Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, December 14, 2016
7:30 pm
**Note Special Time**
Santa Clara County Board Room
70 West Hedding Street, 1st Floor
San Jose, CA

AGENDA

Call to Order

Roll Call

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.

Adoption of Resolutions Commending Directors Harney and Harpootlian for Their Dedicated Service to SVCEA

Consent Calendar (Action)

1a) Approve Minutes of the November 9, 2016, Board of Directors Meeting
1b) Approve Amendment to Agreement with MIG, Inc. for Community Engagement Support Services
1c) Approve Agreement with Ad-Vantage Marketing Inc. for Print and Mail Notices to Customers in SVCE Service Territory
1d) Adopt Resolution to Approve Agreements with PARS for Employee Retirement Benefits
1e) Approve Amendment to Engagement Letter with Troutman Sanders LLP
1f) Adopt Resolution Providing for Certification to Facilitate Provision of Loans to SVCE

Regular Calendar

2) Executive Committee Report (Discussion)
3) CEO Report (Discussion)
4) Approve Board Ongoing Meeting Date, Time, and Location (Action)
5) Appoint Board Treasurer/Auditor and Board Secretary (Action)
6) Approve Security Agreement between SVCEA and River City Bank; Account Control Agreement between SVCEA and River City Bank; Inter-creditor and Collateral Agency Agreement between and among SVCEA, River City Bank and up to three of the suppliers listed below with an asterisk; and approve Power Supply Confirmation Agreement with up to six of the suppliers listed below (Action)

Potential Supplier Names:

1. 3 Phases Renewables Inc.
2. *Energy America, LLC
3. *Exelon Generation Company, LLC
5. Powerex Corp. (Powerex Corp., doing business in California as Powerex Energy Corp.)
6. *Shell Energy North America (US), L.P., a Delaware limited partnership

7) Presentation on Customer Notification (Discussion)

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, Room 157

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

Report from Closed Session

Approval of Amended and Restated Employment Agreement for Chief Executive Officer

Board Member Announcements

Adjourn
RESOLUTION NO. 2016-10

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY COMMENDING DIRECTOR DANIEL HARNEY FOR HIS PROMOTION OF COMMUNITY CLEAN ENERGY IN SANTA CLARA COUNTY AND HIS DEDICATED SERVICE ON THE BOARD OF DIRECTORS OF THE AUTHORITY.

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

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

WHEREAS, Daniel Harney played an important role as a Councilmember in the City of Gilroy in promoting community clean energy in Santa Clara County and forming SVCEA with his City as a member; and

WHEREAS, the Gilroy City Council appointed Dan Harney as its first representative on the Board of Directors of SVCEA; and

WHEREAS, Director Harney served on the Ad Hoc Committee for CEO Recruitment and the Executive Committee of SVCEA; and

WHEREAS, Director Harney actively participated in key decisions setting up the organization and management of SVCEA and establishing the Authority’s community choice energy program, and

WHEREAS, these decisions have made it possible for SVCEA to launch community choice energy service in April 2017;

NOW, THEREFORE, the Board of Directors of SVCEA hereby commends Director Daniel Harney and expresses its sincere appreciation for his promotion of community choice energy in Santa Clara County and his dedicated service as a member of the Board of Directors of the Authority.

ADOPTED AND APPROVED this 14th day of December, 2016.

ATTEST:

Chair

Secretary
RESOLUTION NO. 2016-11

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY COMMENDING DIRECTOR JOHN HARPOOTLIAN FOR HIS PROMOTION OF COMMUNITY CLEAN ENERGY IN SANTA CLARA COUNTY AND HIS DEDICATED SERVICE ON THE BOARD OF DIRECTORS OF THE AUTHORITY.

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

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

WHEREAS, John Harpootlian played an important role as a Councilmember in the Town of Los Altos Hills in promoting community clean energy in Santa Clara County and forming SVCEA with his Town as a member; and

WHEREAS, the Los Altos Hills Town Council appointed John Harpootlian as its first representative on the Board of Directors of SVCEA; and

WHEREAS, Director Harpootlian actively participated in key decisions setting up the organization and management of SVCEA and establishing the Authority’s community choice energy program, and

WHEREAS, these decisions have made it possible for SVCEA to launch community choice energy service in April 2017;

NOW, THEREFORE, the Board of Directors of SVCEA hereby commends Director John Harpootlian and expresses its sincere appreciation for his promotion of community choice energy in Santa Clara County and his dedicated service as a member of the Board of Directors of the Authority.

ADOPTED AND APPROVED this 14th day of December, 2016.

Chair

ATTEST:

Secretary
Call to Order

Chair Sinks called the meeting to order at 7:10 p.m.

Roll Call

Present:
Chair Rod Sinks, City of Cupertino
Vice Chair Rob Rennie, Town of Los Gatos
Director Jeannie Bruins, City of Los Altos
Director John Harpootlian, 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
Director Howard Miller, City of Saratoga
Director Jim Griffith, City of Sunnyvale
Director Liz Gibbons, City of Campbell

Absent:
Director Joe Simitian, County of Santa Clara
Director Daniel Harney, City of Gilroy

Public Comment on Closed Session

No speakers.

Chair Sinks announced the need to change the start time of the regular meeting on December 14 from 7 p.m. to 7:30 p.m. due to a room conflict.

MOTION: Director Miller moved and Vice Chair Rennie seconded the motion to change the start time of the regular meeting on December 14 from 7 p.m. to 7:30 p.m. The motion carried with Directors Simitian and Harney absent.

Trisha Ortiz, Legal Counsel, Richards, Watson & Gershon introduced herself to the Board and stated she was attending the meeting for General Counsel Greg Stepanicich.

The Board adjourned to Closed Session in the Lower Level Conference Room at 7:13 p.m.
Convene to Closed Session

Public Employee Performance Evaluation
Title: Chief Executive Officer

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

The Board reconvened from Closed Session at 8:57 p.m. in the Board Room with Directors Simitian and Harney absent.

Report from Closed Session

Chair Sinks reported the Board met in Closed Session regarding Public Employee Performance Evaluation of the Chief Executive Officer; verbal feedback was provided to the Chief Executive Officer and direction was given to the Chair to work on further aspects.

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

MOTION: Director Craig moved and Director Miller seconded the motion to approve the Consent Calendar.

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

Director Harpootlian stated his vote would be an abstention on Item 1a) Approve Minutes of the October 12, 2016, Board of Directors Meeting.

The motion carried unanimously with an abstention by Director Harpootlian on Item 1a, and Directors Simitian and Harney absent.

1a) Approve Minutes of the October 12, 2016, Board of Directors Meeting

1b) Approve Amendment to Agreement with Richards, Watson & Gershon for Legal Services

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

Chair Sinks reported Executive Committee meeting discussions included the Chief Executive Officer’s performance review for the first six months, options for retirement benefits including that PARS is the preferred provider and staff will bring a proposal to the Board in December, and discussion and approval of the data management agreement with Noble Solutions subject to minor modifications and after review by the CEO and legal counsel.
3) CEO Report

CEO Tom Habashi provided the CEO report including updates regarding the City of Campbell City Council voting to opt-in to GreenPrime energy for city facilities, that the positions of Board Clerk/Executive Assistant, Community Outreach Specialist and the Account Services Manager have been filled, and an update regarding upcoming interviews for the Director of Finance and Administration. CEO Habashi reported the furniture and technology connections are to be installed in the new office, and reported the Executive Committee approved the Data Management Contract with Noble Solutions. CEO Habashi stated the Community Outreach Report is available in the packet, and responded to Board questions. Following discussion, CEO Habashi stated he will provide a sample staff report regarding opting-in to GreenPrime and will distribute it to the Board.

Chair Sinks opened public comment.

James Tuleya, Board member, Carbon Free Mountain View, offered the services of the board to assist with community outreach efforts.

Chair Sinks closed public comment.

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

Patty Kong, Finance and Administrative Services Director, City of Mountain View, presented the staff report and responded to Board questions. CEO Habashi stated Charles Wolf, Attorney, Nixon Peabody, reviewed the agreement and will write the favorable opinion. Ms. Kong stated she would send a sample staff report to Finance Directors and City Managers for use on an upcoming Council meeting agenda. CEO Habashi stated he would coordinate with Ms. Kong to send the sample staff report regarding GreenPrime.

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

MOTION: Director Bruins moved and Director Miller seconded the motion to 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 to the staff report. The motion carried unanimously with Directors Simitian and Harney absent.

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

CEO Habashi introduced the item. Operations Manager Melody Tovar presented the staff report.

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

MOTION: Director McAlister moved and Director Tate seconded the motion to 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 guaranty totaling $2,000,000. The motion carried unanimously with Directors Simitian and Harney absent.
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.**

CEO Habashi presented the staff report.

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

**MOTION:** Director Bruins moved and Director McAlister seconded the motion to approve resolution delegating authority to the Chief Executive Officer to execute Master Agreements with each of the six short listed power suppliers with terms consistent with those contained in the agreements attached to the staff report.

The motion carried unanimously with Directors Simitian and Harney absent.

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

CEO Habashi presented the staff report and responded to Board questions. Trisha Ortiz, Legal Counsel, Richards, Watson & Gershon, responded to Board questions. John Dalessi, Pacific Energy Advisors, provided additional information and responded to Board questions.

Director Bruins inquired regarding page 5 of the agreement, Article 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”)* which states that the agreement is a confidential document.

Trisha Ortiz, Legal Counsel, Richards, Watson & Gershon, stated the Board could approve the agreement and give direction to the Executive Director to include any changes to clarify the confidential nature of the agreement.

In response to comments by the Board regarding performance monitoring of ZGlobal, CEO Habashi stated one of ZGlobal's deliverables is to put together a risk management policy and procedure which will lead to the creation of a risk management committee who will receive monthly reports on how much was purchased, when and for whom. In addition, CEO Habashi stated staff will create an internal mechanism to review ZGlobal's performance and share it with the Board regularly.

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

**MOTION:** Director Miller moved to authorize the Chief Executive Officer to enter into a 5 year agreement with ZGlobal Inc. (ZGlobal) for power supply scheduling coordination services (SC), and authorize the Executive Director to make modifications necessary for the Confidentiality clarification and direction to staff regarding critical contracts to set a schedule by which all of those contracts are presented to the Board with a report and/or metrics that describe how we are doing versus what we expect, so that there is nothing that goes for more than a year without coming before the Board so that the Board may exercise its right for oversight; and to the extent necessary, establish risk management committees and they may review things more frequently.

The motion died due to lack of a second.
MOTION: Director Miller moved and Director Bruins seconded the motion to authorize the Chief Executive Officer to enter into a 5 year agreement with ZGlobal Inc. (ZGlobal) for power supply scheduling coordination services (SC), and authorize the Executive Director to make modifications to clarify the Confidentiality aspects of the agreement. The motion carried unanimously with Directors Simitian and Harney absent.

Without objection, Director Miller provided direction to staff regarding critical contracts, to prepare a schedule by which all contracts come back to the full Board annually with a report on where we are and how we are performing with respect to those contracts. CEO Habashi confirmed the direction to staff.

**Board Member Announcements**

Director McAlister reported issues regarding SPAM email appointments being sent to and from the Board. Other Board members reported experiencing the same issue.

Chair Sinks reminded the Board that the start time for the December 14 meeting will be 7:30 p.m.

CEO Habashi reported the Board meetings for 2017, with the exception of the month of January, will be held at the City of Cupertino Community Hall.

Chair Sinks inquired about the flyers left on the dais for the Board. Communications Manager Misty Mersich stated the flyers are updated flyers for the Board to bring back to their cities.

Director McAlister inquired about the status of new Board members for 2017. CEO Habashi staff will work with each city to get the names of new Directors and Alternates.

Chair Sinks confirmed with CEO Habashi that members leaving the Board will be recognized for their service.

Vice Chair Rob Rennie reported he gave a presentation regarding Community Choice Aggregation and Silicon Valley Clean Energy to the Lions Club in Los Gatos and has been recommended to present at the Kiwanis Club. Vice Chair Rennie stated he, Director Gibbons and Communications Manager Mersich will give a presentation at an upcoming League of Women Voters meeting.

CEO Habashi reported he will give a presentation at the Town of Los Altos Hills on November 17 and stated he is available to present at other City Council meetings.

Director Liz Gibbons thanked Don Bray for his attendance at the City of Campbell Council meeting and thanked outgoing Interim City Clerk Lisa Natusch for her service to the Board.

**Adjourn**

Chair Sinks adjourned the meeting at 10:09 p.m.
To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1b: Approve Amendment to Agreement with MIG, Inc. for Community Engagement Support Services

Date: 12/14/2016

RECOMMENDATION
Authorize the CEO to execute the Amended Service Agreement, any nonfinancial amendments, and other related documents, with MIG for an additional $96,600 to support communications and outreach services through June 30th, 2017.

BACKGROUND
SVCE entered into an agreement with MIG effective April, 13 2016, for a Term to expire March 30, 2017. MIG has been working with SVCE to support outreach and communications efforts including; maintaining, designing, and hosting the current website; logo and brand development; design and collateral creation; creation of SVCE video, development of residential community outreach survey.

ANALYSIS & DISCUSSION
As SVCE ramps up for launch, additional services of MIG are needed. Significant additional website design and development is required to fully support customer interaction on the SVCE website.

New functionality to be developed and deployed by MIG in the updated SVCE website includes:
- display of SVCE energy offerings GreenStart and GreenPrime, and related details
- providing customers with the ability to Opt Out of SVCE services, or Opt Up to SVCE GreenPrime service
- providing comparative information on residential and commercial rates
- providing information and resources for roof-top solar customers
- providing an easy on-line guide to understanding the SVCE bill
- providing an enhanced Frequently Asked Questions page that allows the user to click on the question and have the answer be revealed in an expanded accordion type section
- offering improved access to meeting minutes and videos, news and updates section
- offering an improved user experience with customer friendly graphics, pictures and messaging

Additionally, we want to make sure all information will be available in the most common languages spoken by our customers. Based on census data, both Spanish and Mandarin Chinese are spoken at a rate higher than 10% of the service population. For this reason SVCE will be creating webpages that mimic the English pages for the most important pages on our site, about 10 pages per language. This includes information about our energy offerings, GreenStart, upgrading to GreenPrime, opting out, rates and billing.

MIG’s services are also needed to help develop the graphic visuals for SVCE’s marketing and outreach campaign. This includes developing graphical marketing campaign materials that can be used on SVCE website, in newsletters, as paid advertisements, and on social media.
The specific scope of work is as follows:

1. **Web Design and Development: $52,800**
   1.1 Website Development: MIG will provide visual interface and navigation, design integration and coding, platform setup and programming, QA testing and launch of new SVCE website functionality. ($35,000)
   
   1.2 Web Content and Info Design: MIG will provide new customer-focused content, graphics, icons, illustrations, etc., as needed for the website, on an hourly rate basis. ($13,000)
   
   1.3 Web Ongoing Costs: MIG will provide support for post-launch enhancements or modifications to the SVCE website, on an hourly rate basis. ($2,700)
   
   1.4 SaaS and Hosting: The Software as a Service costs include providing hosting with enterprise level reliability, data backup and security services for all of the website software. It also includes all of the direct costs associated with providing the Internet infrastructure. ($2,100)

2. **Website Translation: $13,300**
   2.1 Translation: Working with a professional translation firm, MIG will translate main elements of the website (10-15 pages) into Spanish and traditional Chinese. ($4,800)
   
   2.2 Two Microsites: The languages will reside on microsites that have identical design to the English site and are accessible both through buttons on the home page and directly, through sp.SVCleanEnergy.org and zh.SVCleanEnergy.org. This task includes developing the sites, placing translated images (art), placing content, in-language quality control and launch. ($8,500)

3. **Marketing Campaign Development: $18,000**
   MIG will develop two campaign directions, including copy and visuals. After SVCE staff review, MIG will develop one campaign which can be used for marketing and outreach both digital and print. Photo shoot included.

4. **Design Support (As-Needed): $7,000**
   As needed, MIG will provide copy writing and design support for additional collateral and other materials, on a time and materials basis.

5. **Project Management: $5,500**
   MIG project management support includes three onsite meetings, managing all MIG tasks, as-needed emails and phone calls, invoicing and reporting. Also, MIG will assist with the transition of tasks to the new SVCE Marketing and Outreach team members as needed.

With this additional scope of work, the original contract will be amended to increase total MIG fees by $96,600. MIG’s total not-to-exceed amount is now two hundred forty two thousand one hundred dollars ($242,100.00). In addition to expanding the scope of work, the Term of the Agreement will be extended by three months, to June 30, 2017. All other terms of Agreement shall remain the same

**ATTACHMENTS**

1. Service Agreement Amendment with MIG
AMENDMENT OF AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND MIG, INC FOR COMMUNITY ENGAGEMENT SUPPORT SERVICES

RECITALS:

A. The SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent joint powers authority, ("Authority"), and MIG, Inc., a California corporation whose address is 800 Hearst Avenue, Berkeley, CA 94710 (hereinafter referred to as "Consultant") (collectively referred to as the “Parties”). Entered into an Agreement effective April, 13 2016, for a Term to expire March 30, 2017.

B. The Agreement (Provision 1) provides that the Agreement Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Both Parties desire to expand and extend by three months the scope of the Agreement, to support the launch of operations and support communications and marketing needs.

NOW, THEREFORE, the Parties mutually agree as follows:

1. SERVICES TO BE PERFORMED

In addition to finishing services set forth in original Agreement (Provision 1), Consultant shall perform additional services set forth below.

1. Web Design and Development: $52,800

1.1 Website Development: MIG will provide visual interface and navigation, design integration and coding, platform setup and programming, QA testing and launch. New functionality to be provided in the updated SVCE website includes (but is not limited to):

- display of SVCE energy offerings GreenStart and GreenPrime, and related details
- providing customers with the ability to Opt Out of SVCE services, or Opt Up to SVCE GreenPrime service
- providing comparative information on residential and commercial rates
- providing information and resources for roof-top solar customers
- providing an easy on-line guide to understanding the SVCE bill
- providing an enhanced Frequently Asked Questions page that allows the user to click on the question and have the answer be revealed in an expanded accordion type section
- offering improved access to meeting minutes and videos, news and updates section
- offering an improved user experience with customer friendly graphics, pictures and messaging
Testing and launch of new website capabilities must be completed by January 12, 2017, so that the updated website is live and fully functional before SVCE customers begin receiving enrollment notifications. ($35,000)

1.2 Web Content and Info Design: MIG will provide new customer-focused content, graphics, icons, illustrations, etc., as needed for the website, on an hourly rate basis. ($13,000)

1.3 Web Ongoing Costs: MIG will provide support for post-launch enhancements or modifications to the SVCE site, on an hourly rate basis. ($2,700)

1.4 SaaS and Hosting: The Software as a Service costs include providing hosting with enterprise level reliability, data backup and security services for all of the website software. It also includes all of the direct costs associated with providing the Internet infrastructure. ($2,100)

2. Website Translation: $13,300
2.1 Translation: Working with a professional translation firm, MIG will translate main elements of the website (10-15 pages) into Spanish and traditional Chinese. ($4,800)

2.2 Two Microsites: The languages will reside on microsites that have identical design to the English site and are accessible both through buttons on the home page and directly, through sp.SVCleanEnergy.org and zh.SVCleanEnergy.org. This task includes developing the sites, placing translated images (art), placing content, in-language quality control and launch. This assumes approximately 10-15 pages. ($8,500)

3. Marketing Campaign Development: $18,000
MIG will develop two campaign directions, including copy and visuals. After staff review, MIG will develop one campaign which can be used for marketing and outreach both digital and print. Photo shoot included.

4. Design Support (As-Needed): $7,000
As needed, MIG will provide copy writing and design support for additional collateral and other materials, on a time and materials basis.

5. Project Management: $5,500
Three onsite meetings, managing all MIG tasks, as needed emails and phone calls, invoicing and reporting. Also, MIG will assist with the transition of tasks to the new SVCE Marketing and Outreach team members as-needed.

2. TERM OF AGREEMENT
The original Term of this Agreement shall be extended by three months, to expire on June 30th, 2017.

3. COMPENSATION TO CONSULTANT
Consultant shall be compensated for the additional services performed pursuant to
amending the original Agreement in a total amount not to exceed Two hundred forty two thousand one hundred dollars ($242,100.00) based on the rates and terms set forth in Exhibit "C," of original Agreement (Provision 1) which is attached hereto and incorporated herein by this reference. All other terms of Agreement shall remain the same.

IN WITNESS WHEREOF, the parties have caused the Amended Agreement to be executed as of December 14, 2016.

MIG, Inc
A California Corporation

By ____________________________  
Title ____________________________  
Date ____________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY
A Joint Powers Authority

By ____________________________  
Title ____________________________  
Date ____________________________

APPROVED AS TO FORM:

______________________________
Counsel for Authority
ATTEST:

______________________________
Authority Clerk
Staff Report – Item 1c

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1c: Approve Agreement with Ad-Vantage Marketing Inc. for Print and Mail Notices to Customers in SVCE Service Territory

Date: 12/14/2016

RECOMMENDATION
Authorize the CEO to execute the Service Agreement, any nonfinancial amendments, and other related documents for printing and marketing services with the firm Mail R Us dba AD-Vantage Marketing Inc., not to exceed $389,936 through December 30, 2017, to print and mail all customer notices.

BACKGROUND
Community Choice Aggregation policy (AB 117 and SB790) outlines that SVCE is to notify customers at least four times about their enrollment with SVCE and their option to opt out and remain with PG&E if they wish.

Two (2) separate notifications are to be sent out during the 60 day period immediately prior to a customer’s automatic enrollment date, and two (2) within two consecutive billing cycles following a customer’s enrollment.

ANALYSIS & DISCUSSION
Silicon Valley Clean Energy has been utilizing the services of MIG to create and design the actual print notices. In addition, SVCE must partner with a full service printing and mailing company to send out the notices on the timeline needed.

Staff contacted two companies referred by other Community Choice agencies, to solicit price quotes for the printing and mailing of notifications to 244,000 SVCE customers. Print2Assist has been serving Marin Clean Energy customers, and AD-Vantage Marketing Inc., has been serving Sonoma Clean Power. These two firms were also recommended to SVCE by Calpine Solutions (SVCE’s data services and call center provider), because both vendors had experience with other CCA’s and were easy to work with. Both quotes were responsive, with AD-Vantage Marketing coming in approximately 4% lower than Print2Assist. Staff conducted phone conferences in which follow up questions were asked of each firm. Both firms expressed that they had the capacity to fulfill SVCE needs, despite workloads with other clients and CCA’s.

Staff also inquired with Peninsula Clean Energy on their provider, but learned that they use two separate companies for printing and mailing. PCE staff highly recommended not going this route and choosing a firm that was full service and all-inclusive of both printing and mailing services.

Staff chose AD-Vantage because of the lower cost estimate, and strong expertise and customer service demonstrated in the phone conference by the account manager who would oversee the SVCE account. AD-Vantage has an excellent understanding of CCA printing and mailing notification processes and needs. AD-
Vantage Marketing Inc. is a full service printing and mailing company that has been in business over 32 years. They are well versed in the business of printing and mailing for Community Choice Aggregation agencies, as they have been working with Sonoma Clean Power since their inception in 2014.

Printing and mailing services is expected to cost $389,936. This includes mailing of four (4) notifications to all 244,000 customers. This also includes mailing of (2) post-enrollment notifications to residents and businesses that move into the SVCE service area between April and December 2017. In addition, a 25% SVCE contingency is included for additional customer-related printing requirements that may arise over the next year, which includes the possibility of sending out a Joint Cost Comparison mailer to customers in July.

1. AD- Vantage Marketing Inc., shall perform services related to the full service printing and mailing of four (4) notices to about 244,000 customers in 3 phases between January 17th, 2017 and November 15th, 2017.
   
   A. Data Processing: $7,000  
   List set up, checking National Change of Address database, and reporting any changes to SVCE.
   
   B. Production: $29,000  
   Inkjet Print setup, addressing letter size postcards with addresses, sort and bag, Delivering and mailing from Santa Clara Main processing center.
   
   C. Printing: $58,000  
   Printing of 6x11 cards, non-gloss with bleeds, FSC Certified paper and soy based ink
   
   D. Postage: $205,936  
   Standard Regular Auto postage @ $0.211 per piece

2. Ongoing expense for Move-in Notices: $15,000  
Printing, mailing and postage for 6x11 cards, non-gloss with bleeds, FSC Certified paper. Sent to addresses of new customers moving into the service territory weekly.

3. Contingency: $75,000  
To be used only at the discretion of the SVCE CEO, for additional customer printing and mailing service requirements that may arise throughout 2017. This includes the possibility of mailing a Joint Cost Comparison Mailer.

Total: $389,936

As shown above, the cost estimate includes all aspects of data processing needed for list processing and setup for mailing addresses, printing set up, actual printing of notices, and a 25% contingency. Notices will be delivered and mailed from our local Santa Clara Main mail processing location. Printing will be done on Forest Stewardship Council (FSC) Certified paper and use soy based ink. This cost includes sending out four (4) 6x11 postcards (2 pre enrollment date and 2 post enrollment date), as shown in the table below.
ATTACHMENTS
1. Service Agreement with AD-Vantage Marketing Inc.
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND MAIL R US dba AD-VANTAGE MARKETING INC FOR PRINTING AND MAILING SERVICES

THIS AGREEMENT, is entered into this 14th day of December, 2016, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent joint powers authority, ("Authority"), and MAIL R US dba AD-VANTAGE MARKETING INC. (hereinafter referred to as "Contractor") (collectively referred to as the “Parties”).

RECORDS:

A. Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") with the power to conduct its business and enter into agreements.

B. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and Contractor desire to enter into an agreement for printing and mailing services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM
   The term of this Agreement shall commence on December 14, 2016, and shall terminate on December 30, 2017, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED
   Contractor shall perform service set forth in Exhibit "A" of which is attached hereto and incorporated herein by this reference.

3. COMPENSATION TO CONTRACTOR
   Contractor shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed three hundred eight nine thousand nine hundred thirty six dollars ($389,936.00). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

4. TIME IS OF THE ESSENCE
   Contractor and Authority agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE
   Contractor agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel.
6. **INDEPENDENT PARTIES**
   Authority and Contractor intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers’ compensation plans, vacation and sick leave are available from Authority to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are the responsibility of Contractor.

7. **NO RE COURSE AGAINST CONSTITUTE NT MEMBERS OF AUTHORITY.**
   Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority’s constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**
   Contractor agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Contractor’s employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**
   Contractor shall indemnify, pay the cost of defense, including attorney’s fees, and hold harmless the Authority from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by Contractor in accordance with the indemnification provision set forth in Exhibit “D”, attached hereto and incorporated herein by reference.

10. **CONFLICT OF INTEREST**
    Contractor warrants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it will not employ any person having such an interest. Contractor agrees to advise Authority immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Contractor to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

11. **PROHIBITION AGAINST TRANSFERS**
    Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Contractor from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of
such assignment shall be promptly furnished to Authority by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

12. **SUBCONTRACTOR APPROVAL**

The Contractor shall perform this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the Authority. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the Authority within thirty (30) business days of Contractor’s notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this Agreement, which shall not be unreasonably withheld by the Authority, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state or federal laws. Action by the Authority awarding a (bid/proposal) to a contractor which has disclosed its intent to assign or subcontract in its response to the (bid/proposal), without exception shall constitute approval for purposes of this Agreement.

13. **RECORDS**

Contractor shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Authority that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of Authority or its designees at all proper times, and gives Authority the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Contractor receives final payment from Authority for all services required under this agreement.

14. **DESIGN, TESTING , AND OWNERSHIP OF DELIVERABLES**

Testing and Acceptance - Contractor will exercise commercially reasonable efforts to test Deliverables requiring testing, including cross-platform and cross-device testing, and to make all necessary corrections prior to providing Deliverables to Authority. Authority shall notify Contractor, in writing, of any failure of such Deliverable to comply with the specifications set forth in Exhibit A, or of any other objections, corrections, changes or amendments the Authority wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and Contractor will undertake to remedy the requested Deliverable in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement.

15. **PARTY REPRESENTATIVES**

The Chief Executive Officer shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Joyce Vollmer shall represent Contractor in all matters pertaining to the services to be performed under this Agreement.

16. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in
writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
Silicon Valley Clean Energy Authority
333 W. El Camino Real
Suite 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONTRACTOR:
MAIL R US
dba AD-VANTAGE MARKETING INC
455 Tesconi Circle
Santa Rosa, CA 95401
Attention: Dave Rankin

17. DOCUMENTS COMPRISING CONTRACT
The Contract shall include this Agreement for printing and mailing services as well as the following documents which are incorporated herein for reference.
   a. Scope of Services in Exhibit “A”
   b. Contractors Certificate of Insurance as required in Exhibit “B”
   c. Confidentiality and Non-Disclosure Agreement as required in Exhibit “C”
   d. Contractor’s Indemnification and Hold Harmless as required in Exhibit “D”

If there is a conflict between the terms of the Agreement and the above referenced documents, then the conflict shall be resolved as follows: the terms of this Agreement shall prevail over the other documents, and the terms of the remaining documents shall be given preference in their above listed order.

18. TERMINATION
In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If Contractor fails to cure the default within the time specified (which shall not be less than 10 days) and according to the requirements set forth in Authority’s written notice of default, and in addition to any other remedy available to the Authority by law, the Chief Executive Officer may terminate the Agreement by giving Contractor written notice thereof, which shall be effective immediately. The Chief Executive Officer shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days’ prior written notice to Contractor as provided herein. Upon receipt of any notice of termination, Contractor shall immediately discontinue performance.

Authority shall pay Contractor for services satisfactorily performed up to the effective date of termination. Upon termination, Contractor shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Contractor or given to Contractor, in connection with this Agreement. Such materials shall become the property of Authority.
19. **COMPLIANCE**  
Contractor shall comply with all applicable local, state and federal laws.

20. **CONFLICT OF LAW**  
This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

21. **ADVERTISEMENT**  
Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

22. **WAIVER**  
A waiver by Authority of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

23. **INTEGRATED CONTRACT**  
This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Authority and Contractor.

24. **AUTHORITY**  
The individual(s) executing this Agreement represent and warrant that they have the legal Authority and authority to do so on behalf of their respective legal entities.

25. **INSERTED PROVISIONS**  
Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

26. **CAPTIONS AND TERMS**  
The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.
MAIL R US
dba AD-VANTAGE MARKETING INC

SILICON VALLEY CLEAN ENERGY AUTHORITY
A Joint Powers Authority

____________________________
By
Date

______________________________
By Tom Habashi, CEO
Date

APPROVED AS TO FORM:

___________________________
Counsel for Authority

ATTEST:

___________________________
Authority Clerk
**Exhibit A**  
*Scope of Services*

1. Contractor, shall perform services related to the full service printing and mailing of four (4) notices to about 244,000 customers in 3 phases between January 17th, 2017 and November 15th, 2017.

A. Data Processing: $7,000  
List set up, checking National Change of Address database, and reporting any changes to SVCE.

B. Production: $29,000  
Inkjet Print setup, addressing letter size postcards with addresses, sort and bag, Delivering and mailing from Santa Clara Main processing center.

C. Printing: $58,000  
Printing of 6x11 cards, non-gloss with bleeds, FSC Certified paper and soy based ink

D. Postage: $205,936  
Standard Regular Auto postage @ $0.211 per piece

2. Ongoing expense for Move-in Notices: $15,000  
Printing, mailing and postage for 6x11 cards, non-gloss with bleeds, FSC Certified paper. Sent to addresses of new customers moving into the service territory weekly.

3. Contingency: $75,000  
To be used only at the discretion of the SVCE CEO, for additional customer printing and mailing service requirements that may arise throughout 2017. This includes the possibility of mailing a Joint Cost Comparison Mailer.

Total Not to Exceed Amount: $389,936

Contractor shall print out and send out notifications according to the phase-in schedule set forth below. This schedule may be modified with the written approval of the Chief Executive Officer.

<table>
<thead>
<tr>
<th>2017</th>
<th>Enroll Phase 1 (P1)</th>
<th>Enroll Phase 2 (P2)</th>
<th>Enroll Phase 3 (P3)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jan</td>
<td>Feb</td>
<td>Mar</td>
</tr>
<tr>
<td>Notice # 1</td>
<td>P1</td>
<td>P2</td>
<td>P3</td>
</tr>
<tr>
<td>Notice # 2</td>
<td>P1</td>
<td>P2</td>
<td>P3</td>
</tr>
<tr>
<td>Notice # 3</td>
<td>P1</td>
<td>P2</td>
<td>P3</td>
</tr>
<tr>
<td>Notice # 4</td>
<td>P1</td>
<td>P2</td>
<td>P3</td>
</tr>
<tr>
<td>Move-In Notices</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
STATEMENT OF PURPOSE
The Silicon Valley Clean Energy Authority (the “Authority”) from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined). Such Agreements shall contain at a minimum risk management/insurance terms to protect the Authority’s interest and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

AUTHORITY DEFINED
The term Authority (wherever it may appear) is defined to mean the Silicon Valley Clean Energy Authority itself, its Board of Directors, employees, volunteers, representatives and agents.

OTHER PARTY DEFINED
The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the Authority and any of such Other Party’s subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

LOSS CONTROL/SAFETY
Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected. The Authority may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the Authority.

INSURANCE – BASIC COVERAGE REQUIRED
The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the Authority, on policies and with insurers acceptable to the Authority, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The Authority does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party’s interests or liabilities, but are merely minimums. “Except for worker’s compensation and professional liability, the Other Party’s insurance policies shall be endorsed to name Silicon Valley Clean Energy Authority as additional insured. It is agreed that the Other Party’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by Silicon Valley Clean Energy Authority for liability arising out of the operations of this agreement.”

Except for workers compensation, the Other Party waives its right of recovery against the Authority, to the extent permitted by its insurance policies. The Other Party’s deductibles/self-insured retentions shall be disclosed to the Authority and may
be disapproved by the Authority. They shall be reduced or eliminated at the option of the Authority. The Other Party is responsible for the amount of any deductible or self-insurance retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the Authority shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of Silicon Valley Clean Energy Authority, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.

**Commercial General Liability:** This insurance shall be an “occurrence” type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other that the Other Party’s employees or damage to property of the Authority or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive or property damage resulting from explosion, collapse, or underground exposures. This policy shall also include protection against claims insured by usual personal liability coverage. ISO occurrence Form CG 0001 or equivalent is required.

The liability limits shall not be less than:

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<tbody>
<tr>
<td>Bodily Injury and</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Property Damage</td>
<td>Aggregate</td>
</tr>
<tr>
<td><strong>Commercial General</strong></td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Liability</td>
<td>Single Occurrence</td>
</tr>
</tbody>
</table>

**Business Automobile Liability:** Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use. ISO Form CA 0001 or equivalent is required.

The liability limits shall not be less than:

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<table>
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<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Injury and</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Property Damage</td>
<td>Single Occurrence</td>
</tr>
</tbody>
</table>

**Worker’s Compensation:** Worker’s Compensation coverage to apply for all employees for statutory limits as required by the State of California. If exempt from Worker’s Compensation coverage, as defined by California Law, the Other Party will provide a copy of State Worker’s Compensation exemption.

All subcontractors shall be required to maintain Worker’s Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

**Professional Liability Insurance:** The Other Party shall carry professional malpractice insurance throughout the term of this Contract and shall maintain such coverage for an extended period of one (1) year after completion and acceptance of any work performed hereunder. At all times throughout the period of required coverage, said coverage shall insure all claims accruing
from the first date of the Contract through the expiration date of the last policy period. In the event that Other Party shall fail to secure and maintain such coverage, Other Party shall be deemed the insurer of such professional malpractice and shall be responsible for all damages suffered by the Authority as a result thereof, including attorney’s fees and costs.

**The liability limits shall not be less than: $1,000,000**

**EVIDENCE/CERTIFICATES OF INSURANCE**
Required insurance shall be documented in Certificates of Insurance which provide that the Authority shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the Authority at least 15 days prior to coverage renewals.

If requested by the Authority, the Other Party shall furnish complete copies of the Other Party’s insurance policies, forms and endorsements.

For Commercial General Liability coverage the Other Party shall, at the opinion of the Authority, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the Authority, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party’s obligation to fulfill the insurance requirements herein.

MAIL R US
dba AD-VANTAGE MARKETING INC

_______________________________________

By________________________

Date________________________
Exhibit C
Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is entered into by and between SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent joint powers authority, ("Authority") and MAIL R US dba AD-VANTAGE MARKETING, INC. (hereinafter referred to as "Contractor") as of December 14, 2016 (“Effective Date”). As used herein the Authority and Contractor may each be referred to individually as a “Party” and collectively as “Parties.” The provisions of this Agreement govern the disclosure of the Authority's confidential customer information to Contractor (“Disclosure Provisions”). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of the Authority regarding customers of the Authority (“Authority Customers”) may be disclosed to Contractor from time to time as provided by the Disclosure Provisions and solely for the purposes set forth on Exhibit A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:

   (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;

   (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is (are) authorized to execute this Agreement on behalf of the Contractor; and

   (c) Contractor confirms its understanding that the information of Authority Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Exhibit A and that any other use of the information is prohibited.

   (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Exhibit A.

2. The confidential and proprietary information disclosed to Contractor in the course of business may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation,
end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to Authority Customers individually or in the aggregate (collectively, “Confidential Information”). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by the Authority, regardless of the form of media in which it is prepared, recorded or retained.

3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.

4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Exhibit A.

5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Exhibit A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection with the Confidential Information, to those employees or representatives of Contractor who have a “need to know” such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.

6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by the Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify the Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Contractor’s compliance with the terms of this Agreement.
7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Decision No. 12-08-045, and any modifications or successors to that decision.

8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to the Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.

9. In addition to all other remedies, Contractor shall indemnify and hold harmless the Authority, its officers, employees, or agents from and against any claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys’ fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.

10. When Contractor fully performs the purposes set forth on Exhibit A, or if at any time Contractor ceases performance or the Authority requires Contractor cease performance of the purposes set forth on Exhibit A, Contractor shall promptly return or destroy (with written notice to the Authority itemizing the materials destroyed) all Confidential Information then in its possession at the request of the Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.

11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.

12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter contained herein, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.

13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.
MAIL R US
dba AD-VANTAGE MARKETING INC

_______________________________________

By________________________

Date________________________
Exhibit D
Hold Harmless/Indemnification - Contractor

To the fullest extent permitted by laws and regulations, and in consideration of the amount stated on any Purchase Order, the Contractor shall defend, indemnify, and hold harmless Silicon Valley Clean Energy Authority (the ‘Authority’), its officers, directors, agents, guests, invitees, and employees from and against all liabilities, damages, losses, and costs, direct, indirect, or consequential (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting from any acts of negligence, recklessness or intentional wrongful misconduct in the performance of the work by the Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable.

In any and all claims against the Authority, or any of its officers, directors, agents, or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of the them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor or other person or organization under worker’s or workmen’s compensation acts, disability benefit acts, or other employee benefit acts, nor shall this indemnification obligation be limited in any way by any limitation on the amount or type of insurance coverage provided by the Authority, the Contractor, or any of his Subcontractors. To the extent this Indemnification conflicts with any provision of California Law or Statue, this indemnification shall be deemed to be amended in such a manner as to be consistent with such Law or Statue.

Subrogation: The Contractor and his Subcontractors agree by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Contractor or Subcontractor to enter in to pre-loss agreement to waive subrogation without an endorsement, then Contractor or Subcontractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer or Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor or Subcontractor enter into such an agreement on a pre-loss basis.

Release of Liability: Acceptance by the Contractor of the last payment shall be a release to the Authority and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the Authority or of any person relating to or affecting the work.

Savings Clause: The parties agree that to the extent the written terms of this Indemnification conflict with any provisions of California laws or statues the written terms of this indemnification shall be deemed by any court of competent jurisdiction to be modified in such a manner as to be in full and complete compliance with all such laws or statues and to contain such
limiting conditions, or limitations of liability, or to not contain any unenforceable, or prohibited term or terms, such that this Indemnification shall be enforceable in accordance with and to the greatest extent permitted by California Law.

MAIL R US
dba AD-VANTAGE MARKETING INC

______________________________

By________________________

Date_______________________
Staff Report – Item 1d

To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 1d: Adopt Resolution to Approve Agreement(s) with PARS for Employee Retirement Benefits
Date: 12/14/2016

RECOMMENDATION
Adopt Resolution 2016-12 authorizing the Chief Executive Officer to execute an agreement with the Public Agency Retirement Services (“PARS”) to provide both a mandatory 401(a) Defined Contribution Plan and voluntary 457(b) Deferred Compensation Program for Silicon Valley Clean Energy Authority’s (“Authority”) employees.

BACKGROUND
As a California public agency, the Authority has the option to opt out of Social Security as its primary retirement system. Staff investigated various retirement plans and investment options aiming to keep employer contribution affordable, maximize investment returns and maintain an acceptable level of risk. Other than Social Security, staff identified three significant retirement plan options available to the Authority:

- California Public Employee’s Retirement System (CalPERS)
- PARS
- Private Plan

After careful review by staff and presentation of findings to the Executive Committee, PARS is the recommended option as it offers clear advantages over Social Security, CalPERS and the less known programs reviewed. PARS also has an advantage over STARS (another retirement plan that staff investigated) because of its investing options and, in the moderate to long-term, better expense ratios as assets grow. This focus beyond the initial term takes into account the fact that retirement programs are intended to operate for many years.

PARS is the third largest multiple employer public retirement system in California with over 800 member agencies representing over 375,000 public employees. Several nearby Cities have implemented retirement programs through PARS including the Cities of Cupertino, Campbell, Gilroy, Morgan Hill and Sunnyvale.

ANALYSIS & DISCUSSION
Effective January 1, 2017, the Authority will contribute 10.0% of salary expense on behalf of each employee eligible for the 401(a) Defined Contribution Program. The Employee shall also be required to contribute a mandatory employee contribution of 10.0% of their salary on a pre-tax basis into the same program. The Authority estimates that the projected employer contribution of the program will be approximately $250,000 annually when fully staffed. In addition, employees can voluntarily contribute their own pre-tax compensation into the 457(b) Deferred Compensation Program at their discretion. There is no vesting period required.

As the Trust Administrator, PARS will ensure that the Authority’s eligible employees are educated in the program and will be provided information regarding plan investments. PARS will also provide training to
payroll staff to ensure the program is properly implemented and will monitor the program including generating and submitting all required reports.

U.S. Bank will serve as the Trustee of the Program. The assets are held separately from the assets of U.S. Bank and cannot be accessed by creditors of either the Trustee or the Authority. John Hancock Life Insurance Company will serve as Custodian and Record Keeper of the Program and its retirement services will provide a variety of no-load mutual fund investments for selection.

Benefits of a Defined Contribution Plan
There are several benefits to the Authority of choosing a Defined Contribution Plan:

- Employer Contribution rate is set by the Authority
- The Authority can increase or decrease employer contributions at its discretion
- External factors (e.g., volatility in the financial markets or mortality rates) do not impact the Authority’s cost of the program.
- The Authority avoids costly actuarial valuations and recognizing potential large unfunded liabilities on its financial statements.
- The employee benefits through participation in a tax-qualified retirement program that provides advantages during employment (e.g., no immediate taxation on any contributions received and tax-deferred accumulation).
- At termination of employment, the employee’s vested account balance may be rolled over into an Individual Retirement Account (IRA) or other qualified retirement plans that accept rollovers.

Alternatives
- CalPERS is a less attractive option because of benefit changes in recent years, its relative inflexibility and the uncertainty of its costs to the Authority.
- STARS program is similar to PARS but is less flexible in its investing, especially its low cost brokerage options. The expense ratio is initially lower when asset values are low, but the advantage ceases when asset values reach approximately $2.5 million.
- Other less known programs were not cost competitive.

ATTACHMENTS
1. Resolution 2016-12 authorizing the CEO to execute an agreement with PARS
2. Sample Agreement with PARS 401(a) Defined Contribution Plan
3. Sample Agreement with PARS 457(b) Deferred Compensation Plan
WHEREAS, the Silicon Valley Clean Energy Authority (“Authority”) was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, it is determined to be in the best interest of the Authority and its employees to provide both a 401(a) Defined Contribution Plan and a 457(b) Deferred Compensation Plan for its eligible employees; and

WHEREAS, The Public Agency Retirement Services (“PARS”) has made available to the Authority a 401(a) Defined Contribution Plan and a 457(b) Deferred Compensation Plan (the “Plans”) qualifying under the relevant section of the Internal Revenue Code of 1986, as amended, and the California Government Code; and

WHEREAS, the Authority is eligible to sponsor such Plans.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does resolve as follows:

SECTION 1. Adopts the PARS Trust, including the PARS Defined Contribution Plan as part of the Authority’s Retirement Program, effective January 1, 2017.

SECTION 2. Adopts the PARS 457(b) Deferred Compensation Plan and Trust, effective January 1, 2017.

SECTION 3. Adopts PARS as the Trust Administrator, U.S. Bank National Association as Trustee, and John Hancock Life Insurance Company as Custodian and Record Keeper for the PARS 401(a) Defined Contribution Plan and the PARS 457(b) Deferred Compensation Plan effective January 1, 2017.

SECTION 4. Adopts the Chief Executive Officer or his/her successor or his/her designee as the Authority’s Plan Administrator for the aforementioned Plans.

SECTION 5. Authorizes the Authority’s Plan Administrator to execute the PARS legal and administrative documents on behalf of the Authority and to take whatever
additional actions are necessary to maintain the Authority’s participation in PARS and to maintain PARS compliance of any relevant regulation issued or as may be issued; therefore authorizing him/her to take whatever additional actions are required to administer the Authority’s PARS Plan(s).

SECTION 6. The Authority shall contribute 10% of salary on behalf of each eligible employee to the 401(a) Defined Contribution Program. Each eligible employee shall contribute a mandatory employee contribution of 10% of their salary on a pre-tax basis into the 401(a) Defined Contribution Program. The Authority reserves the right to prospectively change contribution rates at any time. Employees can voluntarily contribute their own pre-tax compensation into the 457(b) Deferred Compensation Program at their discretion. No employer contribution will apply to the Deferred Compensation Program at this time.

ADOPTED AND APPROVED this 14th day of December, 2016.

________________________________
Rod Sinks, Chair

ATTEST:

_________________________________________________________
Andrea Pizano, Board Secretary
AGREEMENT FOR ADMINISTRATIVE SERVICES

This Agreement for Administrative Services ("Agreement") is made this ____ day of __________, 2016, between Phase II Systems, a corporation organized and existing under the laws of the State of California, doing business as Public Agency Retirement Services and PARS (hereinafter “PARS”) and the Silicon Valley Clean Energy Authority (“Agency”).

WHEREAS, the Agency has adopted the Silicon Valley Clean Energy Authority PARS Defined Contribution Plan (“Plan”) effective __________, 2016, in conjunction with the PARS Trust Agreement ("Trust"), with PARS, as Trust Administrator to the Trust, to provide administrative services.

WHEREAS, by written resolution and pursuant to Sections 3.4 and 3.5 of the Trust, the Agency’s governing body has appointed by position or title a Plan Administrator to act on its behalf in all matters relating to the Plan pursuant to the PARS Trust Program (“Plan Administrator”);

WHEREAS, pursuant to Section 3.6 of the PARS Trust Agreement, the Agency has the power to delegate certain duties related to the Plan, and PARS accepts those duties pursuant to the terms contained in this Agreement, and that this Agreement represents the entire delegation of duties to PARS from the Agency with regards to the Plan.

WHEREAS, PARS accepts the terms of this Agreement with the understanding by the Agency and Plan Administrator that PARS does not hold custody of any assets of the Plan, and does not have any independent authority or discretion for the investment, distribution or escheatment of Plan assets without the express consent of, and direction from, the Plan Administrator.

NOW THEREFORE, the parties agree:

1. Services. PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto and incorporated as if fully set forth herein as “Exhibit 1A” ("Services") in a timely manner, subject to the further provisions of this Agreement.

2. Fees for Services. PARS will be compensated for performance of the Services as described in the exhibit attached hereto and incorporated as if fully set forth herein as “Exhibit 1B”.

3. Payment Terms. Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will obtain prior Agency authorization and provide the Agency with written notice of the subject services, terms, and an estimate of the fees therefore.

5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency providing PARS the information specified in the exhibit attached hereto and incorporated as if fully set forth herein as “Exhibit 1C” (“Data”). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for non-performance of Services if such non-performance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Suspension of Contributions.** In the event contributions are suspended, either temporarily or permanently, prior to the complete discharge of PARS’ obligations under this Agreement, PARS reserves the right to bill the Agency for Services under this Agreement at the rates indicated in PARS’ standard fee schedule in effect at the time the services are provided, subject to the terms established in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with written notice of the subject services, terms, and an estimate of the fees therefore.

7. **Plan Distributions.** The Plan Administrator is responsible for notifying PARS of any Participant’s eligibility for a distribution, and PARS accepts the Plan Administrator’s contractual delegation of distribution processing. PARS is entitled to rely on, and is under no duty whatsoever to audit the efficacy of the Agency’s procedures for identifying an employee’s change-in-status or eligibility for a distribution.

8. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS’ fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.
9. **Confidentiality.** Without the Agency’s consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.

10. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers, employees or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers’ compensation and similar matters.

11. **Indemnification.** PARS and Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys’ fees and costs, incurred by the other as a consequence of, to the extent PARS’ or Agency’s, as the case may be, negligent acts, errors or omissions with respect to the performance of their respective duties hereunder.

12. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.

13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state or federal court located in Santa Clara County, California.

14. **Force Majeure.** When a party’s nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.

15. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
16. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.

17. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

(A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President

(B) To Agency: Silicon Valley Clean Energy Authority; Address, City, State, Zip; Attention: ________________ (Plan Administrator)

Notices shall be deemed given on the date received by the addressee.

18. **Term of Agreement.** This Agreement shall remain in effect for the period beginning __________, 2016 and ending __________, 2019 ("Term"). This Agreement will continue unchanged for successive twelve month periods following the Term unless either party gives written notice to the other party of the intent to terminate prior to ninety (90) days before the end of the Term.

19. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.

20. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.

21. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney’s fees.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.

23. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
24. **Effective Date.** This Agreement shall be effective and control the obligations and duties of the parties hereto as of the date first above written.

**AGENCY:**

**BY:**

______________________________
Plan Administrator Name

**TITLE:**

______________________________

**DATE:**

______________________________

**PARS:**

**BY:**

______________________________
Tod Hammeras

**TITLE:**

Chief Financial Officer

**DATE:**

______________________________
EXHIBIT 1A
SERVICES

PARS will provide the following services for the Silicon Valley Clean Energy Authority PARS Defined Contribution Plan:

1. Plan Installation Services:
   (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, benefit communication strategies, data reporting and contribution submission requirements;
   (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
   (C) Providing the documentation needed to establish the Plan to be reviewed and approved by Agency legal counsel. Resulting final Plan document must be approved by the Agency prior to the commencement of PARS Plan Administration Services outlined in Exhibit 1A, paragraph 2 below;
   (D) Upon Agency authorization, preparing and submitting application to the Internal Revenue Service for a determination that the Plan is qualified (the application fee for which shall be paid by the Agency).

2. Plan Administration Services:
   (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee and/or custodian/recordkeeper of the PARS Trust (“Trustee and/or Custodian/Recordkeeper”), based upon information received from the Agency and the Trustee and/or Custodian/Recordkeeper;
   (B) Performing periodic accounting of Plan assets, including the allocation of employer and employee contributions, distributions, investment activity and expenses (if applicable) to individual Participant accounts, based upon information received from the Agency and/or Trustee and/or Custodian/Recordkeeper;
   (C) Acting as ongoing liaison between the Participant and the Agency in regard to distribution payments, which shall include use by the Participants of toll-free telephone communication to PARS;
   (D) Coordinating the processing of Participant distribution payments pursuant to authorized written Agency certification of distribution eligibility, authorized direction by the Agency, the provisions further contained in this Agreement, and the provisions of the Plan;
   (E) Directing Trustee and/or Custodian/Recordkeeper to make Participant distribution payments, pursuant to the Agency authorization provisions in this Agreement, and producing required tax filings regarding said distribution payments;
   (F) Notifying the Trustee and/or Custodian/Recordkeeper of the amount of Plan assets available for further investment and management, or, the amount of Plan assets necessary to be liquidated in order to fund Participant distribution payments;
(G) Coordinating actions with the Trustee and/or Custodian/Recordkeeper as directed by the Plan Administrator within the scope this Agreement;

(H) Preparing and submitting a periodic Non- Contribution report which includes all Participants who have received no new contributions for a period of time as specified by the Plan Administrator, unless directed by the Agency otherwise. PARS is not obligated by law or otherwise to provide a Non-Contribution report and this report in no way obligates PARS to generate distributions without specific instruction from the Agency’s Plan Administrator as outlined in Section 7 of this Agreement;

(I) Preparing and submitting a quarterly report of Plan activity to the Agency, unless directed by the Agency otherwise;

(J) Preparing and submitting an annual report of Plan activity to the Agency;

(K) Preparing and submitting individual quarterly statements to Plan Participants (unless otherwise provided by the Custodian/Recordkeeper).

(L) Preparing and submitting the Annual Report of Financial Transactions to the California State Controller, as required by law, for the PARS Trust Program, including the required certified audit of the PARS Trust.

3. Plan Compliance Services: Preparing draft amendments and other associated documents to the Plan or Trust, as required by federal and state regulatory agencies, to be reviewed and approved by Agency’s legal counsel. As directed by the Agency, PARS shall coordinate the filings of any Plan amendments and restatements with the corresponding federal and state regulatory agencies.

4. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice.
EXHIBIT 1B
FEES FOR SERVICES

1. PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

   (A) An optional IRS Letter of Determination fee payable directly to the Internal Revenue Service (IRS) based on current IRS rates at the time of filing;

   (B) A one-time set-up fee upon implementation of Plan, $1,500.00 (“Set-Up Fee”), which shall be paid directly by the Agency.

   (C) An annual asset fee paid by the Agency or from Plan Assets based on the following schedule (“Asset Fee”):

<table>
<thead>
<tr>
<th>For Plan Assets from:</th>
<th>Annual Rate:</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1 to $2,500,000</td>
<td>0.50%</td>
</tr>
<tr>
<td>$2,500,001 and above</td>
<td>0.35%</td>
</tr>
</tbody>
</table>

   Annual rates are prorated and paid monthly. The annual Asset Fee shall be calculated by the following formula [Annual Rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month within each asset range]. Assets based fees are subject to a $400.00 monthly minimum. The monthly minimum will be reduced to $300.00 provided that the Agency implements and maintains the PARS Section 457(b) Deferred Compensation Plan. If the Asset Fee is taken from Plan Assets, the total Asset Fees due in a given month shall be allocated proportionately among Participants of the Agency’s Plan in that month, based on account balance. Trustee and Investment Management Fees are not included.

   Annual Asset Fee Payment Option (Please select one option below):

  ☐ Annual Asset Fee shall be invoiced to and paid by the Agency.

  ☐ Annual Asset Fee shall be paid from Plan Assets.

   (D) A fee equal to any IRS application fees and or legal fees incurred related to any federal or state required Plan compliance changes. Such fees will not be charged to the Agency without prior authorization by the Plan Administrator.

   (E) A fee equal to the out of pocket costs charged to PARS by an outside contractor for formatting contribution data to a suitable electronic format, charged only if the contribution data received by PARS from the Agency is not sent electronically (Excel, CSV, TXT, or other approved format) (“Data Processing Fee”).

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PARS 401(a) Defined Contribution Plan
EXHIBIT 1C
DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information:

1. Contribution Data – transmitted to PARS electronically (Excel, CSV, TXT, or other approved format) containing the following items of employee information related to the covered payroll period:
   (A) Agency name
   (B) Employee’s legal name
   (C) Employee’s social security number
   (D) Payroll date
   (E) Employer contribution amount
   (F) Employee contribution amount

2. Distribution Data – written Plan Administrator’s (or authorized Designee’s) direction to commence distribution processing, which contains the following items of Participant information:
   (A) Agency name
   (B) Participant’s legal name
   (C) Participant’s social security number
   (D) Participant’s address
   (E) Participant’s phone number
   (F) Participant’s birth date
   (G) Participant’s condition of eligibility
   (H) Participant’s effective date of eligibility
   (I) Signed certification of distribution eligibility from the Plan Administrator, or authorized Designee

3. Executed Legal Documents:
   (A) Certified Resolution
   (B) Adoption Agreement
   (C) Plan Document
   (D) Trustee/Custodian/Recordkeeper Recordkeeping Agreements

4. Completed Enrollment Forms (timely submitted by Participant)

5. Other information pertinent to the Services as reasonably requested by PARS.
AGREEMENT FOR ADMINISTRATIVE SERVICES

This Agreement for Administrative Services ("Agreement") is made this _____ day of __________, 2016, between Phase II Systems, a corporation organized and existing under the laws of the State of California, doing business as Public Agency Retirement Services and PARS (hereinafter “PARS”) and the Silicon Valley Clean Energy Authority ("Agency").

WHEREAS, Agency is desirous of retaining PARS, as Trust Administrator, to provide administrative services with respect to the Silicon Valley Clean Energy Authority PARS Section 457(b) Deferred Compensation Plan and Trust (the “Plan”);

WHEREAS, by written resolution and pursuant to Sections 1.1 and 2.1 of the Trust, the Agency’s governing body has appointed by position or title a Plan Administrator to act on its behalf in all matters relating to the Plan and PARS Trust ("Plan Administrator");

WHEREAS, pursuant to Sections 3.3 and 3.5 of the Trust, the Agency has the power to delegate certain duties related to the Plan, and PARS accepts those duties pursuant to the terms contained in the Agreement, and that this Agreement represents the entire delegation of duties to PARS from the Agency with regards to the Plan;

WHEREAS, PARS accepts the terms of this Agreement with the understanding by the Agency and Plan Administrator that PARS does not hold custody of any assets of the Plan, and does not have any independent authority or discretion for the investment, distribution or escheatment of Plan assets without the express consent of, and direction from the Plan Administrator.

NOW THEREFORE, THE PARTIES AGREE:

1. **Services.** PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto as “Exhibit 1A” ("Services") in a timely manner, subject to the further provisions of this Agreement.

2. **Fees for Services.** PARS will be compensated for performance of the Services as described in the exhibit attached hereto as “Exhibit 1B”.

3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received by PARS within thirty (30) days of the invoice delivery date, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.

4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS standard fee schedule in effect at the time the services are provided and shall be payable as
described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with a detailed description of the services, terms, and applicable rates for such services. Such services, terms, and applicable rates shall be agreed upon in writing and executed by both parties.

5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency providing PARS the information specified in the exhibit attached hereto as “Exhibit 1C” (“Data”). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for non performance of Services to the extent such non performance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Plan Distributions.** The Plan Administrator is responsible for notifying PARS of any Participant’s eligibility for a distribution, and PARS accepts the Plan Administrator’s contractual delegation of distribution processing and certain escheatment responsibilities. PARS is entitled to rely on, and is under no duty whatsoever to audit the efficacy of the Agency’s procedures for identifying an employee’s change-in-status or eligibility for a distribution.

7. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS’ fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.

8. **Confidentiality.** Without the Agency’s consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.

9. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers,
employees or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers’ compensation and similar matters.

10. **Indemnification.** PARS and Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys’ fees and costs, incurred by the other as a consequence of, to the extent, PARS’ or Agency’s, as the case may be, negligent acts, errors or omissions with respect to the performance of their respective duties hereunder.

11. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.

12. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state or federal court located in Santa Clara County, California.

13. **Force Majeure.** When a party’s nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.

14. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.

15. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.

16. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
(A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President

(B) To Agency: Silicon Valley Clean Energy Authority; Address, City, State, Zip; Attention: ___________________ [Plan Administrator]

Notices shall be deemed given on the date received by the addressee.

17. **Term of Agreement.** This Agreement shall remain in effect for the period beginning __________, 2016 and ending __________, 2019 (“Term”). This Agreement will continue unchanged for successive twelve month periods following the Term unless either party gives written notice to the other party of the intent to terminate prior to ninety (90) days before the end of the Term.

18. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.

19. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.

20. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney’s fees.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.

22. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

23. **Effective Date.** This Agreement shall be effective and control the obligations and duties of the parties hereto as of the date first above written.

**AGENCY:**

BY: ____________________________

Plan Administrator Name

TITLE: __________________________

DATE: __________________________

**PARS:**

BY: ____________________________

Tod Hammeras

TITLE: Chief Financial Officer

DATE: __________________________
EXHIBIT 1A
SERVICES

PARS will provide the following services for the Silicon Valley Clean Energy Authority PARS 457(b) Deferred Compensation Plan:

1. Plan Installation Services:
   (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, benefit communication strategies, data reporting and contribution submission requirements;
   (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
   (C) Providing the documentation needed to establish the Plan to be reviewed and approved by Agency legal counsel. Resulting final Plan document must be approved by the Agency prior to the commencement of PARS Plan Administration Services outlined in Exhibit 1A, paragraph 2 below.

2. Plan Administration Services:
   (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee and/or custodian/recordkeeper of the PARS Trust Program (“Trustee and/or Custodian/Recordkeeper”), based upon information received from the Agency and the Trustee and/or Custodian/Recordkeeper;
   (B) Performing periodic accounting of Plan assets, including the allocation of employer and employee contributions, distributions, investment activity and expenses (if applicable) to individual Participant accounts, based upon information received from the Agency and/or Trustee and/or Custodian/Recordkeeper;
   (C) Acting as ongoing liaison between the Participant and the Agency in regard to distribution payments, which shall include use by the Participants of toll-free telephone communication to PARS;
   (D) Producing customized Participant election packets and processing enrollments;
   (E) Conducting group Participant orientation meeting(s) at a select agency site;
   (F) Coordinating the processing of Participant distribution payments pursuant to authorized written Agency certification of distribution eligibility, authorized direction by the Agency, the provisions further contained in this Agreement, and the provisions of the Plan;
   (G) Directing Trustee and/or Custodian/Recordkeeper to make Participant distribution payments, pursuant to the Agency authorization provisions in this Agreement, and to produce the required tax filings regarding said distribution payments;
   (H) Notifying the Trustee and/or Custodian/Recordkeeper of the amount of Plan assets available for further investment and management, or, the amount of Plan assets necessary to be liquidated in order to fund Participant distribution payments;
   (I) Coordinating actions with the Trustee and/or Custodian/Recordkeeper as directed by the Plan Administrator within the scope of this Agreement;
(J) If directed by the Agency, preparing and submitting a periodic Non- Contribution report which includes all Participants who have received no new contributions for a period of time as specified by the Plan Administrator. PARS is not obligated by law or otherwise to provide a Non-Contribution report and this report in no way obligates PARS to generate distributions without specific instruction from the Agency Plan Administrator.

(K) Preparing and submitting a quarterly report of Plan activity to the Agency, unless directed by the Agency otherwise;

(L) Preparing and submitting an annual report of Plan activity to the Agency;

(M) Preparing and submitting individual quarterly and annual statements to Plan Participants (unless otherwise provided by the Custodian/Recordkeeper).

3. Plan Compliance Services: Preparing draft amendments and other associated documents to the Plan or Trust, as required by federal and state regulatory agencies, to be reviewed and approved by Agency’s legal counsel. As directed by the Agency, PARS shall coordinate the filings of any Plan amendments and restatements with the corresponding federal and state regulatory agencies.

4. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice.
EXHIBIT 1B
FEES FOR SERVICES

1. PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

(A) A one-time set-up fee upon implementation of Plan of $1,500.00 ("Set-up Fee"), which shall be paid directly by the Agency to PARS;

(B) An annual asset fee paid by the Agency or from Plan Assets based on the following schedule ("Asset Fee"):

<table>
<thead>
<tr>
<th>For Plan Assets from:</th>
<th>Annual Rate:</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1 to $2,500,000</td>
<td>0.50%</td>
</tr>
<tr>
<td>$2,500,001 and above</td>
<td>0.35%</td>
</tr>
</tbody>
</table>

Annual rates are prorated and paid monthly. The annual Asset Fee shall be calculated by the following formula [Annual Rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month within each asset range]. Assets based fees are subject to a $400.00 monthly minimum. The monthly minimum will be reduced to $300.00 provided that the Agency implements and maintains the PARS Section 401(a) Defined Contribution Plan. If the Asset Fee is taken from Plan Assets, the total Asset Fees due in a given month shall be allocated proportionately among Participants of the Agency’s Plan in that month, based on account balance. Trustee and Investment Management Fees are not included.

Annual Asset Fee Payment Option (Please select one option below):

- ☐ Annual Asset Fee shall be invoiced to and paid by the Agency.
- ☐ Annual Asset Fee shall be paid from Plan Assets.

(C) A fee equal to any IRS application fees and or legal fees incurred related to any federal or state required Plan compliance changes. Such fees will not be charged to the Agency without prior authorization by the Plan Administrator;

(D) A fee equal to the out of pocket costs charged to PARS by an outside contractor for formatting contribution data to a suitable electronic format, charged only if the contribution data received by PARS from the Agency is not sent electronically (Excel, CSV, TXT, or other approved format) ("Data Processing Fee").
EXHIBIT 1C
DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information:

1. Contribution Data – transmitted to PARS electronically (Excel, CSV, TXT, or other approved format) containing the following items of employee information related to the covered payroll period:
   (A) Agency name
   (B) Employee’s legal name
   (C) Employee’s social security number
   (D) Payroll date
   (E) Employer contribution amount
   (F) Employee contribution amount

2. Distribution Data – written Plan Administrator’s (or authorized Designee’s) direction to commence distribution processing, which contains the following items of Participant information:
   (A) Agency name
   (B) Participant’s legal name
   (C) Participant’s social security number
   (D) Participant’s address
   (E) Participant’s phone number
   (F) Participant’s birthdate
   (G) Participant’s condition of eligibility
   (H) Participant’s effective date of eligibility
   (I) Signed certification of distribution eligibility from the Plan Administrator, or authorized Designee

3. Executed Legal Documents:
   (A) Certified Resolution
   (B) Trust Agreement
   (C) Adoption Agreement to the Recordkeeping Agreement
   (D) Plan Document
   (E) Custodian/Recordkeeper Agreements

4. Completed Enrollment Forms (timely submitted by Participant)

5. Other information pertinent to the Services as reasonably requested by PARS.
To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1e: Approve Amendment to Engagement Letter with Troutman Sanders LLP

Date: 12/14/2016

RECOMMENDATION

Authorize the Chief Executive Officer to approve amendment to a letter of engagement with Troutman Sanders LLP to increase the cost of the contract to NTE $75,000.

BACKGROUND

In August 2016, SVCE mailed an RFP to power producers and marketers seeking proposals to supply power to SVCE service territory for the next 5 years. Proposals were received in late September. SVCE selected 6 suppliers for further negotiations and acquired the services of Troutman Sanders LLP to negotiate legal terms and conditions.

ANALYSIS & DISCUSSION

The initial letter of engagement with Troutman Sanders LLP was for NTE cost of $25,000, requiring only the CEO approval. Since that time, the scope of services required of Troutman Sanders in connection with the RFP has increased due to the addition of two more prospective suppliers to the negotiations (an increase from 4 to 6), accommodation of requests from certain suppliers to use alternative forms of confirmation agreement, negotiation of alternative EEI Master Agreement templates for suppliers that were not participating in the lockbox, preparation of legal opinions and related documentation for suppliers, and other modifications to the Lockbox Agreements and other documentation requested by SVCE to increase value and flexibility for SVCE and its customers. As a result of these additional required services, Staff believes that the NTE amount of $25,000 is not sufficient to proceed with the negotiations through December 2016, the time that we expect to execute the supply agreements. The attached matrix shows the number of agreements and various documents that are necessary to govern the power supply acquisition.

Therefore, staff recommends increasing the NTE limit in the engagement agreement to $75,000 which we believe should be sufficient for the additional work needed to finalize and secure execution of the necessary agreements.

ATTACHMENTS

1. SVCEA Document Party Matrix
2. Troutman Sanders LLP Amended Engagement Letter
<table>
<thead>
<tr>
<th>PPA Providers</th>
<th>Constellation</th>
<th>Shell</th>
<th>Direct Energy</th>
<th>Powerex</th>
<th>3 Phases</th>
<th>Morgan Stanley</th>
<th>River City Bank</th>
<th>Board Approval Required</th>
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<td>EEI Master Agreement&lt;sup&gt;1&lt;/sup&gt;</td>
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<td>✓</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

1. Master Power Purchase and Sale Agreement between PPA Provider and Silicon Valley Clean Energy Authority
2. Confirmation between PPA Provider and Silicon Valley Clean Energy Authority
3. Security Agreement between Silicon Valley Clean Energy Authority and River City Bank
4. Account Control Agreement between River City Bank and Silicon Valley Clean Energy Authority
5. Intercreditor and Collateral Agency Agreement between River City Bank, the PPA Provider, and Silicon Valley Clean Energy Authority
December 7, 2016

VIA EMAIL

Tom Habashi, CEO  
Silicon Valley Clean Energy Authority  
505 W Olive Ave, Suite 130  
Sunnyvale, CA 94086

Re: Troutman Sanders LLP’s Representation of Silicon Valley Clean Energy Authority

Dear Mr. Habashi:

We are pleased that you have requested Troutman Sanders LLP (the “Firm”) to provide legal services to Silicon Valley Clean Energy Authority (“SVCEA”) and we thank you for the opportunity to be of assistance.

The purpose of this Amended Engagement Letter (the “Agreement”) is to verify your approval as to the scope of our engagement, the financial terms of our engagement, and all other aspects of this engagement, as follows:

1. **Scope of Engagement.** By means of this Agreement, SVCEA is engaging the Firm to provide legal services in connection with the review, revision, negotiation, and finalization of the following documentation for SVCEA’s 2016 Energy Services Request for Proposals (“RFP”): (i) the EEI Master Agreement and Cover Sheet, Confirmation, and any supporting credit documentation such as parent guarantees and letters of credit (the “Energy Supply Agreements”) and (ii) the deposit account control agreement, intercreditor and collateral agency agreement, and security agreement (the “Lockbox Agreements”). The legal services relating to the Energy Supply Agreements and the Lockbox Agreements are collectively referred to below as the “Engagement.”

2. **Fees and Hourly Rates.** Our billing practice is to charge for our legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals involved. These hourly rates are based upon these professionals’ experience, expertise, and standing. Our current hourly rates are in these ranges: partners $385 - $1,075; associates $245 - $697; and paralegals $105-335. My rate for this work is $625/hr.
These rates are modified by us from time to time, and any new rates would be implemented immediately after they are adopted and would apply to legal services rendered after the effective date of the new rates which will be reflected on your bill.

We believe that our hourly rates are comparable with the rates charged for the same kinds of work by lawyers and other professionals of similar experience, expertise and standing. We try to use associate and paralegal support on projects where appropriate, and we will be happy to discuss the staffing of your project with you.

We will charge for all activities undertaken in providing legal services to you under this Agreement, including but not limited to the following: conferences, including preparation and participation; preparation and review of correspondence and other documents; legal research; court and other appearances; including preparation and participation; and telephone calls, including calls with you, other attorneys or persons involved with this matter, and governmental agencies. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person will charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. We will charge for travel time, both local and out of town.

As we have discussed, we are willing to perform the legal services through the conclusion of the Engagement for a budgeted amount not to exceed seventy-five thousand dollars ($75,000); a $50,000 increase from the original engagement letter due solely to the increased scope of work requested by SVCEA. The term of the Agreement is hereby extended through January 15, 2017.

3. Additional Services and Outside Expenditures. Our legal representation may also involve additional services provided by vendors. We will obtain your advance approval before incurring any such additional services on your behalf. You will be required either to pay for these outside additional services directly, or to reimburse us if we make payment for these services on your behalf. We sometimes will make payment for, and then bill you for reimbursement of smaller items such as filing fees, photocopying by outside copying services, electronic discovery services, recording fees, messenger services, service of process, and court fees. When there are substantial expenditures involving vendors (such as for discovery management, document production, depositions, expert witnesses, exhibit preparation, or air fare) or substantial out-of-pocket expenditures (such as extended field expenses, large outside copying jobs, or jury fees), we will require either that you pay those sums to us before we expend them, that you provide an advance deposit for such expenditures, or that you directly contract with and pay the vendor. You will not be billed for any internal Firm costs incurred on your behalf, such as telephone (including long distance charges), telexcopy charges, word processing, secretarial overtime, firm couriers, postage (including FedEx, UPS or similar overnight delivery services), printing and photocopying performed in-house.
4. **Monthly Statements and Payment Terms.** Our practice will be to send a monthly statement of our charges for legal services and for reimbursement of payments made on our client’s behalf for outside additional services. The detail in the monthly statement will inform you of the nature and progress of our work and of the charges and expenditures being incurred.

   Unless otherwise agreed, each monthly statement is fully due and payable upon receipt, but in no event later than thirty days after its issuance date.

   We specifically reserve the right to withdraw from representation of you and to cease performing immediately all services if we do not receive full payment of any amounts owed to us within thirty days of any statement.

5. **Withdrawal From Representation.** The attorney-client relationship is one of mutual trust and confidence. If you have any questions at all about the provisions of this Agreement, we invite your inquiries. We encourage our clients to inquire about any matter relating to our engagement agreements or monthly statements which may be in any way unclear or appear unsatisfactory. If you do not meet your obligation of timely payments or deposits under this Agreement, we reserve the right to withdraw from your representation on that basis alone, subject of course to any required judicial, administrative, or other approvals.

   This Agreement is also subject to termination by either party upon reasonable notice for any reason. If there were to be such a termination, however, you would remain liable for all unpaid charges for services provided and expenditures advanced or incurred.

6. **Duties Upon Termination of Active Representation.** Upon termination of our active involvement in a particular matter for which we had previously been engaged, we will have no further duty to inform you of future developments or changes in law which may be relevant to such matter in which our representation has terminated. Further, unless you and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had been engaged. If your matter involves obtaining a judgment and such judgment is obtained, we will only be responsible for those post judgment services (such as recording abstracts, filing judgment liens, and calendaring renewals of judgments) as are expressly agreed to by you and the Firm in writing and for which you will be obligated to pay.

7. **Document Storage Policies.** The Firm’s policy with regard to documents and other materials at the conclusion of a matter is to maintain them in storage for a period of no more than ten years. All documents and other materials in our file will then be destroyed or discarded without notice to you. Accordingly, if there are any documents or other materials you wish to have retrieved from your file at the conclusion of a matter, it will be necessary for you to advise us of that request to ensure that they are not destroyed.

8. **Consent to Electronic Communications.** In order to maximize efficiency in this matter, we intend to use state of the art communications devices to the fullest extent possible
(e.g., E-Mail, document transfer by computer, cellular telephones, and facsimile transfers). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe the effectiveness involved in use of these devices outweighs the risk of accidental disclosure. By signing this letter, you acknowledge your consent to the use of these devices.

9. Disclaimer of Guarantee. Nothing in this Agreement should be construed as a promise or guarantee about the outcome of any matter which we are handling on your behalf. Our comments about the outcome of your matter are expressions of opinion only. If we should provide you with an estimate of the fees and costs which may be incurred in connection with our representation of you, it is important that you understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be.

10. Future Matters. Unless otherwise agreed in writing between us, all other matters referred to us for representation shall be governed by the terms of this Agreement.

11. Entire Agreement. This Agreement contains all terms of the agreement between us applicable to our representation of you, and may not be modified except by a written agreement signed by both of us.

12. Future Conflict. Our undertaking to represent you in the above matters will not act as a bar so as to prevent us from representing any existing or future client with respect to a claim, litigation or transaction adverse to you, so long as in the course of our representation of you we have not obtained any information that would be adverse to your interests with respect to such claim, litigation or transaction.

13. Client. The Firm’s clients for the purpose of our representation are only the persons and entities identified in this Agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any of their shareholders, partners, officers, directors, agents, or employees.

If this Agreement correctly sets forth your understanding of the scope of the services to be rendered to you by the Firm and if all of the terms set forth in this Agreement are satisfactory, then please sign this Agreement and return it to me so that we will be engaged as your legal counsel. If the scope of services described is incorrect or if the terms set forth are not satisfactory to you, please let us know in order that we can discuss either aspect.
We look forward to working with you and thank you once again for the opportunity to be of service.

Sincerely,

TROUTMAN SANDERS LLP

Stephen C. Hall

I have read and understand the contents of this letter and consent to the Firm representing me on the terms set forth in this letter.

SILICON VALLEY CLEAN ENERGY AUTHORITY:

Dated: ____________, 2016

By: _______________________
Name: Tom Habashi
Title: CEO
To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 1f: Adopt Resolution Providing for Certification to Facilitate Provision of Loans to SVCE

Date: 12/14/2016

RECOMMENDATION
Adopt Resolution 2016-13 authorizing the Chief Executive Officer to engage Silicon Valley Clean Energy Authority (SVCEA) into loan agreements with River City Bank.

BACKGROUND
The Board of Directors approved a Memorandum of Understanding (MOU) at the November 9th, 2016 Board Meeting authorizing a loan guarantee of $2,000,000 between SVCEA and the Cities of Gilroy, Mountain View, Sunnyvale, and the County of Santa Clara. However, River City Bank requires a more formal resolution.

ANALYSIS & DISCUSSION
There is no further analysis to present.

ATTACHMENTS
1. Resolution 2016-13 Providing Certification to Facilitate Provision of Loans to SVCE
RESOLUTION NO. 2016-13

RESOLUTION OF SILICON VALLEY CLEAN ENERGY AUTHORITY

In my capacity as Chair of the Silicon Valley Clean Energy Authority (the “Authority”), I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

THE AUTHORITY’S EXISTENCE. The complete and correct name of the Authority is Silicon Valley Clean Energy Authority. The Authority is a public agency formed under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 et seq. The Authority is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California.

The Authority is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California in which the Authority is doing business.

The Authority has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Authority maintains an office at 333 W. El Camino Real, Suite 290, Sunnyvale, California 94087. Unless the Authority has designated otherwise in writing, the principal office is the office at which the Authority keeps its books and records. The Authority will notify Lender prior to any change in the location of the Authority’s state of organization or any change in the Authority’s name. The Authority shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Authority and the Authority’s business activities.

RESOLUTIONS ADOPTED. At a meeting of the Silicon Valley Clean Energy Authority’s Board of Directors, duly called and held on the 14th day of December, 2016, by a vote affixed hereto, the resolutions set forth in this Resolution were adopted.

AUTHORIZED REPRESENTATIVE. The following named individual is the authorized representative of the Authority with title and genuine signature provided below:

<table>
<thead>
<tr>
<th>NAMES</th>
<th>TITLES</th>
<th>SIGNATURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Habashi</td>
<td>Chief Executive Officer</td>
<td></td>
</tr>
</tbody>
</table>

ACTIONS AUTHORIZED. The authorized representative listed above may enter into any agreements of any nature with River City Bank (“Lender”), and those agreements will bind the Authority. Specifically, but without limitation, the authorized representative is authorized, empowered, and directed to do the following for and on behalf of the Authority with respect to a loan or loans and any other financial accommodations from Lender:

Borrow Money. To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender, on such terms as may be agreed upon between
the Authority and Lender, such sum or sums of money as in its judgment should be borrowed, without limitation.

**Execute Notes.** To execute and deliver to Lender any loan agreement, promissory note or notes, letter of credit applications, requests, or other evidence of the Authority’s credit accommodations, in form and substance acceptable to Lender, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Authority’s indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

**Grant Security.** To pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Authority or in which the Authority now or hereafter may have an interest, including without limitation all of the Authority’s personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Authority to Lender at any time owing, however the same may be evidenced. Such property may be pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

**Execute Security Documents.** To execute and deliver to Lender any assignment agreements, pledge agreements, mortgages, deeds of trust, security agreements, financing statements and other documents which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Authority or in which the Authority may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Authority’s account with Lender, or to cause such other disposition of the proceeds derived therefrom as it may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

**NOTICES TO LENDER.** The Authority will promptly notify Lender in writing at Lender’s address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Authority’s name; (B) change in the Authority’s assumed business name(s); (C) change in the management or in the members of the Authority; (D) change in the authorized signer(s); (E) change in the Authority’s principal office address; (F) change in the Authority’s state of organization; (G) conversion of the Authority to a new or different type of business entity; or (H) change in any other aspect of the Authority that directly or indirectly relates to any
agreements between the Authority and Lender. No change in the Authority’s name or state of organization will take effect until after Lender has received notice.

**CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS.** The authorized representative named above is duly elected, appointed, or employed by or for the Authority, as the case may be, and each occupies the position set opposite his or her name. This Resolution now stands of record on the books of the Authority, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender’s address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Authority’s agreements or commitments in effect at the time notice is given.

**IN TESTIMONY WHEREOF,** I have hereunto set my hand and attest that the signatures set opposite the names listed above are their genuine signatures.

I have read all the provisions of this Resolution, and I personally and on behalf of the Authority certify that all statements and representations made in this Resolution are true and correct. This Resolution is dated on this 14th day of December, 2016.

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

______________________________
Rod Sinks
Chair, Silicon Valley Clean Energy Authority

By: __________________________
Andrea Pizano
Secretary
To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 3: CEO Report
Date: 12/14/2016

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REPORT

Staff Hiring Progress
Between November 21 and December 5, 2016, four new members joined the SVCE team. Attached are their names, positions and a quick bio on each. In October, we advertised for four positions; two interviews are scheduled for December 13 and 14. The other two interviews will be conducted in early January.

Los Altos Hills Default Electricity Product
In July 2016, the Los Altos Hills town Council passed a resolution requesting that SVCE default the town residents and businesses into the Green Prime product. After further consideration, I was informed by the town Administrator, and alternate Director Carl Cahill that Los Altos Hills is no longer interested in that direction and desires to follow the same approach that will apply to the other 11 members of SVCE.

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

1) City of Sunnyvale: Extension of agreement for administrative and fiscal services and reimbursement; new term set to expire April 30, 2017.
2) City of Cupertino: Extension of agreement for administrative services and reimbursement; new term set to expire January 31, 2017.
3) OmegaComp HR: Payroll services and workers comp coverage; billed monthly.

ATTACHMENTS
1. Staff Bios
2. Agenda Planning Document, January – June 2017
New Staff Bios

**Board Clerk/Executive Assistant**

Andrea Pizano joins SVCE as the new Board Clerk/Executive Assistant. Andrea's focus will be to support the board and the Board committees, keep SVCE records and support the CEO. Andrea earned a Bachelor’s degree in Journalism and Mass Communications from San Jose State University. Most recently, Andrea was a Senior Staff Assistant for the City of Sunnyvale reporting to the Environmental Programs Manager.

**Account Services Manager**

Don Bray joins SVCE as the new Account Services Manager. Don’s focus will be major customers including customer service and program operations and development. Don earned a Bachelor’s degree in Civil/Environmental Engineering from UC Davis and a Master’s degree in Industrial Engineering/Engineering Management from Stanford University. Don comes to SVCE from Joint Venture Silicon Valley where he was the Executive Director for Smart Energy Enterprise Development.

**Director of Administration and Finance**

Don Eckert joins SVCE as the new Director of Administration and Finance. Don’s focus will be on SVCE’s internal operations including banking and budget oversight, accounting, information technology and communications systems, human resources. Don earned a Bachelor’s degree in Business Administration from the University of Michigan and a Master’s degree in Accounting from the University of Southern California. Don comes to SVCE from Alameda-Contra Costa Transit District where he served as Director of Finance and Management Systems.

**Community Outreach Specialist**

Pamela Leonard joins SVCE as the new Community Outreach Specialist. Pamela’s focus will be on conducting strategic outreach, improve SVCE digital communication tools and advocate on behalf of the Authority. Pamela earned a Bachelor’s degree in Political Science and Drama from the University of California, Irvine. Prior to joining SVCE, Pamela served as Communications Specialist for Prospect Silicon Valley where she was responsible for developing messaging, collateral, website and social media content.
### SVCEA Board of Directors Agenda Planning

**Revised: 12/9/16**

<table>
<thead>
<tr>
<th>JAN 2017</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
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<tr>
<td>Set Rates</td>
<td>Ph 1 Notice # 2</td>
<td>Launch - Phase 1</td>
<td>Ph 2 Notice # 1</td>
<td>Ph 2 Notice # 2</td>
<td>Ph 1 Notice # 4 (60 day after)</td>
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<td>Ph 1 Notice # 1</td>
<td>Ph 2 Notice # 2</td>
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<th><strong>MILESTONES</strong></th>
<th><strong>JANUARY 11, 2017</strong></th>
<th><strong>FEBRUARY 8, 2017</strong></th>
<th><strong>MARCH 8, 2017</strong></th>
<th><strong>APRIL 12, 2017</strong></th>
<th><strong>MAY 10, 2017</strong></th>
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<tr>
<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>
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<td>Treasurer Report</td>
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<td>SVCEA Net Metering Presentation</td>
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<tr>
<td>Staff Appointments</td>
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Staff Report – Item 4

To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 4: Approve Board Ongoing Meeting Date, Time, and Location
Date: 12/14/2016

RECOMMENDATION

Adopt the attached draft Resolution, thereby amending the ongoing date, time, and place for regular meetings of the Board of Directors. Staff proposes that the meetings be held at the Cupertino Community Hall at 10350 Torre Avenue, in Cupertino.

BACKGROUND & DISCUSSION

Pursuant to Section 4.10 of the Silicon Valley Clean Energy Authority Joint Powers Agreement, the Board of Directors of the Authority may fix, by resolution, the date upon which, and the hour and place at which, each regular meeting of the Authority Board is to be held. Currently, Board meetings are being held at the Santa Clara County Board Room on Hedding Street in San Jose. Staff proposes to keep the ongoing date, the second Wednesday of each month, and the hour, 7 p.m., but change the location to Cupertino Community Hall.

This change would take effect beginning at the February Board meeting scheduled for February 8, 2017.

ATTACHMENTS
1. A Resolution of the Board of Directors of the Silicon Valley Clean Energy Authority Fixing the Date, Hour, and Place of Regular Meetings of the Authority Board
RESOLUTION NO. 2016-14

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY FIXING THE DATE, HOUR, AND PLACE of REGULAR MEETINGS OF THE AUTHORITY BOARD

RECITALS

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

WHEREAS, pursuant to Section 4.10 of the Silicon Valley Clean Energy Authority Joint Powers Agreement, the Board of Directors of the Authority may fix, by resolution, the date upon which, and the hour and place at which, each regular meeting of the Authority Board is to be held; and

WHEREAS, the Authority wishes to establish a regular meeting schedule by this resolution; and

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

Section 1. The regular meetings of the Board of Directors of Authority shall be held on the second Wednesday of each month at the hour of 7 p.m. at the Cupertino Community Hall, located at 10350 Torre Avenue, in Cupertino, California.

Section 2. This Resolution shall take effect on February 1, 2017.

ADOPTED AND APPROVED this 14th day of December, 2016.

Chair

ATTEST:

Clerk
Staff Report – Item 5

To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 5: Appoint Board Treasurer/Auditor and Board Secretary
Date: 12/14/2016

RECOMMENDATION

Appoint Don Eckert, SVCE Director of Admin and Finance, as the Board Treasurer/Auditor and Andrea Pizano, SVCE Board Clerk/Executive Assistant, as the Board Secretary.

BACKGROUND & DISCUSSION

Pursuant to Section 4.11.2 of the Silicon Valley Clean Energy Authority Joint Powers Agreement, the Board of Directors of the Authority shall appoint a Secretary. The Secretary is responsible for keeping the minutes of all Board meetings (that is, ensuring the minute meetings are completed and retained) and keeping other official records of the Authority. The secretary does not have to be a member of the Board.

Pursuant to Section 4.11.3 of the Joint Powers Agreement, the Board shall appoint a qualified person to act as Treasurer and a qualified person to serve as Auditor. The Board may appoint a qualified person to serve as both Treasurer/Auditor. The Treasurer/Auditor acts as the depository of the Authority’s funds and has custody of all of the money of the Authority. The Treasurer/Auditor reports directly to the Board in the performance of his or her duties as Treasurer/Auditor and must comply with the requirements for treasurers of general law cities. Government Code Section 6505.5 and Section 6 of the Joint Powers Agreement further specifies the duties and obligations of the Treasurer/Auditor. Tim Kirby, Finance Director for the City of Sunnyvale, was appointed to this position on an interim basis at the April 13, 2016 Board of Directors meeting.

Staff recommends appointing Don Eckert, SVCE Director of Admin and Finance, as the Board Treasurer/Auditor going forward. Don earned a Bachelor’s degree in Business Administration from the University of Michigan and a Master’s degree in Accounting from the University of Southern California. Prior to working with SVCE, Don served as the Director of Finance and Management Systems with the Alameda-Contra Costa Transit District.
Staff Report – Item 6

To: Silicon Valley Clean Energy Authority Board of Directors
From: Tom Habashi, CEO

Item 6: Power Supply Acquisition
Date: 12/14/2016

RECOMMENDATION
Adopt a Resolution delegating authority to the Chief Executive Officer to:

(A) Execute Confirmations in connection with the previously authorized EEI Master Agreements with one or more power suppliers, with terms consistent with those contained in the attached Confirmation agreements for a term of up to 57 months, subject to the condition that the average cost of power purchased in aggregate under all of the Confirmations shall not exceed a cost threshold of $50 per MWh; and

(B) Execute an Inter-creditor and Collateral Agency Agreement, Security Agreement and Deposit Account Control Agreement with River City Bank, and in the case of the Inter-creditor and Collateral Agency Agreement, with the participating power suppliers, with terms consistent with those contained in the attached agreements, and transfer funds to the designated account held at River City Bank sufficient to meet contractual obligations under the foregoing 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.

On November 9, 2016, the SVCE Board approved a Scheduling Coordinator agreement with zGlobal Inc. and adopted Resolution No. 2016-09 authorizing the Chief Executive Officer to execute Edison Electric Institute Master Power Purchase and Sale Agreements ("Master Agreements") with the following six power suppliers:

- 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.
- 3Phases Renewables Inc.

The approved Master Agreements contain general terms and conditions applicable to power transactions with the parties. Under the EEI contract structure, specific energy transactions are made through written “Confirmations” setting forth the commercial terms and conditions of each separate energy purchase transaction. In the present case, the Confirmations will provide the price, quantity, and delivery specifications for the energy, renewable energy, and carbon free energy being purchased by SVCE.
Because SVCE is a new entity with few assets, power suppliers are generally unwilling to sell SVCE large volumes of energy without adequate forms of credit assurance. One form of assurance that SVCE can provide is a secured account, or “lockbox”, into which ratepayer revenues will be deposited by the incumbent utility; such account will be administered according to specific instructions, which indicate that a secured power supplier will have a priority interest in a proportionate share of the ratepayer funds deposited into such account. The lockbox will be managed by a bank, in this case River City Bank, acting as collateral agent for the benefit of the secured power suppliers. A set of three agreements (the Inter-creditor and Collateral Agency Agreement, the Security Agreement and the Deposit Account Control Agreement) establishes the lockbox security structure.

ANALYSIS & DISCUSSION
The CEO, working in close coordination with outside legal counsel and SVCE consultants, has negotiated Confirmations and associated credit agreements with the previously mentioned six power suppliers. A separate Confirmation was negotiated with each short-listed power supplier. The goal of the negotiation was to make each Confirmation as similar as possible, but there are still some differences among them. Two representative Confirmations are attached. To the extent that the other versions have differences, those differences are not material in the overall context of the proposed transactions.

Transacted Energy Products
Prior to execution, the Confirmations will include the final prices and quantities of energy that SVCE will be purchasing from each power supplier. The Confirmations will specify quantities and prices for the transacted products, which may include Energy, Renewable Energy (Category 1 and Category 2, only), and Carbon Free Energy, for a term of up to 57 months. When product quantities purchased under all of the Confirmations are considered in aggregate, SVCE will be purchasing a portfolio from specified energy sources comprising 51% qualifying renewable energy and 49% large hydro-electric energy. These contracts will, on a forecast basis, supply energy needed to provide a 50% renewable energy mix to customers taking the default Green Start product (assumed to be 98% of SVCE customer load) and a 100% renewable energy mix (the “Green Prime” service option) to the estimated 2% of SVCE customers who voluntarily elect to receive this resource mix. The remaining supply to Green Start customers, subject to minor variations that may arise due to actual customer usage differing from the load forecast, will come from large hydro-electric resources. Term purchases of Energy at fixed prices will provide a hedge against inevitable price fluctuations in California’s wholesale power market.

Generation Sources
Information regarding the specific generators that will be supplying Renewable Energy and Carbon Free Energy to SVCE will be included with the final pricing offers for each prospective supplier. Based on information provided by such suppliers, SVCE expects its electric energy will be produced by the following categories of generation resources:

<table>
<thead>
<tr>
<th>Generating Technology</th>
<th>Location</th>
<th>Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wind</td>
<td>California, Washington, British Columbia</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Photovoltaic</td>
<td>California</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Geothermal</td>
<td>California</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Cogeneration</td>
<td>Washington</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Landfill Gas to Energy</td>
<td>California</td>
<td>Renewable Energy</td>
</tr>
<tr>
<td>Hydro-electric</td>
<td>California, Washington, Idaho, British Columbia</td>
<td>Carbon Free Energy</td>
</tr>
</tbody>
</table>

Conditional Execution Authority
Once the Board authorizes the Chief Executive Officer to execute these agreements, on or about December 15, 2016, SVCE will request the power suppliers to provide updated final pricing. SVCE will have a short
period of time to make final supplier selections and execute Confirmations, making it infeasible to bring the
decision back to the Board – typically, binding price offers are not “held” by suppliers beyond a narrow window
of 1–2 hours. However, the Chief Executive Officer will only execute the Confirmation(s) if associated pricing
meets the parameters set by the Board at this meeting. Based on analysis of indicative pricing recently
provided by the power suppliers, SVCE estimates its average cost of power supply under the prospective
Confirmations will be less than $50 per MWh from 2017-2021. Furthermore, SVCE expects that such costs
will enable SVCE to meet its planned targets pertaining to rates, portfolio content and reserves. If the
recommendation is approved by the Board, the Chief Executive Officer would be authorized to execute the
Confirmations so long as the average cost of contracted power, aggregated across all Confirmations, is less
than or equal to $50 per MWh.

The lockbox credit structure would be applicable to Confirmations negotiated with three of the power suppliers
(Constellation, Direct Energy, and Shell). The Security Agreement requires initial funding of a reserve in the
secured account prior to or contemporaneous with execution of the Confirmations. If approved, SVCE will
draw funds under the credit agreement with River City Bank to fund the lockbox reserve requirement. The
initial reserve amount is $1.0 million, which will increase to $2.5 million after all phases of SVCE customers
are enrolled.

Pro Forma Update
As we approach finalizing SVCE’s initial power purchase contracts, a variety of updates have been made to
SVCE’s planning assumptions and pro forma projections. Key among these are modifications to the SVCE
sales forecast based on updated PG&E data and revised participation assumptions; updated SVCE rate
assumptions based on the most recent PG&E projections for its generation rates and PCIA fees; and updated
power supply costs based on recently obtained indicative pricing.

The following table compares current projections for 2018, the first full year of operations, with projections
that were made in July and included in the SVCE Implementation Plan. Projected net operating income for
2018 is $38.1 million, down from the July projection of $43.8 million. The reduction is primarily due to
adverse changes in the projected PG&E rates and PCIA charges, partially offset by a reduction in projected
power supply costs.

Table 1: Pro Forma Comparison for CY 2018

<table>
<thead>
<tr>
<th>Unit</th>
<th>Jul-16</th>
<th>Dec-16</th>
<th>Change</th>
</tr>
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<tbody>
<tr>
<td>Load Information</td>
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<tr>
<td>Service Area Energy Forecast (GWh)</td>
<td>4,844</td>
<td>4,904</td>
<td>60</td>
</tr>
<tr>
<td>Less Opt Out (GWh)</td>
<td>(607)</td>
<td>(204)</td>
<td>403</td>
</tr>
<tr>
<td>Less Direct Access (GWh)</td>
<td>(799)</td>
<td>(1,134)</td>
<td>(335)</td>
</tr>
<tr>
<td>SVCE Energy Forecast (GWh)</td>
<td>3,438</td>
<td>3,566</td>
<td>128</td>
</tr>
<tr>
<td>Resource Adequacy Capacity (MW)</td>
<td>790</td>
<td>804</td>
<td>14</td>
</tr>
<tr>
<td>Operating Costs</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Power Supply Cost (All-In) ($/KWh)</td>
<td>5.6</td>
<td>5.2</td>
<td>(0.4)</td>
</tr>
<tr>
<td>Total Energy Costs ($000)</td>
<td>194,212</td>
<td>186,241</td>
<td>(7,971)</td>
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<tr>
<td>Other Operating Costs ($000)</td>
<td>16,155</td>
<td>16,469</td>
<td>314</td>
</tr>
<tr>
<td>Total Operating Costs ($000)</td>
<td>210,367</td>
<td>202,710</td>
<td>(7,657)</td>
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Rate Information
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<tr>
<th>Agenda Item: 6</th>
<th>Agenda Date: 12/14/2016</th>
</tr>
</thead>
</table>

| PG&E Average Rate | (₵/KWh) | 9.4 | 9.2 | (0.2) |
| PCIA Average Rate | (₵/KWh) | 1.9 | 2.3 | 0.4  |
| SVCE Average Rate | (₵/KWh) | 7.4 | 6.7 | (0.7) |

<table>
<thead>
<tr>
<th>Revenue</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>SVCE Green Start Revenue</td>
<td>($)000</td>
<td>253,447</td>
<td>240,106</td>
<td>(13,341)</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>($)000</td>
<td>688</td>
<td>713</td>
<td>25</td>
</tr>
<tr>
<td>Total SVCE Revenue</td>
<td>($)000</td>
<td>254,135</td>
<td>240,819</td>
<td>(13,316)</td>
</tr>
<tr>
<td>Net Operating Revenue</td>
<td>($)000</td>
<td>43,768</td>
<td>38,109</td>
<td>(5,659)</td>
</tr>
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</table>

**Resource Adequacy Confirmations**
SVCE will also require capacity contracts to meet its regulatory obligations under the state’s resource adequacy program. SVCE will soon be initiating the process for obtaining its 2017 resource adequacy obligations from the appropriate regulatory agencies and anticipates entering into separate Confirmations for resource adequacy in January 2017.

**CONCLUSION**
Following Board Authorization, the Chief Executive Officer will solicit final, binding pricing from the short-listed power suppliers and complete price and quantity negotiations. If the final pricing meets the designated cost threshold, the Chief Executive Officer will execute Confirmation agreements with selected suppliers; execute the associated lockbox agreements; and fund the lockbox reserve amount. Upon completion, these agreements will secure low-carbon power supply for the SVCE program for the next three to five years.

**ATTACHMENTS**
1. Resolution Delegating Authority to the Chief Executive Officer to Execute Confirmation Agreements with Terms Consistent with Those Presented with each of the Short-Listed Energy Service Providers and to Enter Into the Lockbox Agreements with River City Bank.
2. Confirmations:
   - EA_SVCEA Energy Confirmation
   - MSCG_SVCEA Energy Confirmation
   - PWX_SVCEA RPS Confirmation
   - PWX_SVCEA Carbon Free Energy Confirmation
   - EXG_SVCEA Energy Confirmation
   - 3PR_SVCEA Energy Confirmation
   - SENA_SVCEA Energy Confirmation
3. Lockbox Agreements:
   - Intercreditor and Collateral Agency Agreement
   - Security Agreement
   - Deposit Account Control Agreement
RESOLUTION NO. 2016-15

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE CONFIRMATION AGREEMENTS WITH TERMS CONSISTENT WITH THOSE PRESENTED WITH EACH OF THE SHORT-LISTED ENERGY SERVICE PROVIDERS AND TO ENTER INTO THE LOCKBOX AGREEMENTS WITH RIVER CITY BANK.

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, Silicon Valley Clean Energy has also negotiated a form of Confirmation Agreement with each of the ESPs;

WHEREAS, a Confirmation Agreement is an agreement between an energy purchaser and an energy supplier (e.g., an ESP) that binds the purchaser and a supplier to supply specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of the Master Agreement;

WHEREAS, Silicon Valley Clean Energy has agreed to provide a “multi-party lockbox”, into which Silicon Valley Clean Energy customer payments will be deposited, as security for the power purchase obligations of Silicon Valley Clean Energy;

WHEREAS, three of the ESPs have elected to participate in the multi-party lockbox;

WHEREAS, River City Bank was selected to administer the multi-party lockbox;
WHEREAS, three agreements with River City Bank are necessary to establish the “multi-party lockbox”: an Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Agreement (collectively, the “Lockbox Agreements”) and forms of these three agreements were negotiated with three participating ESPs as well as River City Bank and are intended to be entered into at the same time that Silicon Valley Clean Energy enters into the Confirmation Agreements with the ESPs that are participating in the multi-party lockbox;

WHEREAS, staff is presenting to the Board for its review one form of each of the Confirmation Agreements and the Lockbox Agreements;

WHEREAS, there are minor differences in each form of Confirmation 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 Confirmation Agreements and Lockbox Agreements for the reasons provided above and because of the timing of the execution of the Confirmation Agreement it is infeasible to bring the final Confirmation Agreement and Lockbox Agreements back to the Board and comply with the Brown Act;

WHEREAS, the Board has determined that (1) the approval of the Confirmation Agreements are not a project under the California Environmental Quality Act (CEQA), (2) if the approval of the Confirmation Agreements are a project under CEQA the Agreements do not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3), and (3) if the approval of the Confirmation Agreements are a project under CEQA, the Agreements are categorically exempt under State CEQA Guidelines Section 15308 as actions for the protection of the environment.

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

1. Execute a Confirmation Agreement with terms consistent with those presented to the Board of Directors, for a term of up to 57 months subject to the condition that the average cost of power purchased in aggregate under all of the Confirmations shall not exceed a cost threshold of $50 per MWh, with the following short-listed Energy Service Providers:

   3 Phases Renewables Inc.

   Energy America, LLC

   Exelon Generation Company, LLC

   Morgan Stanley Capital Group, Inc.

   Powerex Corp.
Shell Energy North America (US), L.P.

2. Execute the Lockbox Agreements with River City Bank, and in the case of the Intercreditor and Collateral Agency Agreement, with the participating ESPs, in a form containing terms consistent with those presented to the Board of Directors, and transfer funds to River City Bank sufficient to meet contractual obligations under the foregoing agreements.

3. File with the Santa Clara County Clerk, a Notice of Exemption until CEQA.

ADOPTED AND APPROVED this 14th day of December, 2016.

Chair

ATTEST:

Secretary
CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between _______ (“Seller”)
And
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated ______
Transaction Date: _______ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on ______, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.
“Buyer Facilities” has the meaning set forth in Section 10 hereof.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.


“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.
“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price ($/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.
“Inter-SC Trade” or “IST” has the meaning set forth in CAISO Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.


“Renewable Energy Contract Price” shall mean the price ($/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.
“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. **PRODUCT.**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

   (a) the quantity of Energy specified in Section 7.1;

   (b) the quantity of Renewable Energy specified in Section 7.2; and

   (c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 **Change in Law.**

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties...
shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 RPS Standard Terms and Conditions

   **STC 6: Eligibility**

   Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

   **STC REC-1: Transfer of Renewable Energy Credits**

   Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
STC REC-2: Tracking of RECs in WREGIS

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

2.4 No New Construction Without Environmental Review. To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use Unspecified Sources of Power to provide the required Energy hereunder; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer’s sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates
included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller’s rejection of such non-conforming WREGIS Certificates.

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D).

2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the regulatory requirements for application of the RPS Adjustment change after the Effective Date and such change causes an increase in the greenhouse gas emissions intensity associated with the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction to mitigate the increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. DELIVERY PERIOD. This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation
shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

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4. **DELIVERY POINT.**

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<th>Product</th>
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<td>Energy</td>
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<tr>
<td>Renewable Energy</td>
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<tr>
<td>Carbon Free Energy</td>
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5. **SCHEDULING.** The Product will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS during such month plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Renewable Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Carbon Free Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
7.2 **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.

7.3 **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. **MONTHLY BILLING SETTLEMENT.**

8.1 **Collection of Customer Payments.** In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

8.2 **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities (“Buyer Facilities”) or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.
11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer’s financial performance, Buyer’s performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);

(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts;

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60
days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers;

(b) **Annual Reports.** The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer’s financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 28, 2016 (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

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<tr>
<th>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</th>
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<tr>
<td>Exhibit A – Energy Contract Quantity and Price Schedule</td>
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<td>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</td>
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<tr>
<td>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</td>
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Exhibit A

Energy Contract Quantity and Price Schedule

[TBD]
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

[TBD]
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Morgan Stanley Capital Group Inc. ("Seller")
And
Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer")
dated ______
Transaction Date: _______ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on ______, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“Buyer Facilities” has the meaning set forth in Section 10 hereof.
“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Energy” means electrical energy, measured in MWh.
“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

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

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.
“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

2. **PRODUCT.**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of the following:

(a) the quantity of Carbon Free Energy specified in Section 7.

2.2 **Resources.** For Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit A; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Carbon Free Source as defined herein. For other Energy deliveries, if any, Seller may use Unspecified Sources of Power to provide the required Energy hereunder; provided that any Energy delivered under this Confirmation shall not be procured from unit-specific sources that are nuclear or coal-fired resources.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

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4. **DELIVERY POINT.**

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<tr>
<td>Carbon Free Energy</td>
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</table>

5. **SCHEDULING.** For each hour during the Delivery Period, Seller shall schedule the Product to the Delivery Point. Energy deliveries shall be accompanied by an Inter-SC Trade from Seller to Buyer at the Delivery Point pursuant to CAISO requirements (the
“Inter SC Trade Quantity”). For each hour during the Delivery Period, the Carbon Free Energy Quantities may be scheduled in a volume up to the Inter SC Trade Quantity. Seller shall deliver up to [XX] MWs of energy (7x24) each hour during the Delivery Period (the “Energy Quantity”); provided however, that the energy delivery obligation for the Delivery Period shall cease at the end of the calendar month in which the Carbon Free Energy Quantity obligation is satisfied (the “Carbon Free Quantity Completion”). For greater certainty, it is understood that Buyer shall pay Seller for the Energy Quantity through the end of the calendar month during which the Carbon Free Quantity Completion is reached (the “Residual Energy Delivery”); provided however, that in no event will Buyer be obligated to pay for any deliveries made outside of the Delivery Period. Seller shall notify Buyer of the amount of energy (up to [XX] MW) to be delivered daily by 08:00 (PPT) on the pre-schedule day (the “Delivery Notification”). In the absence of any such Delivery Notification, the energy delivery amount shall be [XX] MW.

6. **PRICING**.

6.1 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit A plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Inter-SC Trade scheduled in accordance with this Confirmation in such month.

7. **CONTRACT QUANTITIES.**

7.1 **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A. The Carbon Free Energy will be scheduled by the Seller from the Specified Sources of Power into California without substituting electricity from another source. For greater certainty, the parties hereby acknowledge and agree that the Carbon Free Energy Contract Quantities shall be evidenced by the lesser of the Energy Quantity and the NERC e-Tag showing the scheduled amount of zero carbon flow into a California balancing authority.

7.2 **Tracking of Carbon Free Energy Contract Quantities.**

(a) Seller shall be responsible for meeting all requirements for delivery and verification of Carbon Free Energy imports, including NERC e-Tags. In addition, Seller shall produce NERC e-Tags in a format that adequately demonstrates that Buyer is purchasing a Carbon Free Energy product hereunder.

(b) Seller shall provide Buyer, within a reasonable time after request, (i) proof of the veracity of the representations made by Seller in Section 10 herein and (ii) hourly meter data or an equivalent report showing the actual generation for the Specified Sources of Power.
(c) Seller, upon the reasonable request of the Buyer, will deliver additional documents and information related to this Transaction to Buyer; provided however such obligation is only to the extent such information is either (i) in the Seller’s possession or (ii) reasonably available to Seller.

8. MONTHLY BILLING SETTLEMENT.

8.1 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

9. COMPLIANCE REPORTING. Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

10. SELLER REPRESENTATIONS AND WARRANTIES. Seller hereby represents and warrants to Buyer that:

(a) it has the right to sell the Carbon Free Energy;
(b) the Carbon Free Energy has never been sold for any other purpose or use;
(c) the Carbon Free Energy is free and clear of all liens or other encumbrances;
(d) as of the Effective Date of this Confirmation, the Specified Sources of Power have been assigned an emissions factor of zero (0) by CARB as reported by CARB; and
(e) it is one of: (i) the owner or operator of the Specified Sources of Power with prevailing rights to sell the electricity sold hereunder, or (ii) is selling or remarketing electricity procured pursuant to a Specified Source Transaction from the Specified Sources of Power through the market path and possesses or has the right to obtain copies of written documents that the energy it is reselling or remarketing was procured pursuant to Specified Source Transaction(s) from the Specified Sources of Power through the market path.
11. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities (“Buyer Facilities”) or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.

12. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

13. **SECURITY PROVISIONS.**

13.1 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer’s financial performance, Buyer’s performance of its obligations under this Confirmation or the ongoing viability of the CCA.

(a) **Annual Reports.** The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer’s financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated **November 28, 2016** (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

<table>
<thead>
<tr>
<th>This Confirmation is subject to the Exhibit identified below and that are attached hereto:</th>
<th>Exhibit A – Carbon Free Energy Contract Quantity and Price Schedule</th>
</tr>
</thead>
</table>

**MORGAN STANLEY CAPITAL GROUP INC.**

Sign: __________________________
Print: __________________________
Title: __________________________

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

Sign: __________________________
Print: __________________________
Title: __________________________
Exhibit A

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
AGREEMENT BETWEEN
Powerex Corp. * and Silicon Valley Clean Energy Authority
Powerex Deal No. [●]

This document ("Confirmation" or "Agreement") confirms the agreement reached on the Trade Date between Powerex Corp.* ("Powerex" or "Seller") and Silicon Valley Clean Energy Authority ("SVCEA" or "Buyer") regarding the sale and purchase of the Product in accordance with the EEI Master Power Purchase and Sale Agreement dated as of November 28, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties and as amended and supplemented by this Confirmation (collectively, the "Master Agreement") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts.

Seller: Powerex
Buyer: SVCEA
Trade Date: [●]

Transaction: This Transaction is for Buyer to procure Bundled Renewable Energy, all in accordance with the terms and conditions of this Confirmation.

Generation Periods: For the purposes of this Confirmation and the Bundled Renewable Energy to be delivered pursuant hereto, the generation periods for Bundled Renewable Energy are (i) [●], inclusive, (ii) [●], inclusive, and (iii) [●], inclusive, (each, a "Generation Period" and in aggregate, the "Generation Term").

Product: "Bundled Renewable Energy", which is comprised of energy generated by the Project(s) and the associated Green Attributes, including RECs.

Delivery and Passage of Title:

Delivery – Out-of-State Designated Facilities

The Parties recognize that a schedule of energy by Seller into the California Independent System Operator ("CAISO") balancing authority ("CAISO Balancing Authority") by means of either Delivery Method 1 (Category 1 Product) and/or Delivery Method 2 (Category 2 Product), as defined and described below, are deliveries to the CAISO and not directly to the Buyer. Scheduling energy in accordance with Delivery Method 1 and/or Delivery Method 2 into the CAISO Balancing Authority shall
constitute delivery of Bundled Renewable Energy to Buyer, provided the WREGIS Certificates evidencing the Green Attributes comprised in the Bundled Renewable Energy are delivered to Buyer as provided in this Confirmation.

Delivery – In-State Designated Facilities

The Parties recognize that a schedule of energy by or on behalf of Seller onto the CAISO Controlled Grid by means of Delivery Method 1 (Category 1 Product) is a delivery to the CAISO and not directly to the Buyer. Scheduling energy in accordance with Delivery Method 1 onto the CAISO Controlled Grid shall constitute delivery of Bundled Renewable Energy to Buyer, provided the WREGIS Certificates evidencing the Green Attributes comprised in the Bundled Renewable Energy are delivered to Buyer as provided in this Confirmation.

Passage of Title

Energy: Title to the Energy shall pass at the Delivery Point.

Green Attributes: Green Attributes (including any RECs) to be delivered to Buyer hereunder shall be represented by WREGIS Certificates. Seller shall use WREGIS to transfer title to the Green Attributes to Buyer. The transfer of WREGIS Certificates through WREGIS shall be deemed to transfer title to all of the Green Attributes associated with the Product.

Delivery Method Election:

Seller and Buyer acknowledge and agree that Buyer has purchased Bundled Renewable Energy, and that the energy generated by a Project and allocated to this Transaction will not be sold back to that Project, is available to Buyer and is not otherwise committed to another party. The Green Attributes associated with the Bundled Renewable Energy have not been unbundled and transferred to another owner.

The Parties intend that the Product as procured by Buyer and as delivered by Seller in accordance with Delivery Method 1 (the “Category 1 Product”) will meet the Category 1 Eligibility Requirements.

The Parties intend that the Product as procured by Buyer and as delivered by Seller in accordance with Delivery Method 2 (the “Category 2 Product”) will meet the Category 2 Eligibility Requirements.

Bundled Renewable Energy

Buyer elects to take receipt of the Energy associated with Buyer’s procurement of the Product as follows:

- **“Delivery Method 1”** – (Category 1 Product) – Energy directly delivered from the Project on an hourly, sub-hourly or real-time basis to
the Delivery Point without substituting electricity from another source ("Project Energy"), and/or

☐ “Delivery Method 2” – (Category 2 Product) – Energy generated by a source other than the Project, delivered to the Delivery Point in substitution for, and in an amount matching the amount of, Project Energy ("Substitute Energy").

If both boxes are checked, Buyer is deemed to have selected a combination of Delivery Method 1 and Delivery Method 2 as detailed below.

Substitute Energy shall be generated by a resource located outside of the metered boundaries of a California balancing authority and such Substitute Energy was not in the Buyer’s portfolio prior to the date of this Transaction.

Substitute Energy will be scheduled into a California balancing authority within the same calendar year as the year in which the Project Energy was generated.

Powerex will not deliver Substitute Energy from a Specified Source if such unit or facility is a nuclear-powered or coal-fired generating resource. Except as provided in the immediately preceding sentence, Powerex may procure and deliver Substitute Energy from any other source, including a Specified Source, an “unspecified source” (as such term is defined in the Mandatory Reporting Rule) or electricity procured in the open market.

**Delivery Method Quantity:**

**Delivery Term**

The delivery term is [●], through the date that all Green Attributes transacted under this Confirmation have been delivered from Seller to Buyer in accordance with this Confirmation, and in any case no later than [●] (the “Delivery Term”).

**Quantity**

During the Delivery Term, Buyer shall procure [●] MWh of Bundled Renewable Energy from Seller to be delivered by Seller in accordance with the Delivery Method selected under the “Delivery Method Election” section above, being comprised of [●] MWh of Category 1 Product allocated to each Delivery Period as specified below (“Category 1 Product Contract Quantity”) and [●] MWh of Category 2 Product allocated to each Delivery Period as specified below (“Category 2 Product Contract Quantity”).

The Energy shall be delivered by Seller in compliance with the applicable annual Contract Quantity amounts set forth in tables.
Category 1 Product

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<tr>
<th>Delivery Period</th>
<th>Contract Quantity (MWh)</th>
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Category 2 Product

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<tr>
<th>Delivery Period</th>
<th>Contract Quantity (MWh)</th>
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Total Energy Deliveries (Category 1 Product and Category 2 Product) to Delivery Point

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<tr>
<th>Delivery Period</th>
<th>Contract Quantity (MWh)</th>
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<tr>
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Deliveries of Category 1 Product and Category 2 Product are further described in the “Scheduling and Tagging” section of this Confirmation.

The Green Attributes will be delivered to Buyer on or before the 20th NERC Business Day of the month following applicable WREGIS timelines.

Green Attributes will be transferred to the WREGIS account named [●].

The determination of the hourly quantity of Category 1 Product generated by an out-of-state Project and delivered to the Delivery Point shall be made after-the-fact and will be: the lesser of (i) the Projects’ hourly metered output, and (ii) the actual hourly quantity allocated by Seller to this Confirmation and delivered to the Buyer at the Delivery Point as determined by the NERC e-tags.

In the event that the quantity of Category 1 Product delivered in any hour is less than the quantity of energy delivered to the Buyer at the Delivery Point pursuant to this Confirmation that Seller intended to be a delivery of Category 1 Product, the Buyer shall pay the Energy Price (less the CAISO Credit) for any such quantities, and any such quantities shall not count
towards the Category 1 Product Contract Quantity to be delivered under this Confirmation.

**Contract Price:**

In this Confirmation,

“CAISO Credit” means the Energy Price paid by the CAISO for the Energy.

“Category 1 REC Price” means: $[●].

“Category 2 REC Price” means: $[●]/MWh.

“Energy Price” means the applicable day-ahead hourly, hour-ahead fifteen minute market, or real-time five minute market locational marginal price clearing price at the applicable Delivery Point(s), as published by the CAISO, per MWh of energy delivered.

“REC Price” means the Category 1 REC Price or the Category 2 REC Price, as applicable.

**Category 1 Product**

The “Category 1 Product Contract Price” for each MWh of the Category 1 Product delivered to Buyer shall consist of the sum of the Energy Price and the Category 1 REC Price, less the CAISO Credit, calculated as follows:

Category 1 Product Contract Price = (Energy Price – CAISO Credit) + Category 1 REC Price

**Category 2 Product**

The “Category 2 Product Contract Price” for each MWh of the Category 2 Product delivered to Buyer shall consist of the sum of the Energy Price and the Category 2 REC Price, less the CAISO Credit, calculated as follows:

Category 2 Product Contract Price = (Energy Price – CAISO Credit) + Category 2 REC Price

For the purposes of this Transaction, Buyer shall pay the Category 1 Product Contract Price and the Category 2 Product Contract Price, as applicable, as follows:

(a) Invoicing and payment for Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. For greater certainty, for Project Energy delivered from an in-state Project, Seller will apply the CAISO Credit as specified in
the Contract Price formula even if the CAISO Credit is paid by the CAISO to the entity or person delivering the Energy to the CAISO rather than the Seller directly.

(b) Invoicing and payment for all Green Attributes delivered on WREGIS to Buyer will be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation.

The Parties acknowledge that invoicing and payments for the Energy may not occur in the same month as invoicing and payments for the Green Attributes associated with such Energy due to the delivery of the Green Attributes on WREGIS timelines.

Seller’s invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer.

**Designated Facility:** Bundled Renewable Energy procured under this Confirmation will be generated by and/or attributable to one or more of the facilities (each a “Designated Facility”) listed in Schedule “A”. Each Designated Facility must be certified as an eligible renewable energy resource for the California RPS Program (or will be certified as an eligible renewable energy resource prior to delivery of Category 1 Product or Category 2 Product generated by or attributed to such facility). Seller must be contractually entitled to all or a portion of the bundled energy and associated Green Attributes generated by a Designated Facility during the Generation Term (or the portion thereof in respect of which bundled energy is generated by or attributed to such facility). Schedule “A” may be amended and updated by Seller in accordance with “Additional Designated Facilities” below.

For the purposes of this Agreement, a facility will be deemed to be certified as an eligible renewable energy resource prior to delivery of a Category Product if (i) the facility is certified as an eligible renewable energy resource by the CEC and (ii) delivery of the Category Product occurs on or after the eligibility date issued by the CEC.

**Additional Designated Facilities – Applicable to Category 1 Product only:**

From time to time during the Generation Term, Seller may designate one or more additional renewable generation facilities as a Designated Facility for the purposes of delivering Category 1 Product under this Confirmation, provided that Seller shall designate such facility in advance of delivering any Green Attributes with associated delivery of energy from such facility. Seller may designate any such additional facility(s) by providing Buyer with an updated Schedule “A” that includes such additional facility(ies) listed as “Part B – Additional Designated Facilities for Category 1 Product” of Schedule “A”, which shall thereupon replace the existing
Schedule “A” to this Confirmation. Any additional Designated Facility shall be considered to be a Designated Facility with respect to Category 1 Product deliveries for all purposes of this Confirmation.

Eligibility Requirements:

If, at any time, a Category Product does not meet the applicable Eligibility Requirements (a “Failing Category Product”), it shall not be an Event of Default for the purposes of the Master Agreement. Provided that the Parties have complied with any obligations under Section 2 of this Confirmation, the Parties will have no obligation to schedule, deliver or purchase a Failing Category Product and no liability to each other for any failure to schedule, deliver or purchase a Failing Category Product except in the event and to the extent that there is a Seller Eligibility Failure, Buyer Eligibility Failure, Regulatory Determination or change in law as and to the extent provided in this Confirmation.

Unless expressly provided in this Confirmation, nothing herein shall excuse either Party from its obligations hereunder as a result of, and neither Party shall be entitled to rely on, any Seller Eligibility Failure or Buyer Eligibility Failure. Each Party will make commercially reasonable efforts to do, or cause or permit to be done, everything in its direct control which would or would reasonably be expected to cause each of the Eligibility Requirements, or elements or components thereof, applicable to the Category Products to be met or satisfied, and neither Party will do or omit to do, or cause or permit to be done, anything in its direct control which would or would reasonably be expected to cause any one or more of the Eligibility Requirements, or elements or components thereof, applicable to a Category Product not to be met or satisfied.

Regulatory Determination:

If a governmental or regulatory authority having authority or jurisdiction determines that one or both of the Category Products to be delivered under and in accordance with the terms of this Confirmation does not or will not meet or satisfy the applicable Eligibility Requirements and the failure to meet or satisfy such Eligibility Requirements is not a result of a Seller Eligibility Failure, Buyer Eligibility Failure, change in law or Force Majeure (a “Regulatory Determination”), then, provided that the Parties have complied with any obligations under Section 2 of this Confirmation and have been unsuccessful in revising or amending the Agreement such that the affected Category Product(s) meets or satisfies the applicable Eligibility Requirements:

(a) if the Regulatory Determination is made prior to delivery of any of the applicable Category Product(s) hereunder, the Parties will have no liability to each other for any failure to schedule, deliver or purchase the affected Category Product;
(b) if the Regulatory Determination is made after delivery of any of the applicable Category Product(s) hereunder, the Parties will have no liability to each other for any failure to schedule, deliver or purchase the affected Category Product that is not then delivered; and

(c) either Party may, by written notice to the other, immediately terminate the Transaction, without penalty, termination payment or liability of either Party to the other except as provided in paragraph (b) above.

**Delivery Point:**

**Out-of-State Designated Facilities:** Seller may deliver Energy to any Scheduling Point or combination of Scheduling Points.

**In-State Designated Facilities:** Seller shall deliver Project Energy from an in-state Designated Facility to the Pricing Node (PNode) (as defined in the CAISO Tariff) for the Designated Facility, as specified in Schedule “A”.

**Scheduling and Tagging:**

**Scheduling**

Seller shall schedule or cause to be scheduled, at its sole discretion, Energy into the CAISO Balancing Authority or onto the CAISO Controlled Grid on a day-ahead, hour-ahead, sub-hourly and/or real-time basis. Without limiting the generality of the foregoing, Seller may schedule or cause to be scheduled the Energy during any and/or all Peak and Off-Peak hours.

All Energy shall be scheduled in accordance with Generally Accepted Utility Practice.

**e-tagging – Out-of-State Designated Facilities**

Seller shall generate all e-tags required to schedule the Energy to and from the Delivery Point. Seller shall match RECs with e-Tags before transferring the RECs to Buyer. For greater certainty, no e-Tags will be generated for deliveries from in-state Projects and RECs generated by an in-state Project will therefore not be matched with e-Tags before transferring to Buyer.

**Category 1 Product**

For Category 1 Product, each e-Tag shall (i) contain a single Designated Facility, from the Designated Facilities listed in Schedule “A”, identified as the source under ‘POR/ POD’ under the ‘Physical Path’ section of an e-tag, and (ii) include the RPS ID for the Designated Facility in the Misc(Token/Value) field of the e-Tag where “RPS_ID” is the Token and the RPS ID is the Value.
For Category 1 Product only, the use of another source to provide real-time ancillary services required to maintain an hourly import schedule into the CAISO Balancing Authority shall be permitted, but only the fraction of the schedule actually generated by or attributable to the Designated Facility shall qualify as Category 1 Product under this Confirmation.

**Category 2 Product**

For Category 2 Product, each e-Tag shall include one or more, up to a maximum of ten, of the RPS ID numbers for the Designated Facilities listed in Schedule “A” in the Misc(Token/Value) field of the e-Tag where “RPS_ID” is the Token and the RPS ID is the Value.

Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under ‘Physical Path’, and Buyer, or Buyer’s scheduling coordinator, as the last PSE (Purchasing Selling Entity) or ‘sink’ PSE under “Physical Path” on each NERC e-Tag. Seller will be the Party delivering energy into CAISO.

**Seller scheduling contacts:**

<table>
<thead>
<tr>
<th>Role</th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prescheduler:</td>
<td>(604) 891-5007</td>
<td>(604) 891-5045</td>
</tr>
<tr>
<td>Real-Time:</td>
<td>(604) 891-5091</td>
<td>(604) 891-5045</td>
</tr>
<tr>
<td>Mid-office Agreement:</td>
<td>(604) 891-5057</td>
<td>(604) 891-5045</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:cash.desk@powerex.com">cash.desk@powerex.com</a></td>
<td></td>
</tr>
</tbody>
</table>

**Importer for Cap and Trade Purposes:** For any Energy imported into California, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation under the Cap and Trade Regulations associated with the energy which Seller shall schedule into the CAISO Balancing Authority as part of the Product to be delivered under this Confirmation and that they will work together such that Seller may claim that any Project Energy which Seller has scheduled into the CAISO Balancing Authority is from a Specified Source and claim the RPS Adjustment with respect to Substitute Energy, in both cases to mitigate such Compliance Obligation.

**Definitions Applicable to this Transaction:** For the purposes of this Confirmation, the following terms shall have the following meanings:

(a) “Alternate Eligible Facility” means an alternate Eligible Facility.

(b) “Alternate Source” means an alternate source of supply of energy and associated Green Attributes generated by the same facility as a
Designated Facility during the Generation Term and which Seller is entitled to pursuant to its purchase agreements for output from the facility.

(c) “Buyer Eligibility Failure” means a failure of a Category Product to meet or satisfy the applicable Eligibility Requirements or any element or component thereof which are in the direct control of Buyer to meet or satisfy as a result of or if caused by or attributable to an act or omission of Buyer, including a failure by Buyer to accept an applicable transfer on WREGIS, to provide information and data available to Buyer (including as provided by Seller) as may be required to verify the Green Attributes comprised in the Products or, for Category 2 Product, to retire or designate for retirement the RECs for the purposes of compliance with the California RPS Program.

(d) “Buyer Shortfall” means that the quantity of Category 1 Product or Category 2 Product received or purchased by Buyer during a Delivery Period pursuant to this Confirmation is less than the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, for that Delivery Period, if such shortfall is caused by or attributable to:

(i) the failure of the Buyer to receive or purchase the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity generated by and/or attributable to the Project(s) and delivered to Buyer pursuant to this Confirmation; or

(ii) a Buyer Eligibility Failure;

and the amount of such shortfall for that Delivery Period is the difference between:

(iii) the greater of:

A. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, and delivered to Buyer pursuant to this Confirmation, or

B. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, that would have been delivered to Buyer pursuant to this Confirmation if the Buyer had met or satisfied the applicable Eligibility Requirements
in each case, for greater certainty, taking into account any Seller Shortfall; and

(iv) the amount of Category 1 Product or Category 2 Product received or purchased by Buyer during the Delivery Period pursuant to this Confirmation.

(e) “CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

(f) “CAISO Tariff” means the applicable tariff and protocol provisions of the CAISO (as amended from time to time).

(g) “California RPS Program” or “California Renewables Portfolio Standard” means the “California Renewables Portfolio Standard” program jointly administered by the CEC, the CPUC and the California Air Resources Board, as such program exists as of the Trade Date, including without limitation all applicable eligibility criteria and requirements thereof in force and effect as of the Trade Date.

(h) “Cap and Trade Regulations” means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.

(i) “Category 1 Product Eligibility Requirements” means, with respect to the Category 1 Product only, any applicable criteria or requirements of the California RPS Program in force and effect as of the Trade Date regarding the eligibility or qualification of the Category 1 Product to meet the criteria of Section 399.16(b)(1) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.

(j) “Category 2 Product Eligibility Requirements” means, with respect to Category 2 Product only, any applicable criteria or requirements of the California RPS Program in force and effect as of the Trade Date regarding the eligibility or qualification of the Category 2 Product to meet the criteria of Section 399.16(b)(2) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.

(k) “Category Product” means Category 1 Product or Category 2 Product, as applicable.

(l) “Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.
(m) “CPUC” means the California Public Utilities Commission.

(n) “Delivery Period” means Generation Period, provided that, for the sole purpose of matching delivery of Green Attributes with Energy, such period will extend through the date that all Green Attributes associated with such Energy have been delivered from Seller to Buyer in accordance with this Confirmation.

(o) “Eligible Facility” means a generation facility that is certified as an eligible renewable energy resource for the California RPS Program and from which Seller is entitled to energy and associated Green Attributes generated during the Generation Term (or portion thereof in respect of which bundled energy and associated Green Attributes to be delivered hereunder are generated by such facility).

(p) “Eligibility Requirements” means Category 1 Product Eligibility Requirements or Category 2 Product Eligibility Requirements, as applicable.

(q) “Energy” means Project Energy or Substitute Energy, as applicable.

(r) “Energy Commission” or “CEC” means the California Energy Commission.

(s) “Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

(t) “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights

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Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.
to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

(u) “Green Tag” and “Green Tag Reporting Rights” have the meanings set forth in the definition of “Green Attributes”, and for the purposes of this Transaction, “Green Tag Purchaser” means Buyer.

(v) “Holiday” means any day designated as a holiday by NERC.

(w) “Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

(x) “Off Peak” hours means Mondays through Saturdays hours ending (HE) 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.

(y) “Party” means Buyer or Seller, and “Parties” means both Buyer and Seller.
“Peak” hours means HE 0700-2200 PPT Mondays through Saturdays, excluding Holidays.

“Project” means Designated Facility up to the Seller’s contractual rights to the energy and Green Attributes produced by such Designated Facility.

“Renewable Energy Credit” or “REC” means a renewable energy credit as defined by and in accordance with the California Public Utilities Code.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“RPS ID” means the “California Energy Commission RPS certification number”, the “identification number” and/or the “RPS ID”, as such terms are used by the CEC to describe the identification number for an eligible renewable energy resource that has been certified (or will be certified for the period of deliveries) as such by the CEC for the purposes of the RPS. The RPS ID for each Designated Facility is set out beside the applicable facility under the column “RPS ID” in the table attached hereto as Schedule “A”.

“Scheduling Point” has the meaning set forth in the CAISO Tariff, including (without limitation) the SYLMARDC_2_N501 and MALIN_5_N101 Scheduling Points.

“Seller Eligibility Failure” means a failure of (i) Category 1 Product or Category 2 Product to meet or satisfy the applicable Eligibility Requirements as a result of any requirements set forth in Section 6(a) of this Confirmation not being satisfied, or (ii) any other Eligibility Requirements or element or component thereof applicable to a Category Product which are in the direct control of Seller to meet or satisfy as a result of or if caused or attributable to an act or omission by Seller.

“Seller Shortfall” means that the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) and delivered to Buyer during a Delivery Period pursuant to this Confirmation is less than the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, for that Delivery Period, if such shortfall is caused by or attributable to:

(i) the failure of the Projects to generate the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity of the Green Attributes component of Category 2
Product during the corresponding Generation Period for any reason other than a Force Majeure;

(ii) the failure of the Seller to receive or deliver any Category 1 Product or Green Attributes component of Category 2 Product actually generated by or attributable to the Projects during the corresponding Generation Period that was delivered to Seller for any reason other than a Force Majeure; or

(iii) a Seller Eligibility Failure;

and the amount of such shortfall for that Delivery Period is the difference between the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity and the actual quantity of Category 1 Product or Category 2 Product, respectively, generated by and/or attributable to the Projects and delivered to Buyer (together with any Category 1 Product or Category 2 Product not delivered to Buyer as a result of a Buyer Shortfall) during the Delivery Period pursuant to this Confirmation.

(hh) “Specified Source” means “specified source”, as such term is defined in the Mandatory Reporting Rule.

(ii) “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

(jj) “WREGIS Certificate” means a “Certificate” as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the Green Attributes associated with the Product.

(kk) “WREGIS Operating Rules” means the operating rules and requirement adopted by WREGIS, as amended from time to time.

**ADDITIONAL TERMS**

1. **Force Majeure.** For purposes of this Transaction, the Products shall be subject to Force Majeure and Section 3.3 of the Master Agreement such that, upon receipt of written notice of Force Majeure from the Party prevented by the Force Majeure from carrying out its obligations hereunder, both Parties will be relieved of their respective obligations to schedule, sell and deliver or purchase and receive the affected Category Product(s) without liability to the extent that, and for the period during which, such performance is prevented by Force Majeure, and the Master Agreement is hereby amended by editing paragraph (iii) of the definition of Force Majeure in Section 1.23 to read as follows:

“the loss or failure of Seller’s supply, except, with respect to the Green Attributes, to the extent Seller’s supply is itself subject to an event of Force Majeure;”
For greater certainty and without limiting the foregoing, neither a Regulatory Determination nor change in law shall be an event of Force Majeure for the purposes of this Transaction. In the event and to the extent that the Category 1 Product and/or Category 2 Product generated by or attributable to a Project do not meet or satisfy the Eligibility Requirements as a result of any other event or circumstance which otherwise meets the definition of Force Majeure, that will be considered an event of Force Majeure for the purposes of this Confirmation, and the Category 1 Product Contract Quantity and/or Category 2 Product Contract Quantity, as applicable, provided for in this Confirmation shall be reduced to the extent of and by the amount affected by such event of Force Majeure commencing with the Delivery Period in which the event of Force Majeure occurs.

2. Negotiations Respecting Failure to Satisfy Eligibility Requirements. In the event that a Category Product generated by and/or attributable to the Projects does not meet or satisfy the Eligibility Requirements for reasons other than a Buyer Eligibility Failure or a Seller Eligibility Failure, the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation as appropriate to meet applicable requirements so that such Category 1 Product and/or Category 2 Product meets or satisfies the applicable Eligibility Requirements, in a manner consistent with the intent of the Parties as set out in this Confirmation.

3. Anticipated Shortfall – Category 2 Product. If Seller reasonably anticipates that there will be a Seller Shortfall in respect of the Category 2 Product Contract Quantity in a Delivery Period in which Category 2 Product is to be delivered to Buyer, Seller shall provide written notice to Buyer on or before September 15 of the Delivery Period in which such shortfall is anticipated. Upon Buyer’s receipt of such notice, the Parties will negotiate in good faith using commercially reasonable efforts to determine whether Seller may deliver a product comparable to the Category 2 Product generated by or attributable to an Alternate Eligible Facility or Alternate Source equal to the amount of such anticipated Seller Shortfall. If the Parties mutually agree to such arrangements, they will enter into a separate agreement respecting same and Buyer will waive the Seller Shortfall and any liquidated damages payable pursuant to this Confirmation in respect of the Seller Shortfall. In the event Seller reasonably anticipates a shortfall in delivery of Category 2 Product that is not or is not likely to be a Seller Shortfall, the Seller may elect to have this Section 3 apply (and thereupon this Section 3 will apply) by giving the written notice referred to herein stating such election.

4. Failure to Deliver/Receive. For purposes of this Transaction:

(a) the references to the “Contract Price” in Sections 4.1 and 4.2 of the Master Agreement, and those Sections only, shall be deemed to refer to the Energy Price only, except in the event and to the extent that there is a Seller Shortfall or a Buyer Shortfall, in which case such references shall be deemed to include the Category 1 REC Price and/or the Category 2 REC Price, as applicable, subject to Section 4(d) of this Confirmation;

(b) the definition of “Replacement Price” in Section 1.51 of the Master Agreement shall be amended by adding the following proviso at the end of the first sentence of such definition:
“; and further provided that the Replacement Price shall not include any premium or other amount paid or payable to replace the Category 1 Product or Category 2 Product not delivered by Seller with electric energy from renewable sources or paid or payable for Green Attributes, renewable energy certificates, or similar credits, rights or offsets associated with replacement electric energy, except in the event and to the extent that there is a Seller Shortfall, in which case the Replacement Price shall include such premium, subject to Section 4(e) of this Agreement.”

(c) the definition of “Sales Price” in Section 1.53 of the Master Agreement shall be amended by adding the following proviso at the end of the first sentence of such definition:

“; and further provided that the Sales Price shall not include any premium or other amount paid or payable on the basis that the energy is attributed to renewable sources or is sold with any associated Green Attributes, renewable energy certificates, or similar credits, rights or offsets, except in the event and to the extent that there is a Buyer Shortfall, in which case the Sales Price shall include such premium, subject to Section 4(e) of this Agreement.”

(d) In the event and to the extent that there is a Seller Shortfall that is not waived pursuant to Section 3 of this Confirmation, any amount payable pursuant to Section 4.1 of the Master Agreement shall only be calculated and payable on and with respect to the amount of such Seller Shortfall that is not waived pursuant to Section 3 of this Confirmation.

(e) The maximum liability of either Party pursuant to Section 4.1 or Section 4.2 of the Master Agreement for any failure to deliver or receive all or any portion of the Product shall not exceed and shall be limited to, for Category 1 Product, 100% of the Category 1 REC Price and, for Category 2 Product, 100% of the Category 2 REC Price, as applicable, for the amount of the Seller Shortfall or the Buyer Shortfall, as the case may be, and in no event will the liability of a Party pursuant to Section 4.1 or Section 4.2 of the Master Agreement for any failure to schedule, deliver or receive all or any portion of the Product include any liability in respect of penalties, ratcheted demand or similar charges.

5. Events of Default; Remedies. For purposes of this Transaction:

(a) For the purposes of determining payments under Section 5.2 of the Master Agreement, with respect to this Transaction, the economic benefits or losses of the Non-Defaulting Party resulting from termination of this Transaction shall be based on both the energy and Green Attributes components of the Product.

(b) The remedies for failure to deliver the Product (including Green Attributes) provided for in the Master Agreement as amended by this Confirmation are the sole and exclusive remedies and all other remedies are waived.
6. **Seller Eligibility Requirements and Non-Modifiable or Standard Terms.** Subject to the terms and conditions of this Agreement and the Master Agreement as amended hereby, and to any other Eligibility Requirements (excluding the following):

(a) Seller shall be responsible for ensuring that: (i) each Designated Facility is certified as an eligible renewable energy resource for the California RPS Program prior to delivery of Category 1 Product or Category 2 Product hereunder; and (ii) the Green Attributes have been or will be transferred to Seller and will be transferrable to Buyer through or using WREGIS, or such similar generation information or attributes tracking system as may be approved by or other method of transfer acceptable to the Energy Commission;

(b) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract [STC REC-2];

(c) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project; and

(d) For the purposes of this Transaction:

(i) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law [STC 6]; and

(ii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]
For the purposes of STC 6 above, for the Category 2 Product, the Parties acknowledge that Substitute Energy, in substitution for Project Energy, and Green Attributes are delivered to Buyer.

As used in this Section 6(d), “Delivery Term” has the same meaning as “Generation Term” provided that, for the purposes of STC 6 above with respect to any Project, the Parties agree that the representation and warranty therein applies only to the portion of the Delivery Term during which the output from that Project is being delivered to the Buyer. As used in this Agreement, a “change in law” refers to any determination, decision, application of, or change in law or policy after the Trade Date by or of the CEC or the CPUC or other applicable governmental or regulatory authority or third party having authority or jurisdiction, excluding a Regulatory Determination.

The Parties agree that, so long as the Seller has used commercially reasonable efforts to comply with a change in law resulting in either of the above representations and warranties becoming incorrect, the Buyer shall receive and pay for any Product supplied hereunder notwithstanding any non-compliance with the California RPS Program resulting from the change in law.

7. Commercially Reasonable Efforts

(a) A Party required to use or make “commercially reasonable efforts” pursuant to this Agreement shall not be required to incur more than $25,000 in aggregate direct or indirect costs, including lost profits, and out-of-pocket costs and expenses, to comply with such “commercially reasonable efforts”, and then only to the extent incurring such costs would be reasonably likely to achieve the desired effect.

(b) In the event an issue or circumstance requiring a Party to use or make commercially reasonable efforts similarly affects one or more other transactions between the Parties, such $25,000 limit shall apply to all such transactions between the Parties and shall not be cumulative to any limits applicable to such other transactions.

8. Meter and Scheduling Information. Throughout the Delivery Term, Seller shall provide to Buyer the following information as and to the extent necessary for Buyer to comply with the requirements of the California RPS Program: (i) meter data from the Project related to the delivery of Category 1 Product, (ii) all E-tag information related to the delivery of Category 1 Product into the CAISO Balancing Authority, and (iii) any other scheduling or delivery information necessary to meet the requirements of the California RPS Program.

9. Specified Source – Category 1 Product. The Parties acknowledge that Seller intends to claim that the Category 1 Product delivered into the CAISO Balancing Authority, to meet the requirement under this Confirmation, is from a Specified Source. In order to assist Seller in claiming that Category 1 Product is from a Specified Source, Buyer agrees that by May 15 following the end of each calendar year in the Generation Term it will provide Seller with a written attestation providing a detailed breakdown of the total quantity of RECs transferred under this Confirmation associated with the Category 1 Product that have been placed in a WREGIS retirement subaccount and those that remain in a
10. **RPS Adjustment – Category 2 Product.** The Parties acknowledge that Seller intends to mitigate its Compliance Obligation for the Category 2 Product, which it imports into California under this Confirmation, by claiming the RPS Adjustment. Buyer agrees to provide Seller, following Seller’s written request, with the information required by Seller for the purpose of claiming the RPS Adjustment including, but not limited to, providing by May 15 following the end of each calendar year in the Generation Term a written attestation to Seller that the quantity of RECs transferred under this Confirmation associated with the immediately previous calendar year in the Generation Term as Category 2 Product have been placed in Buyer’s WREGIS retirement subaccount and that these RECs have been designated for retirement for the purposes of Buyer’s compliance with the California RPS Program for the applicable year in the Generation Term in accordance with the Cap and Trade Regulation. This provision shall survive expiry or earlier termination of this Transaction until such time as the information contemplated herein in respect of the last year of the Generation Term is provided to Seller by Buyer.

Buyer represents and warrants that, as of May 15 following the end of each calendar year in the Generation Term (or the date of the written attestation referenced above, whichever is earlier), the quantity of RECs transferred under this Confirmation associated with the immediately previous calendar year in the Generation Term as Category 2 Product have been placed in Buyer’s WREGIS retirement subaccount and that these RECs have been designated for retirement for the purposes of Buyer’s compliance with the California RPS Program for the applicable year in the Generation Term in accordance with the Cap and Trade Regulation.

Buyer will promptly notify Seller in writing if any RECs associated with Category 2 Product delivered to Buyer under this Confirmation are subsequently withdrawn from Buyer’s WREGIS retirement subaccount and provide Seller with the vintage year and month, serial numbers and any other information with respect to any such RECs withdrawn from Buyer’s WREGIS retirement subaccount as may be required by Seller to comply with Section 95111.g.1.M.2 of the Mandatory Reporting Rule (or any similar successor provision).

The preceding Sections 9 and 10 are based on the Cap and Trade Regulations and Mandatory Reporting Rule as of the Trade Date of this Confirmation. In the event that the regulatory requirements for mitigating the Compliance Obligation change after the Trade Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements.

11. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

This Confirmation is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement.
Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

**Powerex Corp. * ** Silicon Valley Clean Energy Authority, a California joint powers authority

By: __________________________ By: __________________________

Name: __________________________ Name: __________________________

Title: __________________________ Title: __________________________

Date: __________________________ Date: __________________________

* Powerex Corp., doing business in California as Powerex Energy Corp.

**Contacts:**

**Powerex:**

Anthony Des Lauriers
Tel: (604) 891-6018
Fax: (604) 891-5056

**SVCEA:**

Tel: [●]
Fax: [●]
SCHEDULE “A”

Designated Facility(s)

Part A – Initial Designated Facilities

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>State / Province</th>
<th>Technology</th>
<th>RPS ID</th>
<th>Total Facility Nameplate (MW)</th>
<th>PNode (In-State Facilities Only)</th>
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Part B – Additional Designated Facilities for Category 1 Product

[to be added under the terms of the section - “Additional Designated Facilities” as required]
This document ("Confirmation" or "Agreement") confirms the agreement reached on the Trade Date between Powerex Corp.* ("Powerex" or "Seller") and Silicon Valley Clean Energy Authority ("SVCEA" or "Buyer") regarding the sale and purchase of the Product in accordance with the EEI Master Power Purchase and Sale Agreement dated as of November 28, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties and as amended and supplemented by this Confirmation (collectively, the "Master Agreement") under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts.

**Seller:** Powerex

**Buyer:** SVCEA

**Trade Date:** [●]

**Transaction:** This Transaction is for Buyer to procure Carbon Free Energy, all in accordance with the terms and conditions of this Confirmation.

**Product:** Carbon Free Energy, being energy delivered from a Carbon Free Source and scheduled into the CAISO Balancing Authority or onto the CAISO Controlled Grid, in quantities as provided for under “Delivery Term and Contract Quantity” Section of this Confirmation.

The Parties recognize that a schedule of energy into the California Independent System Operator ("CAISO") balancing authority ("CAISO Balancing Authority") or onto the CAISO Controlled Grid is a delivery to the CAISO and not directly to the Buyer. Scheduling energy into the CAISO Balancing Authority or onto the CAISO Controlled Grid shall constitute delivery of Carbon Free Energy provided such energy was delivered from a Carbon Free Source.

**Contract Price:** In this Confirmation,

"CAISO Credit" means the Energy Price paid by the CAISO for the Carbon Free Energy.

"CF Price" means the Energy Price plus $[●].
“Energy Price” means the applicable day-ahead hourly, hour-ahead fifteen minute market, or real-time five minute market locational marginal price (“LMP”) clearing price at the applicable Delivery Point(s), as published by the CAISO, per MWh of energy delivered.

The Contract Price for each MWh of Carbon Free Energy delivered to Buyer in accordance herewith shall consist of the CF Price less the CAISO Credit.

**Payment:**

Invoicing and payment for the Carbon Free Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. Seller’s invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer. For greater certainty, for Carbon Free Energy delivered from an in-state Carbon Free Source, Seller will apply the CAISO Credit as specified in the Contract Price formula even if the CAISO Credit is paid by the CAISO to the entity or person delivering the Carbon Free Energy to the CAISO rather than the Seller directly.

**Change in Law:**

If due to (i) any action by a Governmental Authority, or (ii) any change in Applicable Law ((i) and (ii), collectively, a “Change in Law”), occurring after the Trade Date that results in material change(s) to Buyer's or Seller's obligations with regard to the Product(s) sold under this Agreement or that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product(s) sold hereunder in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected.

**Delivery Term and Contract Quantity:**

The Delivery Term for the Product is (i) [●] through [●] inclusive, and (ii) [●] through [●] inclusive (each a “Delivery Period” and collectively the “Delivery Term”).

During the Delivery Term, Seller shall deliver to Buyer the Contract Quantity of Carbon Free Energy allocated to each Delivery Period as specified in the table below (“Contract Quantity”):
<table>
<thead>
<tr>
<th>Product</th>
<th>Delivery Period</th>
<th>Contract Quantity (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>[●]</td>
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<td>[●]</td>
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<td>[●]</td>
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</tbody>
</table>

For greater certainty, there shall be no minimum or maximum obligation to deliver Carbon Free Energy in any hour during the Delivery Term.

Carbon Free Energy shall be scheduled in accordance with “Scheduling” below.

**Delivery Point:**

**Out-of-State Carbon Free Sources:** Seller may deliver Carbon Free Energy to any Scheduling Point (as defined in the CAISO Tariff) including but not limited to the SYLMARDC_2_N501 and MALIN_5_N101 Scheduling Points.

**In-State Carbon Free Sources:** Seller shall deliver Carbon Free Energy from an in-state Carbon Free Source to the Pricing Node (PNode) (as defined in the CAISO Tariff) for the Generating Resource, as specified in Schedule “A”.

**Title:** Title to the Carbon Free Energy shall be deemed to pass from Seller to Buyer at the Delivery Point.

**Scheduling:** Seller will perform or cause to be performed all scheduling and tagging requirements for Carbon Free Energy. Energy deliveries shall be scheduled pursuant to WECC and CAISO requirements to the Delivery Point.

**Scheduling:** Seller shall schedule or cause to be scheduled, at its sole discretion, Carbon Free Energy from Carbon Free Sources into the CAISO Balancing Authority or onto the CAISO Controlled Grid on a day-ahead, hour-ahead, sub-hourly and/or real-time basis. Without limiting the generality of the foregoing, Seller may schedule the Carbon Free Energy during any or all HLH and LLH hours during the Delivery Term until the total Contract Quantity is delivered.

All Carbon Free Energy shall be scheduled in accordance with Generally Accepted Utility Practice.

**Tagging – Out-of-State Carbon Free Sources:** [Option A] The CARB ID(s) of the Carbon Free Source shall be entered as the “Value” in the Misc(Token/Value) field of the e-tag. Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under ‘Physical Path’, and Buyer’s PSE code “[●]” as the last PSE (Purchasing Selling Entity) or ‘sink’ PSE under ‘Physical Path’, even though the CAISO Balancing Authority is the last CA in the Scheduling Point.
Authority will be the actual sink for the Carbon Free Energy. The CARB ID(s) of the Carbon Free Source shall be entered as the “Value” in the Misc(Token/Value) field of the e-tag. Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under ‘Physical Path’, [●] shall be entered as the final POR under ‘Physical Path’ and Buyer shall be designated by inserting [●] in the Comment section on each NERC e-Tag.

For greater certainty, no e-Tags shall be generated for Carbon Free Energy delivered from an in-state Carbon Free Source.

Any scheduling provisions may be altered by mutual agreement of the Parties.

**Seller scheduling contacts:**

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<thead>
<tr>
<th></th>
<th>Phone</th>
<th>Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prescheduler</td>
<td>(604) 891-5007</td>
<td>(604) 891-5045</td>
</tr>
<tr>
<td>Real-Time</td>
<td>(604) 891-5091</td>
<td>(604) 891-5045</td>
</tr>
<tr>
<td>Mid-office Agreement</td>
<td>(604) 891-5057</td>
<td>(604) 891-5045</td>
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**Buyer scheduling contacts:**

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**Generation Resources:**

Seller’s list of generation resources from which it will supply Carbon Free Energy to Buyer will be specified in Schedule A in accordance with this provision. A completed Schedule A will be provided to Buyer at least 5 Business Days prior to the initial delivery of Carbon Free Energy (which requirement may be satisfied if a completed Schedule A is attached hereto on the Trade Date) and, thereafter, Seller may update this generation resources list (including to add additional generation resources) from time to time by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A. In the event Seller delivers Carbon Free Energy from a Carbon Free Source not listed in Schedule A, such delivery shall still constitute delivery of Carbon Free Energy hereunder and Seller shall use commercially reasonable efforts to update Schedule A as soon as is reasonably practicable after delivery to add the applicable generation resource(s).
Definitions Applicable to this Transaction

For the purposes of this Confirmation, the following terms used in this Confirmation shall have the following meanings:

(a) “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of or guidance with respect to the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Generation Resource(s), or the terms of the Agreement.

(b) “CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

(c) “CAISO Tariff” means the applicable tariff and protocol provisions of the CAISO (as amended from time to time).

(d) “Cap and Trade Regulation” means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.

(e) “CARB” means the California Air Resources Board of the California Environmental Protection Agency.

(f) “Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the Western Energy Coordinating Council (“WECC”) area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Reporting Rule and the Cap and Trade Regulation. Carbon Free Source does not include any Category 3 Renewables, “asset controlling supplier” (ACS) resources (as such term is used in the Mandatory Reporting Rule) or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

(g) “Category 3 Renewable” means renewable energy credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.

(h) “Governmental Authority” means any federal, provincial, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or any applicable transmission authority, having or asserting jurisdiction over a Party or this Transaction.
(i) “HLH” means hours ending (“HE”) 0700-2200 PPT Mondays through Saturdays, excluding Holidays.

(j) “Holiday” means any day designated as a holiday by NERC.

(k) “LLH” means Mondays through Saturdays HE 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.

(l) “Generally Accepted Utility Practice” means a practice established by WECC or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.

(m) “Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

Special Conditions

1. Events of Default; Remedies. For purposes of this Transaction:
   
   (a) For the purposes of determining payments under Section 5.2 of the Master Agreement, with respect to this Transaction, the economic benefits or losses of the Non-Defaulting Party resulting from termination of this Transaction shall be based on energy delivered from a Carbon Free Source.

   (b) The remedies for failure to deliver the Product provided for in the Master Agreement as amended by this Confirmation are the sole and exclusive remedies and all other remedies are waived.

2. Failure to Deliver/Receive. The maximum liability of either Party pursuant to Section 4.1 or 4.2 of the Master Agreement for any failure to schedule, deliver or receive all or a portion of the Product shall not exceed and shall be limited to $[●]/MWh for the amount of the Product that was not scheduled, delivered or received, as the case may be, and in no event will the liability of a Party pursuant to Section 4.1 or 4.2 of the Master Agreement for any failure to schedule, deliver or receive all or a portion of the Product include any liability in respect of penalties, ratcheted demand or similar charges.

3. Importer/Compliance Obligation. For Carbon Free Energy imported from an out-of-state Carbon Free Source, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation (as such term is defined in the Cap and Trade Regulations) under the Cap and Trade Regulations associated with any Carbon Free Energy that Seller schedules and delivers into the CAISO Balancing Authority and that they will work together such that Seller may claim that such Carbon Free Energy is from a “specified source” (as such term is defined in the Mandatory Reporting Rule) to mitigate such Compliance Obligation. This provision is based on the Cap and Trade Regulations and Mandatory Reporting Rule as of the Trade Date of this Confirmation. In the event that the regulatory requirements for mitigating the Compliance Obligation
change after the Trade Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements.

This Agreement is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Remainder of this page intentionally left blank]
The Parties agree it is their intention that the Transaction provided for in this Agreement is not capable of being agreed to orally and shall only become binding on the Parties when this Agreement is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *  
By: ____________________________  
Name: ___________________________  
Title: ____________________________  
Date: ____________________________

Silicon Valley Clean Energy Authority, a California joint powers authority  
By: ____________________________  
Name: ___________________________  
Title: ____________________________  
Date: ____________________________

* Powerex Corp., doing business in California as Powerex Energy Corp.

Contacts:  
Powerex:  
Anthony Des Lauriers  
Tel: (604) 891-6018  
Fax: (604) 891-5056

SVCEA:  
[●]  
Tel: [●]  
Fax: [●]
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CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Exelon Generation Company, LLC, a Pennsylvania limited liability company (“Seller”)
And
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated November 28, 2016
Transaction Date: December 15, 2016 (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on September 27, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.
“Buyer Facilities” has the meaning set forth in Section 10 hereof.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“California RPS” or “California Renewables Portfolio Standard” means the California Renewables Portfolio Standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (8th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission ("CPUC") as set forth in CPUC Decision ("D") 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.
“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Debt Service” means the obligations payable by Buyer for interest on loans outstanding and any principal repayments and any capital leases, but excluding any interest on or principal repayments of inter-company working capital loans between Buyer and one or more of its Affiliates.

“Debt Service Coverage Ratio” means, the ratio of (a) EBITDA to (b) Debt Service, for the preceding twelve (12) month period measured annually as of each fiscal year end, beginning September 1, 2017.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price ($/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled to Buyer’s Third Party SC as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial,
regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.


“Renewable Energy Contract Price” shall mean the price ($/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder. For avoidance of doubt, the Parties agree that RECs do
not include any production tax credits associated with the construction or operation of an ERR or other financial incentives in the form of credits, reductions, or allowances associated with an ERR that are created by state or federal tax laws.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract (e.g., a Transaction Confirmation).

“Tariff” means the FERC-approved California Independent System Operator Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as may be amended, supplemented or replaced from time to time.

“Third Party SC” means a third party designated by Buyer to provide the Scheduling Coordinator (as defined in the Tariff) functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract (e.g., a Transaction Confirmation).

“WECC” means the Western Electricity Coordinating Council, or its successor.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. **PRODUCT.**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

   (a) the quantity of Energy determined in accordance with Section 7.1;

   (b) the quantity of Renewable Energy determined in accordance with in Section 7.2; and
the quantity of Carbon Free Energy determined in accordance with Section 7.3.

For avoidance of doubt, Product does not include any resource adequacy or capacity attributes.

2.2 **Change in Law.**

If due to (i) any action by the CPUC or any other Governmental Authority, or (ii) any change in Applicable Law, including any modification of the California RPS or the Cap and Trade Regulation (i and ii, collectively, a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 **RPS Standard Terms and Conditions.**

**STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-2: Tracking of RECs in WREGIS

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

2.4 No New Construction. Seller does not intend to construct any new facilities in California to meet its supply obligations hereunder. Notwithstanding the foregoing, to the extent that Seller constructs any new facilities in California to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 Resources. For Category 1 Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use either (i) Unspecified Sources of Power or (ii) Specified Sources of Power; provided that any such Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) from Specified Sources of Power shall not be procured from nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 Delivery of WREGIS Certificates. Buyer and Seller agree that the obligation to deliver RECs hereunder shall be evidenced by the delivery of WREGIS Certificates in WREGIS. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding
forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer and in any event no later than May 1 following the delivery year.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller’s rejection of such non-conforming WREGIS Certificates.

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 et seq., and to comply with the requirements of the Cap and Trade Regulations in Title 17 CCR Section 95111 and 17 CCR Section 95852 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period and to provide WREGIS reports
to Seller by no later than May 15 of the year following delivery that (1) evidence retirement of the RECs and (2) provide REC serial numbers.

2.8 **RPS Adjustment.** The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the RPS Adjustment is eliminated from the Cap and Trade Regulations and is no longer applicable to the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

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5. **SCHEDULING.** The Product will be scheduled to Buyer’s Third Party SC on a Day-Ahead basis using an Inter-SC Trade.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered
and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS during such month plus b) the Day-Ahead LMP (as defined under the Tariff) at the Delivery Point for each MWh of the Renewable Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Carbon Free Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.

7.2 **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.

7.3 **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. **MONTHLY BILLING SETTLEMENT.**

8.1 **Collection of Customer Payments.** In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.
8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

9. COMPLIANCE REPORTING. Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product. Each party shall provide all reasonable information to the other party necessary to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product. Buyer agrees to cooperate with any informational requests Seller may receive from a Governmental Authority, including but not limited to supplying WREGIS reports for Seller’s compliance with Cap and Trade Regulations.

10. NO RESTRICTION. Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities (“Buyer Facilities”) or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.

11. STANDARD OF CARE AND GOOD FAITH. When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

12. SECURITY PROVISIONS.

12.1 Compliance with Security Documents. During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 Buyer Reporting Requirements. During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer’s financial performance, Buyer’s performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In
the event Buyer fails to provide Seller with any required reports set forth below in Section 15.2(a) and such failure is not remedied within fifteen (15) Business Days of Seller’s written request therefore and notice of a potential Event of Default, such failure shall be an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform; provided, however, that should any such reports, not be available on a timely basis due to a delay in preparation or certification, or otherwise outside of the reasonable control of Buyer, such delay shall not be an Event of Default of Buyer so long as Buyer diligently pursues the preparation and delivery of the required reports.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);

(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts;

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers; and

(v) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

(b) **Annual Reports.** The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows:
Buyer’s financial reports consisting of, at a minimum, statement of
revenues, expenses and changes in fund net assets, statement of net assets,
and statement of cash flows on a consolidating basis (as applicable), each
as prepared in accordance with generally accepted accounting principles
and audited by an independent certified public accountant.

12.3 **Debt Service Coverage Ratio Covenant** From September 1, 2017 through the
remainder of the Delivery Period, Buyer shall establish and maintain a Debt
Service Coverage Ratio of at least 1.25 to 1.0 (measured annually as of each fiscal
year end beginning September 1, 2017). If at any time after September 1, 2018,
Buyer fails to maintain such Debt Service Coverage Ratio for the prior fiscal year,
such event shall constitute an Event of Default of Buyer in accordance with
Article V of the Master Agreement and Buyer shall therefore be the ‘Defaulting
Party’ with regard to such event.

This Confirmation is being provided pursuant to and in accordance with the Master Power
Purchase and Sale Agreement dated November 28, 2016 (the “Master Agreement”) between
Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such
Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them
in the Master Agreement. This Confirmation and the Master Agreement, including any
appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

<table>
<thead>
<tr>
<th>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A – Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</td>
</tr>
</tbody>
</table>

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

_______________________
_______________________
_______________________

Sign: __________________________  Print: __________________________
Title: __________________________
Exhibit A

Energy Contract Quantity and Price Schedule

[TBD]
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

[TBD]
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between 3 Phases Renewables Inc. ("Seller")
And
Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer")
dated ______
Transaction Date: ________ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent ("Implementation Plan") to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on ______, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

   “ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

   “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“Buyer Facilities” has the meaning set forth in Section 10 hereof.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Credit” means the Energy Price paid by the CAISO to Seller as the Scheduling Coordinator for the Incremental Energy and the Carbon Free Energy.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.


“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Attribute Price” shall mean the price ($/MWh) to be paid by Buyer to Seller for each MWh of Carbon Free Energy delivered hereunder, as set forth on Exhibit B.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Energy Contract Quantity” shall mean the quantity of Carbon Free Energy to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Carbon Free Energy Price” shall equal the Energy Price minus the CAISO Credit, plus the Carbon Free Attribute Price for every MWh of Renewable Energy delivered by Seller to Buyer hereunder, as described with more specificity in Section 6.2.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free
Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Price” means the applicable day-ahead hourly, hour-ahead fifteen minute market, or real-time five minute market locational marginal price ($/MWh) at the Energy Delivery Point (s), as published by the CAISO, per MWh of Energy delivered.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.
“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Incremental Energy” means Energy generated outside the metered boundaries of a California balancing authority area, which may include electricity produced by the Project(s), delivered to a delivery point inside California during the same calendar year in which the Bundled Renewable Energy was produced by the Projects. For avoidance of doubt, Incremental Energy is not required to be energy generated directly from the Project.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Price” shall mean the price ($/REC) to be paid by Buyer to Seller for each WREGIS Certificate delivered hereunder, as set forth on Exhibit A.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Bundled Renewable Energy, which is shaped and firmed with substitute energy to provide Incremental Energy that is delivered by the Seller to the Buyer at the Delivery Point in accordance with the terms of this Confirmation.
“Renewable Energy Contract Price” shall equal the Energy Price minus the CAISO Credit, plus the REC Price for every MWh of Renewable Energy delivered by Seller to Buyer hereunder, as described with further specificity in Section 6.1.

“Renewable Energy Contract Quantity” shall mean the quantity of Incremental Energy and RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit A.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. **PRODUCT**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:
(a) the quantity of Renewable Energy specified in Section 7.1; and

(b) the quantity of Carbon Free Energy specified in Section 7.2.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 RPS Standard Terms and Conditions.

**STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

**STC REC-1: Transfer of Renewable Energy Credits**

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy
credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

**STC REC-2: Tracking of RECs in WREGIS**

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

2.4 **No New Construction Without Environmental Review.** To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 **Resources.** For Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For Renewable Energy deliveries, if any, Seller may use Unspecified Sources of Power to provide the required Incremental Energy hereunder; provided that any Energy delivered under this Confirmation (including Incremental Energy) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 **Delivery of WREGIS Certificates.** Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer. Prior to the start of each calendar quarter, and at the request of Buyer, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the
Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall convey WREGIS Certificates within ten (10) business days of Buyer’s payment remittance of each applicable invoice for Buyer’s sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller’s rejection of such non-conforming WREGIS Certificates.

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D).

2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Portfolio Content Category 2 deliveries. Buyer shall retire the RECs for the same calendar year in which they were produced so that Seller may meet the conditions for the RPS Adjustment pursuant to the Cap and Trade Regulation 98852. In the event that Seller does not meet the conditions for the RPS Adjustment as a result of Buyer’s failure to retire the RECs in accordance with the above, Buyer shall reimburse Seller the cost of Allowances (as defined in Cap and Trade Regulation 95802(a)(8)) purchased by Seller as a result of Seller’s inability to meet such conditions to the extent such inability is due to Buyer’s
failure to retire RECs, at the price established at the next succeeding auction of Allowances hosted by CARB. Notwithstanding any other provision of this Confirmation, if the regulatory requirements regarding the RPS Adjustment change after the Effective Date, and such change causes an increase in the greenhouse gas emissions intensity associated with the Product for Buyer, the Parties agree to discuss in good faith amendments to this transaction to mitigate such increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this transaction or are unable to agree upon a mutually acceptable resolution, either Party may, by written notice to the other, immediately terminate the undelivered portion of Contract Quantity without penalty, termination payment or liability of either Party.

3. **DELI** **VERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

<table>
<thead>
<tr>
<th>Start Date:</th>
<th>End Date:</th>
</tr>
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<tbody>
<tr>
<td>January 1, 2017</td>
<td>The earlier of December 31, 2019, or the date on which Seller has delivered the Contract Quantity of Energy for the Product(s)</td>
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</table>

4. **DELI** **VERY POINT.**

<table>
<thead>
<tr>
<th>Product</th>
<th>Delivery Point</th>
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<tbody>
<tr>
<td>Renewable Energy</td>
<td>The delivery point for the Incremental Energy shall be within the CAISO at Malin, NP15, Palo Verde, Sylmar DC, Mona, or SP15, as determined by Seller</td>
</tr>
<tr>
<td>Carbon Free Energy</td>
<td>The delivery point for the Energy shall be within the CAISO at Malin, NP15, Palo Verde, Sylmar DC, Mona, or SP15, as determined by Seller</td>
</tr>
</tbody>
</table>

5. **SCHEDULING.** Seller will be the Party delivering Energy into CAISO. Seller will perform all scheduling and tagging requirements applicable to this transaction. These services will be performed consistent with all applicable CAISO and WECC scheduling protocols.

Buyer authorizes Seller to deliver Energy to CAISO at the Delivery Point as agent on Buyer’s behalf. Seller, on behalf of Buyer, will be listed as the Purchasing Selling Entity (“PSE”) on the “Physical Path” of the e-Tag. Seller will be importer of record of the Energy into California.
For Renewable Energy, Seller shall (a) include on the e-Tag the Project(s) CEC RPS identification number or numbers as described in WREGIS Operating Rules and Training Documents updated from time to time so that Seller is able to receive e-Tags in WREGIS, (b) match RECs with e-Tags in WREGIS before transferring to Buyer, and (c) ensure that the appropriate Project information is contained on each e-Tag as required for REC tracking in WREGIS.

6. **PRICING.**

6.1 **Renewable Energy Contract Price and Payment.** Seller shall invoice Buyer no more frequently than monthly during the Delivery Period and Buyer will pay Seller the amount equal to: a) the applicable REC Price as specified in Exhibit A multiplied by the number of WREGIS Certificates transferred from Seller to Buyer through WREGIS during such term plus b) the Energy Price for each MWh of Incremental Energy delivered and scheduled in accordance with this Confirmation in such portion of the Delivery Period, minus (c) the applicable CAISO Credit for such portion of the Delivery Period.

6.2 **Carbon Free Energy Price and Payment.** Seller shall invoice Buyer no more frequently that monthly during the Delivery Period and Buyer will pay Seller an amount equal to a) the quantity of Carbon Free Energy delivered in such portion of the Delivery Period multiplied by the Carbon Free Attribute Price specified in Exhibit B plus b) the Energy Price at the Delivery Point for each MWh of the Carbon Free Energy delivered and scheduled in accordance with this Confirmation in such portion of the Delivery Period, minus (c) the applicable CAISO Credit for such portion of the Delivery Term.

7. **CONTRACT QUANTITIES.**

7.1 **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.

7.2 **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B.

8. **MONTHLY BILLING SETTLEMENT.**

8.1 **Monthly Invoice Timeline.** Invoicing and payment shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation.

9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy and will require resource information, electronic tagging information, and
other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities ("Buyer Facilities") or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.

11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer’s financial performance, Buyer’s performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts;

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers;

(b) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer’s financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 28, 2016 (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

This Confirmation is subject to the Exhibits identified below and that are attached hereto:

| Exhibit A – Renewable Energy Contract Quantity and Price Schedule |
| Exhibit B – Carbon Free Energy Contract Quantity and Price Schedule |

3 PHASES RENEWABLES INC.          SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: ___________________________  Sign: ___________________________
Print: ___________________________  Print: ___________________________
Title: ___________________________  Title: ___________________________
Exhibit A

Renewable Energy Contract Quantity and Price Schedule

[TBD]
Exhibit B

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
CONFIRMATION

Reference:
This Confirmation is governed by the Master Power Purchase and Sale Agreement
Between Shell Energy North America (US), L.P. (“Seller”)
And
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated ______ (the “Master Agreement”)
Transaction Date: _______ (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on September 27, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

   “ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

   “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.
“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.


“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.


“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.
“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Santa Clara.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price ($/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“IST”, an abbreviation for Inter-SC Trade, has the meaning set forth in CAISO Tariff.
“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.


“Renewable Energy Contract Price” shall mean the price ($/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.
“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT.

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

(a) the quantity of Energy specified in Section 7.1;

(b) the quantity of Renewable Energy specified in Section 7.2; and

(c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold
hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 **RPS Standard Terms and Conditions.**

**STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

**STC REC-1: Transfer of Renewable Energy Credits**

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

**STC REC-2: Tracking of RECs in WREGIS**

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable
Energy Generation Information System will be taken prior to the first delivery under this contract.

**STC 17: Applicable Law**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

2.4 **No New Construction Without Environmental Review.** To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 **Resources.** For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries hereunder, if any, Seller may use Unspecified Sources of Power; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 **Delivery of WREGIS Certificates.** Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer’s sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this
Confirmation. In the event that certain WREGIS Certificates fail to conform to the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party’s receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the regulatory requirements for application of the RPS Adjustment change after the Effective Date and such change causes an increase in the greenhouse gas emissions intensity associated with the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction to mitigate the increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.
3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

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4. **DELIVERY POINT.**

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<tr>
<td>Renewable Energy</td>
<td>CAISO or California Balancing Authority</td>
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<tr>
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</tr>
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5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Carbon Free Energy and Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy
Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.

7.2 **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.

7.3 **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. **MONTHLY BILLING SETTLEMENT**

8.1 **Collection of Customer Payments.** In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

8.2 **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.
10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to
develop its own generation facilities or prevent Buyer from purchasing Energy from other
parties or prevent Seller from selling Energy to other parties; provided, however, that
Buyer shall remain responsible to pay Seller for the Contract Quantities represented in
Exhibits A, B and C.

11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations
hereunder, Seller shall act in good faith and shall perform all work in a manner consistent
with Prudent Industry Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this
Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon
the occurrence of an Event of Default (after giving effect to any applicable
cure periods) by Buyer under any Security Document or a termination of any
Security Document by Seller due to Buyer’s failure to perform in accordance with
the terms thereof, such event shall constitute an Event of Default of Buyer in
accordance with Article Five of the Master Agreement and Buyer shall therefore
be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation
remains in effect, Buyer shall provide Seller with the report(s) required below and
shall also provide Seller with any clarifications requested regarding such report(s)
and such other information that Seller reasonably requests regarding Buyer’s
financial performance, Buyer’s performance of its obligations under this
Confirmation or any Security Document or the ongoing viability of the CCA. In
the event Buyer fails to provide Seller with any required reports requested by
Seller and such failure is not remedied within fifteen (15) Business Days of
Seller’s written request therefor and notice of a potential Event of Default, such
failure shall be an Event of Default in accordance with Article Five of the Master
Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such
failure to perform.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to
Seller not later than twenty (20) days following the end of each calendar
month for items (i) through (vi) below, and each report shall be with
regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report
of all collateral Buyer is holding from any Customer in the format
agreed to between the Parties but shall not include the identity or
personal details (name, address, telephone number, family size,
social security number, bank account number, credit score,
payment history, etc.) of any Customer nor any information that
may allow Seller to determine a Customer’s identity;
(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);

(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts; and

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers

(b) Semi-Annual Reports. The following report shall be provided by Buyer to Seller not later than 20 days following the end of the first six calendar months of each Buyer fiscal year: consolidated and consolidating financial statements for such six month period prepared in accordance with generally accepted accounting principles. Such financial statements shall include, at a minimum, a detailed profit and loss statement, balance sheet, statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the annual financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time.

(c) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer’s fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer’s financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated ____ (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

This Confirmation is subject to the Exhibits identified below and that are attached hereto:
Exhibit A – Energy Contract Quantity and Price Schedule
Exhibit B – Renewable Energy Contract Quantity and Price Schedule
Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule

SHELL ENERGY NORTH AMERICA (US), L.P.

Sign:_________________________ Print:_________________________
Title:_________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign:_________________________ Print:_________________________
Title:_________________________
Exhibit A

Energy Contract Quantity and Price Schedule

[TBD]
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

[TBD]
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

[TBD]
INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,

dated as of December 15, 2016,

by and among

RIVER CITY BANK,
as Collateral Agent,

THE PPA PROVIDERS
FROM TIME TO TIME
PARTY HERETO,

and

SILICON VALLEY CLEAN ENERGY AUTHORITY
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Exhibit A – Form of Joinder
INTERCREDITOR AND
COLLATERAL AGENCY AGREEMENT

This INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT, dated as of December 15, 2016 (this “Agreement”), is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as Collateral Agent (“Collateral Agent”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “PPA Provider”) and (iii) Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCEA”).

RECITALS:

A. SVCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which SVCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. SVCEA shall sell the Product it purchases from PPA Providers to SVCEA’s customers at rates established by SVCEA from time to time.

C. Pursuant to the Security Agreement (defined below) SVCEA has pledged to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as defined below).

D. SVCEA’s customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by SVCEA.

E. As of the date hereof, SVCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of SVCEA to Collateral Agent for remittance to a Lockbox Account (as defined below), which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and SVCEA direct PG&E otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint River City Bank as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.
NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

“Affiliate” means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 51% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” shall have the meaning assigned thereto in the Preamble hereof.

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) any binding arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Bankruptcy Proceeding” means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the States of California or Delaware are required or authorized to be closed.

“Collateral” has the meaning given to such term in the Security Agreement.
“Collateral Agent” means the party identified as such in the Preamble hereof, and its successors and permitted assigns in such capacity.

“Control Agreement” means the Account Control Agreement, dated as of the date hereof, among the Depositary Bank, SVCEA and Collateral Agent and any other agreements entered into among SVCEA and Depositary Bank which shall designate the Deposit Accounts as blocked accounts under the “control” of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Customer” means any customer of SVCEA who purchases Product from SVCEA but is invoiced by PG&E, or any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” has the meaning given to such term in the Security Agreement.

“Depositary Bank” has the meaning given to such term in the Security Agreement.

“Distribution Date” has the meaning given to such term in the Security Agreement.

“Distribution Date Certificate” has the meaning given to such term in the Security Agreement.

“Joinder” has the meaning given to such term in Section 6.5.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” has the meaning given to such term in the Security Agreement.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of November 28, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of [date], 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of November 28, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of [date], 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and
(iii) the Master Power Purchase and Sale Agreement, dated as of ____________, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of ____________, 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Obligations” has the meaning given to such term in the Security Agreement.

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

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns or any other Person that is the host utility that bills Customers in SVCEA’s service territory and collects payments for Product from such Customers on behalf of SVCEA.

“Power Purchase Agreement” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to SVCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is a party to this Agreement, and its respective successors and assigns.

“Product” means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits.

“Receivable” means an Account evidencing SVCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and SVCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of SVCEA.

“Regular Charges” has the meaning given to such term in the Security Agreement.

“Required Secured Creditors” means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least fifty percent (50%) of the total aggregate Sharing Percentage, as calculated on such date.

“Secured Creditors” means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

“Security Agreement” means the Security Agreement, dated as of even date herewith, between SVCEA and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.
“Sharing Percentage” means, as of any date, with respect to each PPA Provider as calculated by SVCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider, as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

“Supplemental Payment” has the meaning given to such term in the Security Agreement.

“SVCEA” means the party identified as such in the Preamble hereof, and its successors and permitted assigns, and includes SVCEA in its capacity as a debtor in possession under the Bankruptcy Code.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by SVCEA thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreement, the Security Agreement, this Agreement and all other agreements, instruments or documents to which SVCEA is a party and which are executed and delivered from time to time in connection with or as security for SVCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as
supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of SVCEA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or SVCEA pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Party from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Party from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. SVCEA and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to SVCEA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing.
Section 2.5.  \textit{Representations and Warranties}

Each Secured Creditor represents and warrants to the other parties hereto that:

(a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and

(c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor’s historical practices.

Section 2.6.  \textit{Cooperation; Accountings}

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. \textbf{AGENCY PROVISIONS}

Section 3.1. \textit{Appointment and Authorization of Collateral Agent}

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank hereby accepts such designation and appointment. The Collateral Agent is a non-fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and
perform its obligations under this Agreement, the Security Agreement, the Control Agreement and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate the Control Agreement without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, Account Control Agreement, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

Section 3.2. Collateral

(a) Deposit Accounts Subject to Collateral Agent’s Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent’s officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person’s own bad faith, gross negligence
(or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to SVCEA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by SVCEA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of SVCEA to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to SVCEA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by SVCEA against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or SVCEA referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent’s officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8. Reporting

Collateral Agent will provide the Secured Creditors with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other
information concerning the business, operations, property, financial and other condition or
creditworthiness of SVCEA which may come into the possession of Collateral Agent or any of
its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall
provide to Secured Creditors copies of all notices received by it regarding the Collateral, the
Security Agreement or this Agreement; provided that the failure to provide such copies shall not
cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person.
Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral
Agent’s receipt of a written request from a Secured Creditor provide a report to all Secured
Creditors regarding the status of any matter relating to payments or distributions of Collateral
received by Collateral Agent.

Section 3.9. Indemnification

SVCEA shall indemnify Collateral Agent (as such and in its individual capacity)
from and against any and all liabilities, obligations, losses, damages, penalties, actions,
judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any
time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual
capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement;
provided that neither SVCEA nor the Secured Creditors shall be liable for the payment of any
portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs,
expenses or disbursements resulting solely from Collateral Agent’s fraud, willful misconduct,
gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of
the Obligations and the termination of this Agreement.

Section 3.10. Collateral Agent May Act in its Individual Capacity

River City Bank, and its Affiliates may make loans to, accept deposits from and
generally engage in any kind of business with SVCEA and its Affiliates as though it was not
Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon at least 60 days’ prior
written notice to the Secured Creditors and SVCEA, or may be removed by the demand
of the Required Secured Creditors for cause at any time if Collateral Agent has failed to
take any action that Collateral Agent is required to take hereunder after request by a
Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral
Agent is not authorized to take hereunder or that violates the terms hereof and, in either
case, has not remedied such failure or violation with reasonable promptness after a
written request for corrective action is delivered to Collateral Agent. After any
resignation or removal hereunder of Collateral Agent, the provisions of this Section 3
shall continue to be binding upon and inure to its benefit as to any actions taken or
omitted to be taken by it in its capacity as Collateral Agent hereunder while it was
Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a
successor Collateral Agent, reasonably acceptable to SVCEA, shall be appointed by the
Secured Creditors provided, if an Event of Default as to SVCEA has occurred no such acceptance of the successor Collateral Agent by SVCEA shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent’s notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, SVCEA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.
SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreement or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under any Control Agreement or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreement or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against SVCEA, the Deposit Accounts, the Depositary Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such
actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent’s actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct SVCEA as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer’s certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer’s certificate or an opinion of counsel.

Section 4.5. Further Assurances

SVCEA and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing. Notwithstanding the forgoing, Collateral may be invested in Permitted Investments as provided for in the Security Agreement. Collateral Agent shall not be responsible for any loss of funds invested in accordance with this Section.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral
Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and Control Agreement or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of SVCEA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.
(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by SVCEA.

(e) Any property received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, SVCEA and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in the event there is a replacement of Collateral Agent. SVCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person’s rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES
THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time SVCEA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a “Joinder”) at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all obligations owed to Collateral Agent, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of  

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such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

Section 6.10. No Recourse Against Constituent Members of SVCEA

SVCEA hereby represents, warrants and agrees that (i) 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 and is a public entity separate from its constituent members, (ii) SVCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith. In light of the foregoing, the Collateral Agent and the Secured Creditors will have no rights and will not make any claims, take any actions or assert any remedies against any of SVCEA’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of SVCEA or SVCEA’s constituent members, in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

[Signatures on following pages]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

River City Bank, not in its individual capacity, but solely as Collateral Agent

By: ________________________________
   Name:
   Title:

Notice Address:

River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention: Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com

With a copy to:
TBD, as Secured Creditor

By: ____________________________
   Name: _________________________
   Title: __________________________

Notice Address:

TBD, as Secured Creditor

By: ____________________________
   Name: _________________________
   Title: __________________________

Notice Address:

TBD, as Secured Creditor

By: ____________________________
   Name: _________________________
   Title: __________________________

Notice Address:

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ____________________________
   Name: _________________________
   Title: __________________________

Notice Address:

Silicon Valley Clean Energy Authority
EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

______, in its capacity as Collateral Agent

With a copy to:

____

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of __________, 2016 (as amended or restated from time to time, the “Intercreditor Agreement”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among _____, as Collateral Agent, and the PPA Providers party thereto, relating to Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCEA”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “Joinder”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between SVCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of __________ as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: __________ __, 20__. 

________________________________________
By: ______________________________
Name:
Title:

[Insert address for notices]
SECURITY AGREEMENT

This SECURITY AGREEMENT (this “Agreement”) dated as of December 15, 2016 is entered into between Silicon Valley Clean Energy Authority, a California joint powers authority, as pledgor (“SVCEA”), and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “Collateral Agent”), for the benefit of the PPA Providers (as defined below), as Secured Creditors (as defined below).

REQUITALS:

A. SVCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which SVCEA has agreed, or will agree, to purchase the Product from such PPA Provider and shall cause such PPA Provider to become a party to the Intercreditor Agreement (as defined below).

B. SVCEA shall sell the Product it purchases from PPA Providers to SVCEA’s customers at rates established by SVCEA from time to time.

C. SVCEA generates accounts receivable owing to SVCEA by SVCEA’s customers for such Product.

D. SVCEA’s customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by SVCEA.

E. As of the date hereof, SVCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of SVCEA to Collateral Agent, for remittance to a Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and SVCEA direct PG&E otherwise.

F. SVCEA desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below).

G. The PPA Providers and SVCEA have entered into the Intercreditor Agreement (as defined below) wherein the PPA Providers appointed River City Bank, as Collateral Agent, to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral.

H. SVCEA and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).
NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1.  Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California are required or authorized to close.

“Collateral” means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depositary Bank for credit or with respect to any Deposit Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term “Collateral” shall not include the On-Bill Repayment Account and any amounts distributed to SVCEA pursuant to Section 6.02(v).

“Collateral Agent” has the meaning given to such term in the Preamble hereof.

“Control” has the meaning given to such term in Section 9-104 of the UCC.

“Control Agreement” means the Account Control Agreement, dated as of the date hereof, among the Depositary Bank, SVCEA and Collateral Agent and any other agreements entered into among SVCEA and Depositary Bank which shall designate the Deposit Accounts as blocked accounts under the Control of Collateral Agent, for the
benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“Credit Rating” means for a Qualified Institution the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or, if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

“Customer” means any customer of SVCEA who purchases the Product from SVCEA but is invoiced by PG&E, and any other obligor(s) responsible for payment of a Receivable.

“Deposit Accounts” means the Lockbox Account, together with any other Deposit Account or Securities Account (as such terms are defined in the UCC) from time to time pledged by SVCEA to Collateral Agent, for the benefit of Secured Creditors, to secure the Obligations.

“Depositary Bank” means River City Bank, a California corporation, in its capacity as depositary bank, and its successors and assigns.

“Direction Letter” means that certain letter, a copy of which has been delivered to the Collateral Agent, from SVCEA to PG&E dated as of the date of this Agreement pursuant to which SVCEA has directed PG&E to remit all of the Proceeds on the Receivables collected by PG&E from Customers to the Lockbox Account for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and SVCEA jointly instruct PG&E to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to PG&E.

“Discharge Date” means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by SVCEA under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

“Distribution Date” means the twenty-third (23rd) day of each month.

“Distribution Date Certificate” means a certificate prepared and submitted by SVCEA in accordance with Section 6.03.

“Event of Default” has the meaning set forth in the applicable Master Agreement or Power Purchase Agreement.
“Implementation Plan” means that certain Implementation Plan filed with the California Public Utilities Commission (CPUC) and certified by the CPUC on September 27, 2016.

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and SVCEA, as amended, supplemented, restated or replaced from time to time.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the Secured Creditors and issued by a Qualified Institution.

“Lien” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“Lockbox Account” means the deposit account no. ____, which is maintained in the name of SVCEA and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depositary Bank, and any replacement account, in each case, pursuant to the Control Agreement.

“Master Agreements” means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of November 28, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of ____________, 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of November 28, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of ____________, 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(iii) the Master Power Purchase and Sale Agreement, dated as of ____________, 2016, between [seller name] and SVCEA, and a Confirmation, dated as of ____________, 2016, between [seller name] and SVCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

“Moody’s” means Moody’s Investor Services, Inc.

“Obligations” means all of the obligations and liabilities of SVCEA to each PPA Provider, whether direct or indirect, joint or several, absolute or contingent, due or to
become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term “Obligations” also includes all of SVCEA’s other present and future obligations to each PPA Provider under the Transaction Agreements, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of SVCEA. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against SVCEA under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“On-Bill Repayments” means all payments made by Customers into the Lockbox Account that are related to on-bill repayment of financing for energy efficiency or on-site solar photovoltaic projects.

“On-Bill Repayment Account” means a deposit account in the name of SVCEA for the purpose of receiving all On-Bill Repayments made by Customers.

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

“PG&E” means the Pacific Gas and Electric Company, its successor and assigns or any other Person that is the host utility that bills Customers in SVCEA’s service territory and collects payments for Product from such Customers on behalf of SVCEA.

“Power Purchase Agreement” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to SVCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“Product” means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Master Agreements.

“Qualified Institution” means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor’s, or (ii) A3 or better from Moody’s, or (iii) if such bank has a Credit Rating at such time from both Standard &
Poor’s and Moody’s, A- or better from Standard & Poor’s and A3 or better from Moody’s and (b) assets of at least Ten Billion Dollars ($10,000,000,000).

“Receivable” means an Account evidencing SVCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and SVCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of SVCEA.

“Regular Charges” means, as of any date of determination, amounts then due and owing to such PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

“Regular Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider as calculated by SVCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

“Required Secured Creditors” has the meaning given to such term in the Intercreditor Agreement.

“Reserve Amount” means an initial amount of One Million Dollars ($1,000,000.00) for Phase 1 (as such Phases are defined in the Implementation Plan), plus an additional One Million Dollars ($1,000,000.00) for a total of Two Million Dollars ($2,000,000) for Phase 2, plus an additional Five Hundred Thousand Dollars ($500,000.00) for a total of Two Million Five Hundred Thousand Dollars ($2,500,000) for Phase 3. If SVCEA is not subject to an Event of Default, the total Reserve Amount shall automatically be reduced by 20% annually, upon the annual anniversary of the date on which the Phase 3 confirmation was executed (or next Business Day if the anniversary date is not a Business Day).

“Secured Creditors” means each PPA Provider party to the Intercreditor Agreement, and its respective successors and assigns.

“Standard & Poor’s” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“Supplemental Payment” means, as of any date of determination, all Obligations owing by SVCEA to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

“Supplemental Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the
numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

“Termination Payment” has the meaning given to such term in the Intercreditor Agreement.

“Transaction Agreements” means the Master Agreements, any other Power Purchase Agreements, the Control Agreement, the Intercreditor Agreement, this Agreement and all other agreements, instruments or documents to which SVCEA is a party and which are executed and delivered from time to time in connection with or as security for SVCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

“UCC” means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “Account”, “Investment Property”, and “Proceeds” have the respective meanings set forth in Article 9 of the UCC. The terms “Security” and “Security Entitlements” have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, SVCEA hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority
continuing security interest in and continuing lien on all of SVCEA’s right, title and interest in and to the Collateral, including the following:

(a) the prompt and complete payment, when due and payable, of all Obligations;

(b) the timely performance and observance by SVCEA of all covenants, obligations and conditions contained in the Transaction Agreements; and

(c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by SVCEA to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving SVCEA.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by SVCEA so long as any of the Obligations are outstanding.

Section 3.   Representations and Warranties.

SVCEA represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 Names, Etc. As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address, principal place of business, state issued organization number and federal employer identification number of SVCEA is as follows: Silicon Valley Clean Energy Authority, a California joint powers authority, federal employer identification number: 81-2158638.

3.03 Changes in Circumstances. SVCEA has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a “new debtor” (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 Security Interests. The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. SVCEA owns good and marketable title to the Collateral free and clear of all Liens, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. SVCEA has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by SVCEA or is known by SVCEA to exist with respect to the Collateral. At the time
the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in SVCEA. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by SVCEA have been obtained.

Section 4.  Covenants.

SVCEA hereby stipulates and agrees with the Collateral Agent as follows:

4.01  Perfection by Control.  SVCEA shall not be permitted to withdraw funds from the Deposit Accounts until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit Account shall give the Collateral Agent the sole power to direct Depositary Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02  Further Assurances.  Upon the request of Collateral Agent, SVCEA shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

(a)  take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;

(b)  promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;

(c)  keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and

(d)  permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at SVCEA’s places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by SVCEA with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03  No Other Liens.  SVCEA is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any Lien and SVCEA shall defend the same against all claims and demands of all Persons at any time
claiming the same or any interest therein adverse to Collateral Agent. SVCEA shall not (a) 
grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral 
Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or 
permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument 
with respect to any of the Collateral in which Collateral Agent is not named as the sole secured 
party, or (c) cause or permit any Person other than Collateral Agent to have Control of any 
Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days’ prior written 
notice to the Collateral Agent, SVCEA shall not: (a) change its location (as defined in Article 9 
of the UCC), (b) change its name from the name shown as its current legal name in Section 3 
of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the 
Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of 
priority for, the security interests created hereunder in such item of Collateral, or the loss of 
control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of 
Collateral.

4.05 Perfection and Recordation. SVCEA authorizes Collateral Agent to file 
Uniform Commercial Code financing statements describing the Collateral (provided that no such 
description shall be deemed to modify the description of Collateral set forth in Section 2). The 
Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs SVCEA 
to, and SVCEA hereby agrees, at its sole cost and expense to, prepare and file such Uniform 
Commercial Code financing and continuation statements describing the Collateral as may be 
necessary to perfect and continue the security interest granted herein. SVCEA shall deliver to 
the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall 
make available to any PPA Provider upon request.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. SVCEA has, pursuant to the Direction Letter, 
irrevocably instructed PG&E to remit to Collateral Agent all payments due or to become due in 
respect of the Receivables unless and until both Collateral Agent, at the direction of the Required 
Secured Creditors, and SVCEA direct otherwise in writing. SVCEA shall periodically take such 
additional measures as may be commercially reasonable to cause PG&E or Customers to make 
all payments due to SVCEA into the Lockbox Account. All invoices issued by or on behalf of 
SVCEA shall direct payment into the Lockbox Account. SVCEA shall periodically take 
such commercially reasonable steps as necessary to require such Customer or 
PG&E to make any future remittances into the Lockbox Account and (iv) such activity shall be reported promptly to Collateral Agent.
following SVCEA’s receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by PG&E until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below. Collateral Agent waives all rights under the UCC to enforce rights in the Collateral by means of a sale or other foreclosure action; the Collateral shall be collected by Collateral Agent from PG&E pursuant to the Direction Letter.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, SVCEA remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of SVCEA to receive, endorse and collect all checks made payable to the order of SVCEA representing any payment or other distribution in respect of the Collateral.

Section 6. Establishment of and Distributions From Deposit Accounts.

6.01 Establishment of Deposit Accounts. SVCEA shall establish the Deposit Accounts in SVCEA’s name at Depositary Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Deposit Accounts and all interest accumulated thereon shall be held and disbursed by the Depositary Bank in accordance with the terms and conditions of the Control Agreement and this Agreement. The Deposit Accounts are subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither SVCEA nor any person or entity claiming on behalf of or through SVCEA shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Deposit Accounts including (i) the right to specify the amount of payments to be made from the Deposit Accounts, (ii) when such payments are to be made out of the Deposit Accounts and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Deposit Accounts. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Deposit Accounts or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to the On-Bill Repayment Account for any On-Bill Repayments deposited into the Lockbox Account;

(ii) *second*, to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;
(iii) third, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iv) fourth, to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreement that have been invoiced to SVCEA, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys’ fees of outside counsel to the Collateral Agent; and

(v) fifth, unless an Event of Default shall exist as to SVCEA, the balance, if any, after retention in the Deposit Accounts of the Reserve Amount, shall be returned to SVCEA free and clear of the lien of this Agreement, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Deposit Account and SVCEA shall only receive the amount of the balance, if any, that is in excess of such disputed amount until such time as the Collateral Agent receives written notice from the relevant PPA Provider and SVCEA that the dispute pursuant to Section 6.06 has been resolved.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by SVCEA in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, SVCEA shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “Distribution Date Certificate”) prepared by SVCEA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Deposit Accounts is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days thereafter provide SVCEA with written notice thereof and (b) SVCEA shall deposit such shortfall amount into the Deposit Accounts not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee SVCEA’s replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit SVCEA’s obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Deposit Accounts.
6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if SVCEA provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, SVCEA may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depository Bank to release and distribute the Reserve Amount to SVCEA. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by SVCEA. SVCEA shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then SVCEA shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA Providers issued by a Qualified Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises SVCEA and Collateral Agent in writing that the calculations by SVCEA in any Distribution Date Certificate are in its opinion materially incorrect, then SVCEA and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, SVCEA shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and SVCEA. In the interim, the Distribution Date Certificate originally submitted by SVCEA shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox, even if such distributions would result in a shortfall of the disputed amount. However, SVCEA shall not be entitled to receive any funds if such distribution to SVCEA would result in a shortfall of the disputed amount.

6.07 Earnings on Deposit Accounts. SVCEA shall establish the Deposit Accounts as a non-interest bearing account.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent, without any other notice to or demand upon SVCEA, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, SVCEA HEREBY WAIVES ANY AND ALL RIGHTS THAT IT

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MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT’S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by SVCEA. To the extent permitted by applicable law, SVCEA hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. TO THE EXTENT THAT IT LAWFULLY MAY, SVCEA HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPED THE ENFORCEMENT OF COLLATERAL AGENT’S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, SVCEA HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.
Section 7. **Miscellaneous.**

7.01 **Notices.** Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as SVCEA or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 **No Waiver.** No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 **Amendments.** The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by SVCEA and Collateral Agent.

7.04 **Expenses.** If SVCEA fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. SVCEA agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. SVCEA agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 **Duty of Care; Earnings.** Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or a Control Agreement. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent’s possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct SVCEA as set forth in Section 4.05
hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer’s certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer’s certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of SVCEA, the Secured Creditors, and the Collateral Agent (provided that SVCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon SVCEA, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS
APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 CONSENT TO INJUNCTIVE RELIEF. WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, SVCEA ACKNOWLEDGES THAT ITS VIOLATION OF SECTION 5.01 WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, SVCEA HEREBY (I) CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF SECTION 5.01, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.

7.11 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 Termination. Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, SVCEA; (c) SVCEA has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of SVCEA, have executed a written termination statement, and Collateral Agent has reassigned to SVCEA, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to SVCEA. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of SVCEA, or any other event or proceeding affecting SVCEA or any other obligor. At SVCEA’s request, Collateral Agent shall, at SVCEA’s reasonable expense, instruct Depositary Bank to release all assets credited to the Deposit Accounts to SVCEA, and Collateral Agent shall also execute such other documentation as shall be reasonably
requested by SVCEA to effect the termination and release of the liens on the Collateral, including notice to PG&E that the Direction Letter is terminated.

7.13 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 Disclosure of Information. SVCEA hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to SVCEA as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreement, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

[Signatures on following page]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

SILICON VALLEY CLEAN ENERGY AUTHORITY,
as Pledgor

By: _______________________________
   Name: ____________________________
   Title: _____________________________

Notice Address:
Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA  94087
Attention:  Tom Habashi
Fax: ________________________________
Email: tomh@svcleanenergy.org
Attention: _________________________
Fax: ________________________________

TBD,
not in its individual capacity, but solely as Collateral Agent

By: _______________________________
   Name: ____________________________
   Title: _____________________________

Notice Address:
River City Bank
2485 Natomas Park Dr.
Sacramento, CA, 95833
Attention:  Cash Management
Fax: (916) 567-2799
Email: cashmgmt@rivercitybank.com

With a copy to:
Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCEA”), hereby certifies, on behalf of SVCEA in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of __________, 2016 (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between SVCEA and __________, as collateral agent (“Collateral Agent”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of __________ __, 20__.

No Event of Default exists as of the date of this certificate and SVCEA does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. To the On-Bill Repayment Account, the amount of any On-Bill Repayments deposited into the Lockbox Account in an aggregate amount equal to [___________________ Dollars ($_________)];

2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [___________________ Dollars ($_________)]; [Include this paragraph for each PPA Provider]

3. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [___________________ Dollars ($_________)]; [Include this paragraph for each PPA Provider]

4. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to SVCEA, an aggregate amount equal to [___________________ Dollars ($_________)]; and

5. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount are to be disbursed to SVCEA into the account designated by SVCEA.

[Signatures on following page]
I hereby certify, on behalf of SVCEA and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _________________________________
Name:
Title:
Date:
DATED as of December 15, 2016

(1) RIVER CITY BANK, as Account Bank,

(2) SILICON VALLEY CLEAN ENERGY AUTHORITY, as SVCEA,

and

(3) RIVER CITY BANK, not in its individual capacity, but solely as collateral agent, as Secured Party.

ACCOUNT CONTROL AGREEMENT
ACCOUNT CONTROL AGREEMENT dated as of December 15, 2016 (this “Agreement”)

BETWEEN:

(1) RIVER CITY BANK, a California corporation (the “Account Bank”);
(2) SILICON VALLEY CLEAN ENERGY AUTHORITY (“SVCEA”);
and
(3) RIVER CITY BANK, a California corporation, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

WHEREAS:

(A) SVCEA has pledged to the Secured Party (for the benefit of the PPA Providers, as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between SVCEA and Secured Party dated December 15, 2016 (the “Security Agreement”);

(B) SVCEA has directed Pacific Gas and Electric Company (“PG&E”) to remit all present and future collections on accounts receivable now or hereafter billed by PG&E and owed by SVCEA’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

(D) SVCEA intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. THE ACCOUNTS.

SVCEA hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number [insert account number] (a non-interest-bearing deposit account held in the name of SVCEA) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “SVCEA Account”).

The parties hereto agree that the SVCEA Account shall be funded solely by wire transfers of immediately available funds and that Account Bank shall not be required to accept any other items for deposit into the SVCEA Account. All amounts payable for deposit into the SVCEA Account shall be paid to Account Bank at the following accounts:
2. **CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.**

(a) The SVCEA Account shall be maintained by Account Bank in the name of “Silicon Valley Clean Energy Authority” and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the SVCEA Account without further consent by SVCEA or otherwise.

(b) Account Bank (i) shall disburse and/or invest funds held in the SVCEA Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, SVCEA will not have access to the funds in the SVCEA Account and that the Account Bank will not agree with SVCEA or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the SVCEA Account originated by SVCEA or such other party.

3. **STATEMENTS AND OTHER INFORMATION.**

(a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the SVCEA Account at such times such statements are provided to SVCEA and such other information relating to the SVCEA Account as shall reasonably be requested by Secured Party or SVCEA. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to SVCEA pursuant to any agreement governing or related to the SVCEA Account to Secured Party at such times such notices and statements are provided to SVCEA. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and SVCEA if Account Bank receives a notice that any other person claims that it has an interest in the SVCEA Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the SVCEA Account.

(b) Account Bank hereby confirms that (i) the SVCEA Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the SVCEA Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.

4. **FEES.**

SVCEA agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the SVCEA Account in accordance with the terms of the separate fee agreement entered into by SVCEA and Account Bank.
5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker’s lien against the SVCEA Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the SVCEA Account, except for claims and interests of the parties hereto. All of Account Bank’s present and future rights against the SVCEA Account are subordinate to Secured Party’s security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank’s rights, duties, liabilities and immunities:

(a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.

(b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or SVCEA after Secured Party has informed Account Bank that SVCEA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or SVCEA after Secured Party has informed Account Bank that SVCEA has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

(c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.

(d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.
7. REPRESENTATIONS OF ACCOUNT BANK.

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

(a) **Organization, Corporate Authority.** Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.

(b) **Authorization.** Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.

(c) **Legal, Valid and Binding.** Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.

(d) **No Violation.** Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.

Each of SVCEA and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank’s reasonable control or for the indirect, special or consequential damages. SVCEA agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney’s fees and
disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any SVCEA Account at Account Bank or pursuant to this Agreement.

9. TERMINATION.

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) SVCEA. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated December 15, 2016, between and among Secured Party, the PPA Providers, and SVCEA, at any time, with or without cause, upon its delivery of written notice thereof to each of SVCEA and Account Bank. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days’ prior written notice delivered to each of SVCEA and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the SVCEA Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. IRREVOCABLE AGREEMENTS.

SVCEA acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. NOTICES.

All notices, requests or other communications given to Account Bank, SVCEA or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank: River City Bank
Attention: Cash Management
2485 Natomas Park Dr.
Sacramento, CA, 95833

SVCEA: Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Tom Habashi
Fax:

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Secured Party:

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. MISCELLANEOUS.

(a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither SVCEA nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.

(c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.

(e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE
STATE OF CALIFORNIA. The parties agree that the State of California (i) is and shall remain the “bank’s jurisdiction” of the Account Bank for purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the SVCEA Account and of SVCEA’s rights and interests in and to the SVCEA Account.

(f) JURY WAIVER AND JUDICIAL REFERENCE. EACH PARTY HERETO HEREBY 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 OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (1) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (2) EXERCISE OF SELF-HELP REMEDIES (INCLUDING,

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WITHOUT LIMITATION, SET-OFF), (3) APPOINTMENT OF A RECEIVER AND (4) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN THE FOREGOING CLAUSES (1) – (4) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).


(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPowered TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.
(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

(g) SVCEA hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of California and of any California state court sitting in San Francisco for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. SVCEA irrevocably waives, to the fullest extent permitted by applicable 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 and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(h) SVCEA hereby irrevocably appoints [SVCEA to identify party to receive service] from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. SVCEA undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in California, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of SVCEA. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[signature page follows]
IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the day and year first above set forth.

Account Bank  
RIVER CITY BANK

By: ________________________________
Name: 
Title: 

SVCEA  
SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ________________________________
Name: 
Title: 

Secured Party  
RIVER CITY BANK, not in its individual capacity, but solely as Collateral Agent

By: ________________________________
Name: 
Title: