



Courtenay C. Corrigan, Chair
Town of Los Altos Hills

Margaret Abe-Koga, Vice Chair
City of Mountain View

Liz Gibbons
City of Campbell

Rod Sinks
City of Cupertino

Daniel Harney
City of Gilroy

Jeannie Bruins
City of Los Altos

Rob Rennie
Town of Los Gatos

Marsha Grilli
City of Milpitas

Burton Craig
City of Monte Sereno

Steve Tate
City of Morgan Hill

Dave Cortese
County of Santa Clara

Howard Miller
City of Saratoga

Nancy Smith
City of Sunnyvale

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, June 13, 2018
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, 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.

Consent Calendar (Action)

- 1a) Approve Minutes of the May 9, 2018, Board of Directors Meeting
- 1b) Approve Minutes of the May 9, 2018, Board of Directors Special Meeting (Board Workshop)
- 1c) Approve Minutes of the May 9, 2018, Board of Directors Special Meeting
- 1d) April 2018 Treasurer Report
- 1e) Adopt Resolution Amending the Authority's Conflict of Interest Code to Amend Five Position Titles, Add Two Positions, and Delete Two Positions
- 1f) Approve Amendment to Reserves Policy
- 1g) Authorize the Chief Executive Officer to Negotiate an Office Lease Agreement to Expand Existing Office
- 1h) Approve Amendment to Employee Handbook to Establish Flexible Spending Accounts
- 1i) Approve Employee Recruitment Incentive Policy
- 1j) Approve Workplace Electric Vehicle Charging Policy



Courtenay C. Corrigan, Chair
Town of Los Altos Hills

Margaret Abe-Koga, Vice Chair
City of Mountain View

Liz Gibbons
City of Campbell

Rod Sinks
City of Cupertino

Daniel Harney
City of Gilroy

Jeannie Bruins
City of Los Altos

Rob Rennie
Town of Los Gatos

Marsha Grilli
City of Milpitas

Burton Craig
City of Monte Sereno

Steve Tate
City of Morgan Hill

Dave Cortese
County of Santa Clara

Howard Miller
City of Saratoga

Nancy Smith
City of Sunnyvale

Regular Calendar

- 2) Employee Recognition and Introductions (Discussion)
- 3) Customer Program Advisory Group Progress Update Report (Discussion)
- 4) Adopt Resolution Authorizing the CEO to Execute a 15-year Power Purchase Agreement (PPA) for Renewable Supply with Duran Mesa LLC (Action)
- 5) SVCE Employee Compensation and Benefits Strategy (Discussion)
- 6) CEO Report (Discussion)
- 7) Executive Committee Report (Discussion)
- 8) Finance and Administration Committee Report (Discussion)
- 9) Legislative Ad Hoc Committee Report (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Adjourn

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, May 9, 2018

7:00 pm

Cupertino Community Hall

10350 Torre Avenue

Cupertino, CA

DRAFT MINUTES

Call to Order

Chair Corrigan called the meeting to order at 7:00 p.m.

Roll Call

Present:

Chair Courtenay Corrigan, Town of Los Altos Hills

Vice Chair Margaret Abe-Koga, City of Mountain View

Director Marsha Grilli, City of Milpitas

Director Steve Tate, City of Morgan Hill

Director Nancy Smith, City of Sunnyvale

Director Howard Miller, City of Saratoga

Director Rod Sinks, City of Cupertino

Director Rob Rennie, Town of Los Gatos

Director Daniel Harney, City of Gilroy (arrived at 7:14 p.m.)

Director Liz Gibbons, City of Campbell (by teleconference from 55 Alder Lane, North Falmouth, MA 02556)

Director Jeannie Bruins, City of Los Altos

Director Burton Craig, City of Monte Sereno

Absent:

Director Dave Cortese, County of Santa Clara

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

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

Chair Corrigan opened public comment.

No speakers.

Chair Corrigan closed public comment.

The motion carried unanimously by roll call vote with Directors Cortese and Harney absent.

- 1a) Approve Minutes of the April 11, 2018, Board of Directors Meeting**
- 1b) Approve Minutes of the April 11, 2018, Board of Directors Special Meeting**
- 1c) Customer Program Advisory Group Report**
- 1d) March 2018 Treasurer Report**

Regular Calendar

2) Approve Pilot New Interim Rate Option for Large Commercial Customers Currently Opted Out (Action)

Director of Account Services & Customer Relations Don Bray presented a PowerPoint presentation and responded to Board questions.

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

MOTION: Director Bruins moved and Director Rennie seconded the motion to authorize the CEO to develop and pilot a new interim rate option for large commercial customers who have currently opted out, with the addition of the following criteria: customers have currently opted out for over one year, the selection of customers who can participate is at SVCE's discretion, and eligibility for the pilot ends at the end of this year.

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

3) Approve Allocation of FY 17-18 Program Funding for Bay Area Air Quality Management District Climate Protection Grant Opportunity (Action)

Account Services Manager John Supp presented a PowerPoint presentation and responded to Board questions.

General Counsel Greg Stepanicich recommended any member of the Board also serving on the Bay Area Air Quality Management District (BAAQMD) Board abstain from discussion and voting on the item; Vice Chair Abe-Koga and Director Sinks noted they would be abstaining due to their status as BAAQMD Board members.

Account Services Manager Supp confirmed that if a contract is awarded, it will be brought to the Board for approval prior to program design.

Chair Corrigan opened public comment.

James Tuleya, Sunnyvale resident and Chair of Carbon Free Silicon Valley, expressed support for Staff's recommendation and commented on the importance of the vision in developing the FutureFit home. Tuleya responded to a question from the Board regarding electrical panels.

Bruce Karney expressed support for Staff's proposal. Karney commented the program would be a good academia example for studying over a number of years to see how people's behavior changes once they have an upgraded panel, and suggested adding the spread of knowledge among potential customers to the proposal.

Chair Corrigan closed public comment.

MOTION: Director Smith moved and Director Grilli seconded the motion to approve the allocation of up to \$500,000 of non-residential FY17-18 program funds to an electric heat pump water heater and electric service panel upgrade initiative titled "FutureFit", commensurate with receipt of up to \$500,000 in matching funds from the Bay Area Air Quality Management District (BAAQMD) Climate Protection Grant.

The motion carried by the following roll call vote:

Yes: 10 - Director Grilli
 Director Tate
 Director Smith
 Director Miller
 Director Rennie
 Chair Corrigan
 Director Harney
 Director Bruins
 Director Craig
 Director Gibbons

Abstain: 2 - Director Sinks
 Vice Chair Abe-Koga

Absent: 1 - Director Cortese

4) FY 18-19 Budget Priorities, Assumptions and Timeline

Director of Finance and Administration Don Eckert introduced the item and presented a PowerPoint presentation. CEO Girish Balachandran and Director of Finance and Administration Eckert responded to Board questions.

Chair Corrigan opened public comment.

James Tuleya supported the priorities presented and provided comments regarding the account services and outreach customer web-portal, suggesting there should also be a service provider web-portal as there would be different types of tools and resources needed for trade allies. Tuleya noted the importance of thinking broadly, bundling, and packaging for electrification.

Chair Corrigan closed public comment.

The Board provided feedback on the plan including a request to consider larger conference room space, retain staff by making it as agreeable as possible for employees to stay with SVCE and live in the area, cross-collaboration by leveraging money and programs with other agencies, and conduct a compensation study to see how peers are compensating employees to ensure SVCE remains competitive and retains the best work force.

5) Bike to the Future Recap

Director Harney and Director Bruins provided comments on the event; Community Outreach Manager Pamela Leonard introduced a video recapping the event; SVCE Climate Corps Fellow Kelly Hoogland presented a PowerPoint presentation. Community Outreach Manager Leonard responded to Board questions.

Board members requested Staff provide the names of participants to their Board representative to be recognized at community meetings; members suggested changing the event timing so that it does not overlap with robotics team events, and change the specifics of the competition each year.

6) CEO Report

CEO Balachandran introduced an SVCE service launch anniversary video and provided an update on the SVCE program development timeline. Manager of Regulatory and Legislative Effectiveness Hilary Staver provided an update on the CPUC's draft Green Book, the power charge indifference adjustment (PCIA) proceeding, SVCE's Integrated Resource Plan, and SVCE's Sacramento Lobby day.

CEO Balachandran responded to Board questions regarding the Coyote/Anderson pumped hydro opportunity.

7) Executive Committee Report

Chair Corrigan noted there was no report as the Executive Committee had not met. Chair Corrigan reported Staff requested to cancel the May 22 Executive Committee meeting due to a light agenda and noted the next meeting would be held Tuesday, June 26. There were no objections from the Board.

8) Finance and Administration Committee Report

Chair Corrigan stated there was no report as the Finance and Administration Committee had not met since their March 9, 2018 meeting, and announced the next meeting would be held on May 30, 11:00 a.m., at the SVCE office.

9) Legislative Ad Hoc Committee Report

Director Sinks, Chair of the Legislative Ad Hoc Committee, reported the committee met on Monday, May 7, discussed the CPUC's draft Green Book, and developed the outline of the letter that would be presented to the Board as Item 1 during the special meeting. Director Sinks noted the committee finalized plans for SVCE's day of meetings with Sacramento legislators, and reviewed and provided direction to Staff on several bills relevant to the CCA community. Members of the Legislative Ad Hoc Committee provided brief comments regarding the CPUC's draft Green Book.

Board Member Announcements and Direction on Future Agenda Items

Vice Chair Abe-Koga thanked Staff for sponsoring and attending the Mountain View annual Spring Parade.

Director Sinks echoed Vice Chair Abe-Koga's comments in regards to Cupertino's Earth Day. Director Sinks noted Mark Z. Jacobson, Stanford professor, spoke at a rotary event; Director Sinks commented he would pass on the link from the video once it gets posted.

Adjourn

Chair Corrigan adjourned the regular meeting at 8:59 p.m. and announced the special meeting would convene immediately.



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

Wednesday, May 9, 2018
5:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Call to Order

Vice Chair Abe-Koga called the meeting to order at 5:06 p.m.

Roll Call

Present:

Directors:

Vice Chair Margaret Abe-Koga, City of Mountain View
Director Marsha Grilli, City of Milpitas
Director Steve Tate, City of Morgan Hill
Director Nancy Smith, City of Sunnyvale
Director Howard Miller, City of Saratoga
Director Rod Sinks, City of Cupertino
Director Rob Rennie, Town of Los Gatos
Director Jeannie Bruins, City of Los Altos (arrived at 5:08 p.m.)
Director Burton Craig, City of Monte Sereno

Alternate Directors:

Alternate Director Steve Schmidt, Town of Los Altos Hills

Absent:

Directors:

Chair Courtenay C. Corrigan, Town of Los Altos Hills
Director Daniel Harney, City of Gilroy
Director Liz Gibbons, City of Campbell
Director Dave Cortese, County of Santa Clara

Alternate Directors:

Alternate Director Edesa Bitbadal, City of Milpitas
Alternate Director Barry Chang, City of Cupertino
Alternate Director Fred Tovar, City of Gilroy
Alternate Director Jean Mordo, City of Los Altos
Alternate Director Marico Sayoc, Town of Los Gatos
Alternate Director Evert Wolsheimer, City of Monte Sereno
Alternate Director Anthony Eulo, City of Morgan Hill
Alternate Director Lisa Matichak, City of Mountain View
Alternate Director Cindy Chavez, County of Santa Clara
Alternate Director Rich Waterman, City of Campbell

Alternate Director Emily Lo, City of Saratoga
Alternate Director Gustav Larsson, City of Sunnyvale

Public Comment on Matters Not Listed on the Agenda

No Speakers.

Regular Calendar

2) SVCE Building Electrification Workshop Presented by David Kaneda

Vice Chair Abe-Koga introduced David Kaneda of Integral Group; Kaneda presented a PowerPoint presentation on Net Zero Energy Buildings. Kaneda and John Andary, Principal for Integral Group, responded to Board questions.

Board Member Announcements and Direction on Future Agenda Items

CEO Girish Balachandran provided ideas for future workshop topics.

Director Rennie suggested the group consider broader scale ideas for future workshops.

Alternate Director Schmidt supported an electric vehicle and water heater informational session.

Adjourn

Vice Chair Abe-Koga adjourned the meeting at 6:09 p.m.



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

Wednesday, May 9, 2018

7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Call to Order

Chair Corrigan called the meeting to order at 8:59 p.m.

Roll Call

A roll call was not heard; the following Directors were in attendance:

Present:

Chair Courtenay Corrigan, Town of Los Altos Hills
Vice Chair Margaret Abe-Koga, City of Mountain View
Director Marsha Grilli, City of Milpitas
Director Steve Tate, City of Morgan Hill
Director Nancy Smith, City of Sunnyvale
Director Howard Miller, City of Saratoga
Director Rod Sinks, City of Cupertino
Director Rob Rennie, Town of Los Gatos
Director Daniel Harney, City of Gilroy
Director Liz Gibbons, City of Campbell (by teleconference from 55 Alder Lane, North Falmouth, MA 02556)
Director Jeannie Bruins, City of Los Altos
Director Burton Craig, City of Monte Sereno

Absent:

Director Dave Cortese, County of Santa Clara

Regular Calendar

1) Authorize Chair and CEO to Finalize a Letter in Response to the CPUC's Draft Green Book (Action)

CEO Girish Balachandran introduced the item and responded to Board questions.

General Counsel Greg Stepanicich described the process for obtaining Director signatures for the final letter: after taking comments from the Board, the proposed letter would be revised and sent to each Board member individually for members to review and provide comments to Staff. Staff would then review

the letter with the Chair to finalize, and a final version of the letter would individually be distributed to Board members for concurrence to include each signature.

Manager of Regulatory and Legislative Effectiveness Hilary Staver provided comments on the CPUC's draft Green Book.

Directors provided feedback and suggestions regarding the proposed letter which included adding City seals with signatures to the letter, turning text in key phrases bold, rephrasing the last sentence of the first paragraph to be a positive reflection on what CCAs are bringing and how they should be supported, stating what CCAs are doing and include the positives of who we are and what has been done already, rephrase the last paragraph to end on a positive note, include more information about SVCE, tie the letter back to something legislature has already achieved and how much CCAs are exceeding goals, engaging Supervisor Joe Simitian and Director Cortese to provide input, establish a clear purpose of the letter, and take an offensive approach.

Chair Corrigan commented SVCE and CalCCA plan to respond directly to the Green Book and the CPUC as appropriate when the opportunity presents itself and refute information they have decided to publish in the Green Book.

Chair Corrigan summarized Board comments regarding the letter as follows: add positivity to the letter on things that SVCE does, including to remind legislators that CCAs were founded based on the actions legislators have already taken and the Green Book is contrary to these actions; throughout the letter bold or italicize words to highlight key messages; include a fact sheet on background information of SVCE as a cover letter or a separate sheet to be used during Sacramento Lobby Day; and, if possible, have Supervisor Joe Simitian provide input.

Chair Corrigan confirmed direction to Staff and summarized the process for approval of the letter: Staff will produce a second draft of the letter which would be sent to the Board, members should provide a timely response with approval or proposed edits, once edits are received by staff and incorporated, one final draft will be sent to Board members and final approval will be needed before signatures will be added. Director Sinks confirmed with Chair Corrigan the City seal should also be added to the letter.

MOTION: Director Sinks moved and Director Rennie seconded the motion to authorize the Chair of the SVCE Board and the Chief Executive Officer to finalize and send a letter to state legislators in response to the report released by the Public Utilities Commission (CPUC) on May 3rd entitled "California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market" (also known as the "Green Book"); with the process summarized by Chair Corrigan.

Director Sinks emphasized the need for an expeditious process to complete the letter prior to SVCE's Sacramento Lobby Day; Direct Bruins clarified the Board comments regarding the letter summarized by Chair Corrigan were suggestions and not required.

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

Adjourn

Chair Corrigan adjourned the special meeting at 9:45 p.m.



TREASURER REPORT

**Fiscal Year to Date
As of April 30, 2018**

(Preliminary & Unaudited)

Issue Date: June 13, 2018

Table of Contents

	<u>Page</u>
Summary	2-3
Statement of Net Position	4
Statement of Revenues, Expenses & Changes in Net Position	5
Statement of Cash Flows	6-7
Actuals to Budget Report	8-9
Monthly Change in Net Position	10
Personnel Report	11
Investments Report	12
Customer Accounts	13
Weather Statistics	14
Accounts Receivable Aging Report	15

SILICON VALLEY CLEAN ENERGY AUTHORITY

Financial Statement Highlights (\$ in 000's)

Financial Highlights for the month of April 2018:

Changes to the Organizational Chart were approved by the Board in April 2018. The Personnel Report has been updated.

SVCE is in stable financial condition entering the cooling season (May through October).

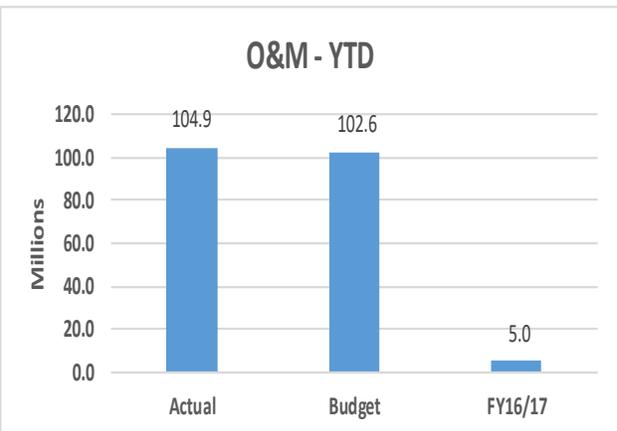
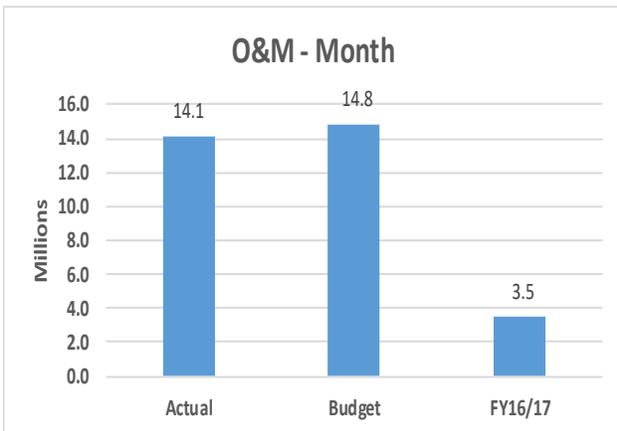
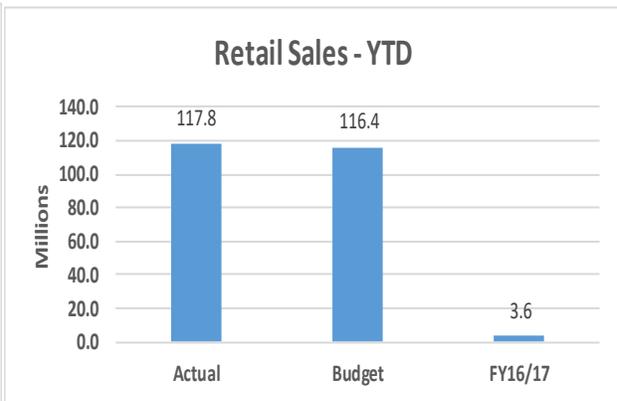
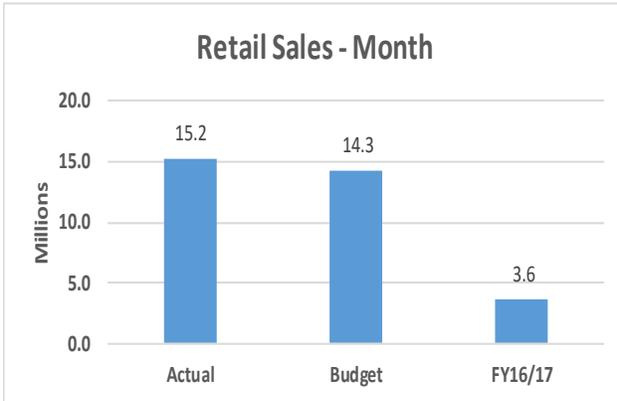
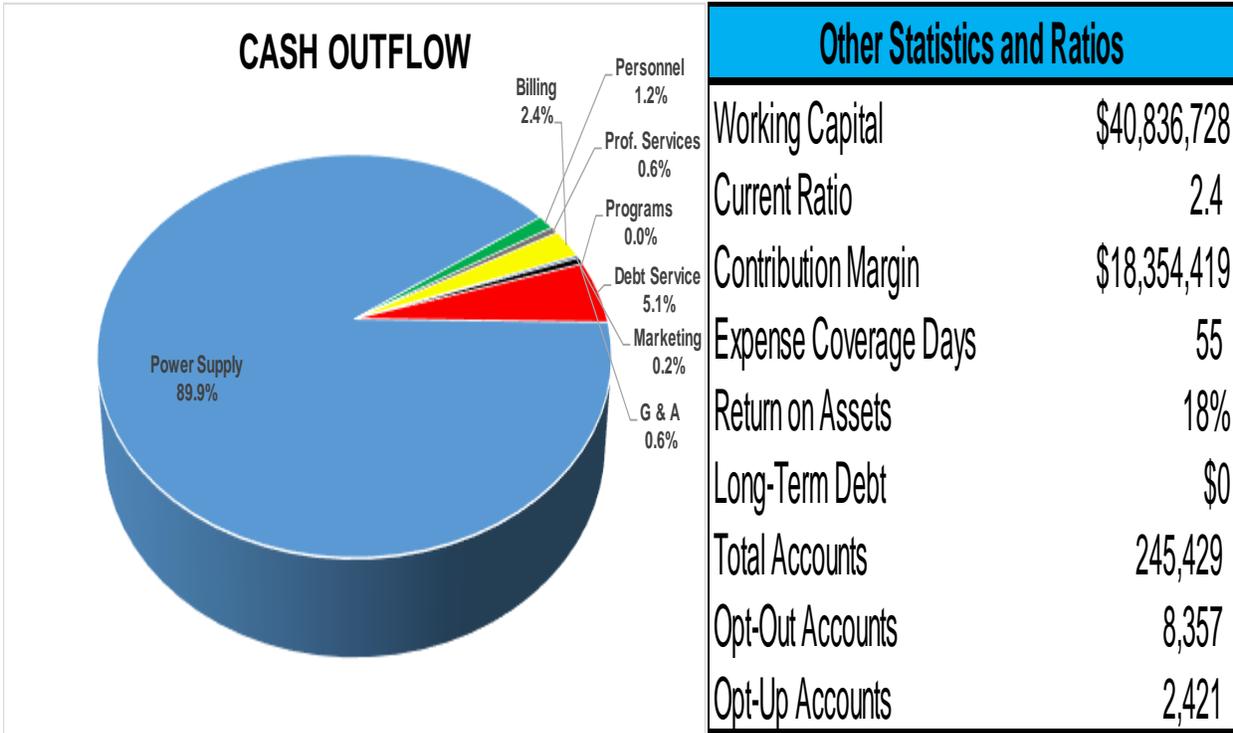
- > SVCE operations resulted in positive change in net position for the month of \$1.2 million and year-to-date positive change in net position of \$12.9 million.
 - o April revenue of 15.2 million accounted for 255 GWh in net retail consumption.
 - o Margin is slightly below plan due to large REC purchases front-loaded in the first half of the fiscal year.
 - o Year-to-date contribution margin is \$18.4 million.
- > Retail GWh sales are on target.
 - o Volume for the last 3 months combined is 5 GWh's ahead of the amended budget.
 - o Energy load was re-forecasted for February through September in the mid-year budget. Forecasted GWh sales for the fiscal year is 3,600.
- > Power Supply
 - o Power supply FYTD has a negative variance to budget based on the timing of REC purchases.
 - o Incremental power supply needs due to serving Milpitas has been secured.
- > Programs/Capital
 - o Year-to-date programs activity includes GHG accounting services.
 - o A Customer Program Advisory Group was initiated in January 2018. Recommendations are expected at the June 2018 Board of Directors meeting.
- > Investing/Financing
 - o Money market investment was executed near the end of March 2018 with a return of 1.26%
 - o SVCE is debt free at the end of January 2018.

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	6,742	1,818	578	2,847	94	(416)	1,155						12,818	55,900

Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	13,251	12,727	14,439	13,620	14,992	14,302	12,992						96,324	
Capacity	275	743	657	724	742	643	714						4,498	
CAISO Charges	1,034	534	2,813	882	1,292	453	325						7,334	
NEM Expense	44	(19)	(47)	(63)	(4)	26	38						(25)	
Charge/Credit (IST/Net Rev)	591	(1,127)	(1,828)	(2,934)	(2,789)	285	(943)						(8,745)	
Net Power Costs	15,195	12,859	16,034	12,228	14,233	15,708	13,127	-	-	-	-	-	99,384	182,561

Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	-	-	9	2	-	10	-						21	50
Energy Programs	-	-	-	14	-	-	-						14	4,780

Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	285	266	295	278	254	282	255						1,915	
Retail Sales Budget	285	266	295	278	269	256	261						1,910	3,542



SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of April 30, 2018

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 39,618,096
Accounts Receivable, net of allowance	12,214,846
Energy Settlements Receivable	158,609
Accrued Revenue	10,400,613
Other Receivables	222,750
Prepaid Expenses	1,626,337
Deposits	2,442,770
Restricted cash - lockbox	2,500,000

Total Current Assets 69,184,021

Noncurrent assets

Capital assets, net of depreciation	167,648
Deposits	129,060

Total Noncurrent Assets 296,708

Total Assets 69,480,729

LIABILITIES

Current Liabilities

Accounts Payable	488,379
Accrued Cost of Electricity	25,792,687
Accrued Payroll & Benefits	134,703
Other Accrued Liabilities	179,000
User Taxes and Energy Surcharges due to other gov'ts	567,524
Supplier Security Deposits	1,185,000

Total Current Liabilities 28,347,293

NET POSITION

Net investment in capital assets	167,648
Unrestricted (deficit)	40,965,788
Total Net Position	<u><u>\$ 41,133,436</u></u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

October 1, 2017 through April 30, 2018

OPERATING REVENUES

Electricity Sales, Net	\$ 117,247,960
GreenPrime electricity premium	403,088
Other income	88,060

TOTAL OPERATING REVENUES **117,739,108**

OPERATING EXPENSES

Cost of Electricity	99,384,689
Staff Compensation and benefits	1,362,988
Data Management	1,957,099
Service Fees - PG&E	692,698
Consultants and Other Professional Fees	461,257
Legal	183,856
Communications & Noticing	267,871
General & Administrative	598,130
Depreciation	21,094

TOTAL OPERATING EXPENSES **104,929,682**

OPERATING INCOME (LOSS) **12,809,426**

NONOPERATING REVENUES (EXPENSES)

Interest Income	24,179
Interest and related expenses	(15,666)

TOTAL NONOPERATING EXPENSES **8,513**

CHANGE IN NET POSITION 12,817,939

Net Position at beginning of period 28,315,497

Net Position at end of period **\$ 41,133,436**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS
October 1, 2017 through April 30, 2018

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from electricity sales	\$ 131,284,956
Receipts from other income	65,310
Receipts from supplier security deposits	1,185,000
Tax and surcharge receipts from customers	2,843,520
Energy settlements received	5,803,759
Deposits and collateral received	2,200,300
Payments to purchase electricity	(102,444,156)
Payments for staff compensation and benefits	(1,312,936)
Payments for data manager fees	(2,223,503)
Payments for PG&E service fees	(715,886)
Payments for consultants and other professional services	(464,152)
Payments for legal fees	(198,594)
Payments for communications and noticing	(260,881)
Payments for general and administrative	(603,918)
Energy settlements paid	(4,284,583)
Payments of deposits and collateral	(1,405,770)
Tax and surcharge payments to other governments	(2,944,018)
Net cash provided (used) by operating activities	<u>26,524,448</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments on loan	(5,630,000)
Interest and related expense payments	(22,892)
Net cash provided (used) by non-capital financing activities	<u>(5,652,892)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(21,236)</u>
-------------------------------	-----------------

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Interest income received	<u>24,179</u>
--------------------------	---------------

Net change in cash and cash equivalents	20,874,499
Cash and cash equivalents at beginning of year	<u>21,243,597</u>
Cash and cash equivalents at end of period	<u>\$ 42,118,096</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2017 through April 30, 2018

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

Operating Income (loss)	\$ 12,809,426
 Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	21,094
Revenue reduced for uncollectible accounts	593,369
(Increase) decrease in net accounts receivable	8,612,135
(Increase) decrease in energy settlements receivable	107,719
(Increase) decrease in othe receivables	(22,750)
(Increase) decrease in accrued revenue	4,575,709
(Increase) decrease in prepaid expenses	(1,554,495)
(Increase) decrease in current deposits	794,530
Increase (decrease) in accounts payable	(361,843)
Increase (decrease) in accrued payroll & benefits	49,680
Increase (decrease) in supplier security deposits	1,185,000
Increase (decrease) in accrued cost of electricity	(195,424)
Increase (decrease) in accrued liabilities	158,100
Increase (decrease) taxes and surcharges due to other governments	(247,802)
Net cash provided (used) by operating activities	<u>\$ 26,524,448</u>

SILICON VALLEY CLEAN ENERGY
BUDGETARY COMPARISON SCHEDULE
October 1, 2017 through April 30, 2018

	FYTD	FYTD	Variance		FY 2017-18	% Budget
	<u>Actual</u>	<u>Amended Budget</u>	\$	%	<u>Amended Budget</u>	<u>Spent</u>
REVENUES & OTHER SOURCES						
Energy Sales	\$ 117,247,960	\$ 115,973,321	\$ 1,274,639	1%	\$ 253,508,101	
Green Prime Premium	403,088	359,179	43,909	12%	609,889	
Other Income	88,060	38,250	49,810	130%	50,750	
Investment Income	24,179	16,667	7,512	0%	100,000	
TOTAL REVENUES & OTHER SOURCES	<u>117,763,287</u>	<u>116,387,417</u>	<u>1,375,870</u>	<u>1%</u>	<u>254,268,741</u>	
EXPENDITURES & OTHER USES						
CURRENT EXPENDITURES						
Power Supply	99,384,689	96,579,097	(2,805,592)	-3%	182,561,000	54%
Data Management	1,957,099	1,897,607	(59,492)	-3%	3,276,512	60%
PG&E Fees	692,698	623,667	(69,031)	-11%	886,912	78%
Salaries & Benefits	1,362,988	1,785,670	422,682	24%	3,555,301	38%
Professional Services	631,275	772,917	141,642	18%	1,325,000	48%
Marketing & Promotions	199,393	320,833	121,440	38%	550,000	36%
Notifications	68,478	42,500	(25,978)	-61%	125,000	55%
Lease	187,530	195,181	7,651	4%	334,650	56%
General & Administrative	410,600	348,775	(61,825)	-18%	597,900	69%
TOTAL CURRENT EXPENDITURES	<u>104,894,750</u>	<u>102,566,247</u>	<u>(2,328,503)</u>	<u>-2%</u>	<u>193,212,276</u>	<u>54%</u>
OTHER USES						
Customer Programs	13,838	1,909,899	1,896,061	0%	5,070,000	0%
Office Equipment	21,257	25,415	4,158	16%	50,000	43%
TOTAL OTHER USES	<u>35,095</u>	<u>1,935,314</u>	<u>1,900,219</u>	<u>98%</u>	<u>5,120,000</u>	<u>1%</u>
DEBT SERVICE						
Interest	15,666	15,666	-	0%	15,666	100%
Principal	5,630,000	5,630,000	-	0%	5,630,000	100%
TOTAL DEBT SERVICE	<u>5,645,666</u>	<u>5,645,666</u>	<u>-</u>	<u>0%</u>	<u>5,645,666</u>	<u>100%</u>
Total Expenditures, Other Uses & Debt Service	<u>110,575,511</u>	<u>110,147,227</u>	<u>(428,284)</u>	<u>0%</u>	<u>203,977,942</u>	<u>54%</u>
Net Increase(Decrease) in Available Fund Balance	<u>\$ 7,187,776</u>	<u>\$ 6,240,190</u>	<u>\$ 947,586</u>	<u>15%</u>	<u>\$ 50,290,799</u>	

SILICON VALLEY CLEAN ENERGY AUTHORITY

**BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION**

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 7,187,776
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(21,094)
Add back capital asset acquisitions	21,257
Add back principal payments on debt	<u>5,630,000</u>
Change in Net Position	<u><u>12,817,939</u></u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2017 through April 30, 2018

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$22,523,034	\$15,426,854	\$17,324,129	\$15,778,435	\$14,921,265	\$16,117,978	\$15,156,265	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 117,247,960
Green electricity premium	32,946	63,341	61,848	62,605	57,222	64,918	60,208						403,088
Other income	-	-	24,450	6,300	-	34,560	22,750						88,060
Total operating revenues	22,555,980	15,490,195	17,410,427	15,847,340	14,978,487	16,217,456	15,239,223	-	-	-	-	-	117,739,108
OPERATING EXPENSES													
Cost of electricity	15,195,616	12,859,048	16,034,462	12,228,493	14,232,977	15,707,933	13,126,160						99,384,689
Staff compensation and benefits	196,743	168,026	197,149	161,974	209,855	228,403	200,838						1,362,988
Data manager	276,838	277,564	277,114	281,602	275,000	287,603	281,378						1,957,099
Service fees - PG&E	920	200,000	104,290	120,027	101,645	81,816	84,000						692,698
Consultants and other professional fees	78,816	90,373	106,105	141,733	1,900	159,302	334,755						912,984
General and administration	55,285	66,571	110,236	62,956	59,744	168,407	74,931						598,130
Depreciation	2,762	2,762	3,001	3,059	3,058	3,153	3,299						21,094
Total operating expenses	15,806,980	13,664,344	16,832,357	12,999,844	14,884,179	16,636,617	14,105,361	-	-	-	-	-	104,929,682
Operating income (loss)	6,749,000	1,825,851	578,070	2,847,496	94,308	(419,161)	1,133,862	-	-	-	-	-	12,809,426
NONOPERATING REVENUES (EXPENSES)													
Interest income	-	-	-	-	-	3,452	20,727						24,179
Interest and related expense	(7,442)	(8,224)	-	-	-	-	-	-	-	-	-	-	(15,666)
Total nonoperating revenues (expenses)	(7,442)	(8,224)	-	-	-	3,452	20,727	-	-	-	-	-	8,513
CHANGE IN NET POSITION	\$ 6,741,558	\$ 1,817,627	\$ 578,070	\$ 2,847,496	\$ 94,308	\$ (415,709)	\$ 1,154,589	\$ -	\$ 12,817,939				

PERSONNEL REPORT

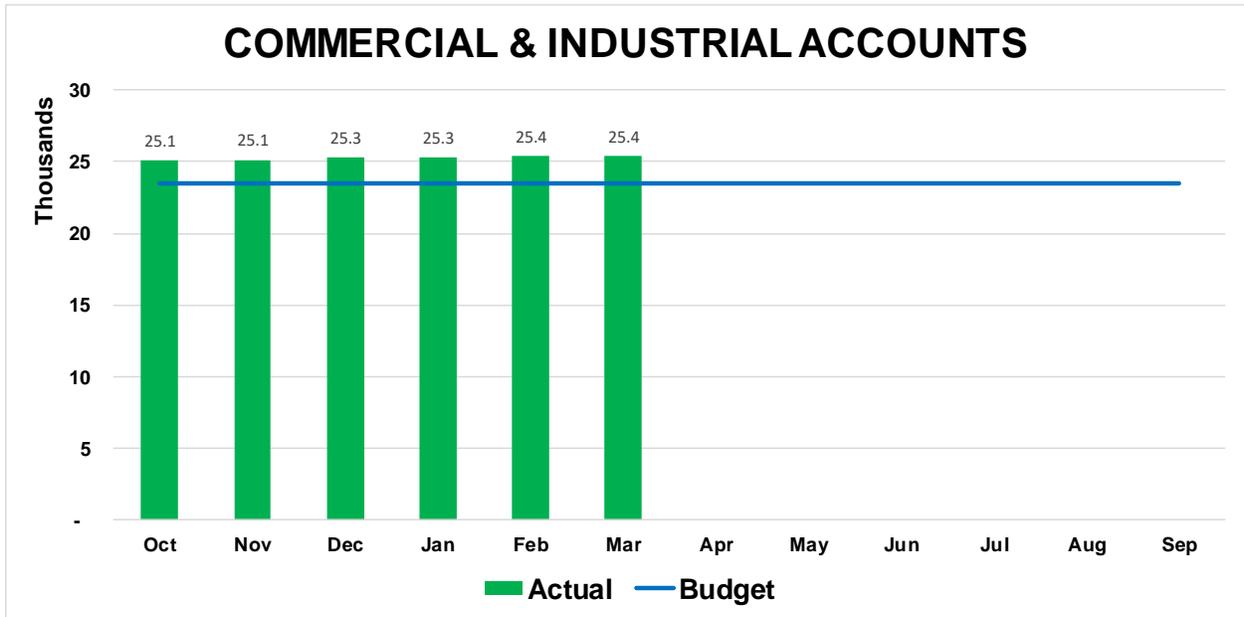
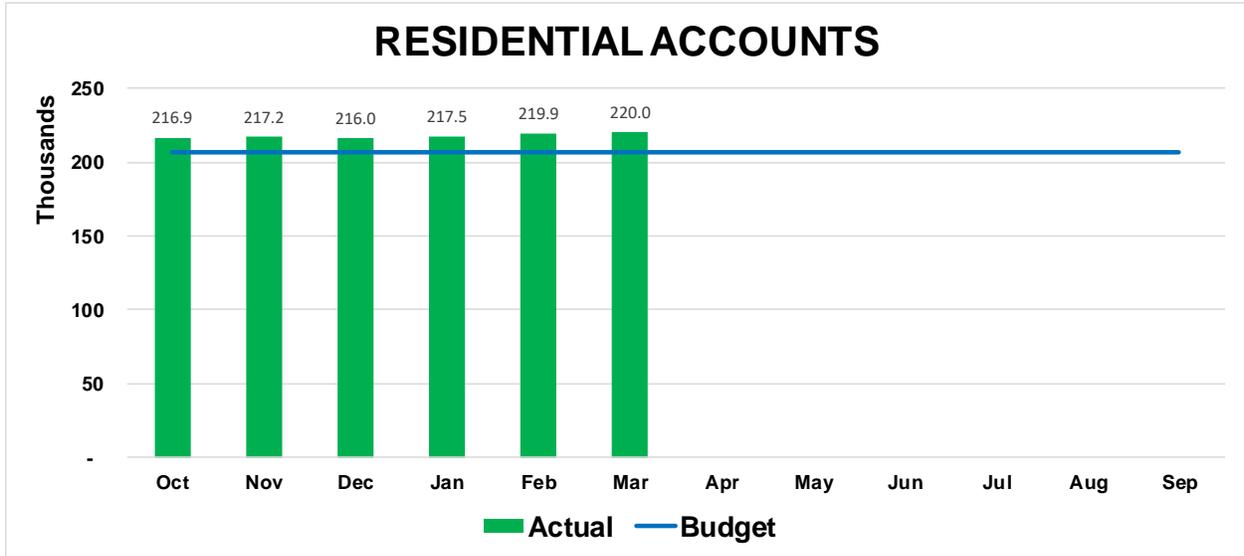
HEADCOUNT				
Position	Budget	Actual	Variance	
Account Representative I	1	1	0	
Account Representative II	1	1	0	
Account Services Manager	1	0	1	
Administrative Analyst	1	1	0	
Administrative Assistant	1	1	0	
Associate Legislative Analyst	1	0	1	
Board Clerk/Executive Assistant	1	1	0	
Chief Executive Officer	1	1	0	
Community Outreach Manager	1	1	0	
Community Outreach Specialist	1	1	0	
Director of Finance & Administration	1	1	0	
Director of Customer Care	1	1	0	
Director of Decarbonization and Grid Innovations	1	0	1	
Director of Power Resources	1	1	0	
IT Specialist	1	1	0	
Manager of Regulatory & Legislative Effectiveness	1	1	0	
Power Contracts & Compliance Manager	1	0	1	
Power Settlements & Compliance Analyst	1	1	0	
Senior Regulatory Analyst	<u>1</u>	<u>0</u>	<u>1</u>	
Total	19	14	5	

CONTINGENT POSITIONS				
Position	Positions		Variance	
	FY2017-18 Budget	FY2017-18 Actual		
Climate Fellows / Temporary	4	4	-	

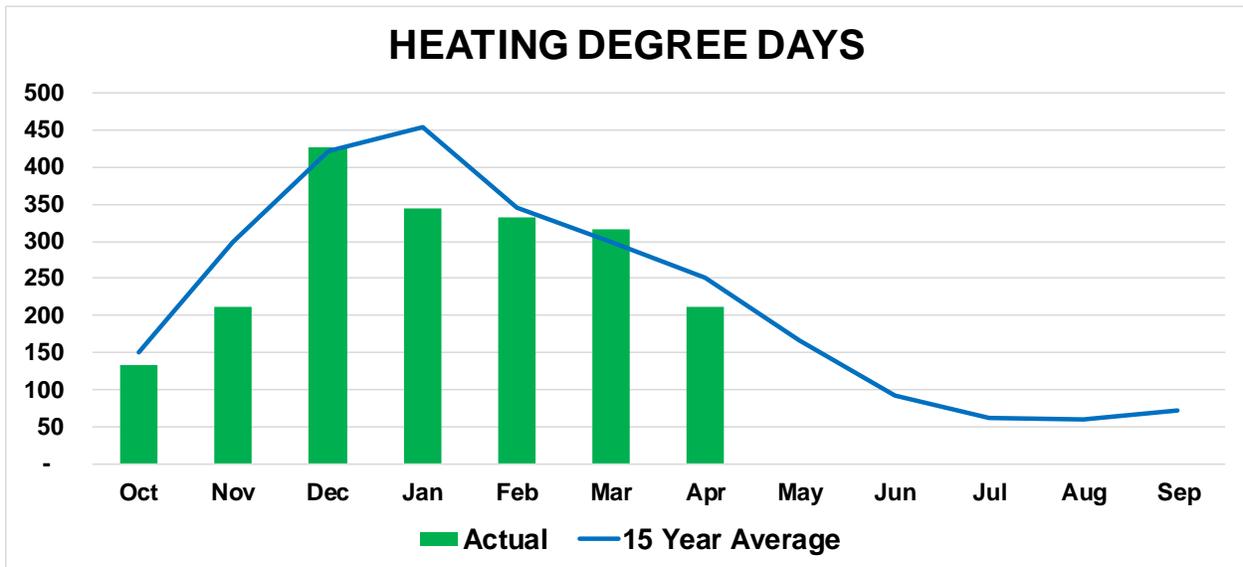
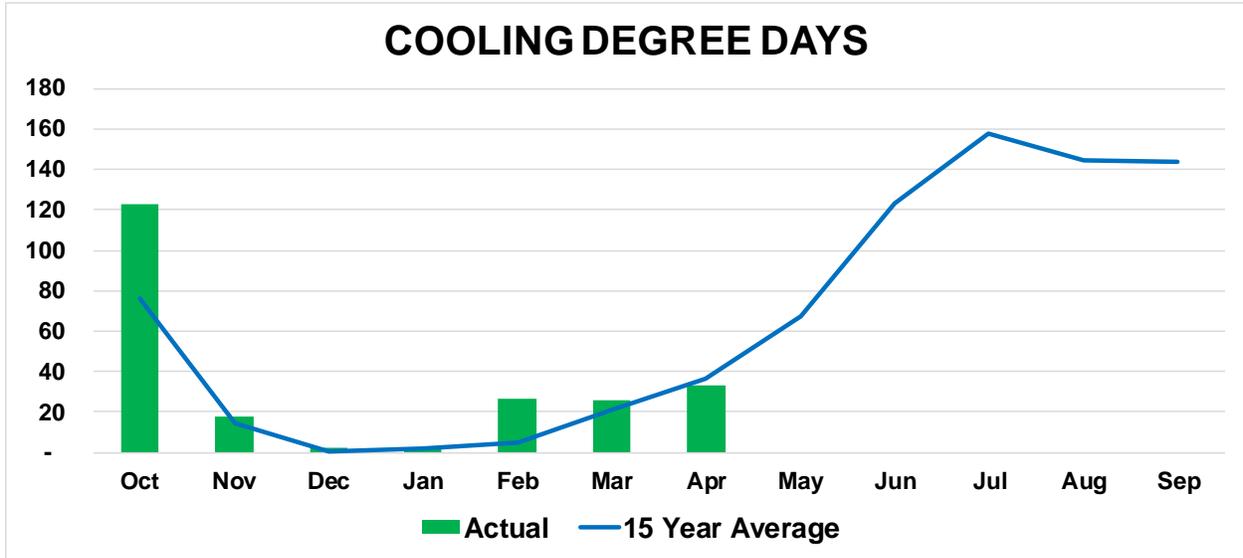
**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2017 through April 30, 2018**

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	YTD Total
<i>Money Market</i>	\$0	\$0	\$0	\$0	\$0	\$3,452	\$20,727						<u>\$24,179</u>
<hr/>													
Portfolio Invested													
<i>Average daily portfolio available to invest</i>						\$36,750,070	37,850,501						
<i>Average daily portfolio invested</i>						\$20,003,452	20,004,143						
<i>% of average daily portfolio invested</i>						54.4%	52.9%						
<hr/>													
Detail of Portfolio													
	<u>Purchased Rate %</u>			<u>Maturity Rate %</u>			<u>Carrying Value</u>						
<i>Money Market - River City Bank</i>	1.26%			1.26%			\$20,024,179						
<hr/>													

CUSTOMER ACCOUNTS



WEATHER STATISTICS



**SILICON VALLEY CLEAN ENERGY AUTHORITY
ACCOUNTS RECEIVABLE AGING REPORT**

	Total	Days				
		0-30	31-60	61-90	90-120	Over 120
Accounts Receivable	\$13,280,277	\$11,975,635	\$442,435	\$264,654	\$215,679	\$381,874
Period %	100%	90.2%	3.3%	2.0%	1.6%	2.9%



Staff Report – Item 1e

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1e: Adopt Resolution Amending the Authority’s Conflict of Interest Code to Amend Five Position Titles, Add Two Positions, and Delete Two Positions

Date: 6/13/2018

RECOMMENDATION

Adopt Resolution 2018-07 amending the SVCEA conflict of interest code to amend five position titles, add two positions, and delete two positions, as approved at the April 11, 2018 Board of Directors meeting.

BACKGROUND

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

At the April 11, 2018 SVCE Board of Directors meeting, Resolution 2018-06 was adopted by the Board to amend SVCE’s organizational chart. The updated organizational chart reclassifies five position titles, adds three position titles, and removes two position titles:

Reclassifications

1. Director of Marketing and Public Affairs reclassified as Director of Customer Care
2. Manager of Legislative and Regulatory Affairs reclassified as Manager of Regulatory and Legislative Effectiveness
3. Power Contracts and Compliance Specialist reclassified as Power Contracts and Compliance Manager
4. Power Resource Planning and Programs Analyst reclassified as Power Settlements and Compliance Analyst
5. Director of Administration and Finance reclassified as Director of Finance and Administration

Additions

1. Director of Decarbonization and Grid Innovation Programs
2. Senior Regulatory Analyst
3. Associate Legislative Analyst

Eliminate

1. General Counsel & Director of Government Affairs
2. Finance Manager

Staff recommends amending the Conflict of Interest Code to reflect the new organizational chart. The amended Code will include the reclassified titles and the new the positions of Director of Decarbonization and Grid Innovation Programs and Senior Regulatory Analyst, and omit the eliminated positions of General

Agenda Item: 1e**Agenda Date: 6/13/2018**

Counsel and Director of Government Affairs and Finance Manager. The new Associate Legislative Analyst will not have decision-making job responsibilities, so that position will not be required to submit a Form 700 and has not been added to the amended Conflict of Interest Code.

ANALYSIS & DISCUSSION

In accordance with the requirements of the Political Reform Act and the County of Santa Clara, a new conflict of interest code must be adopted by resolution which includes the newly created positions as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to the Authority's Code to reflect the reclassifications of the five position titles listed above, the additions of the positions of Director of Decarbonization and Grid Innovation Programs and Senior Regulatory Analyst, and the removal of the General Counsel and Director of Government Affairs and Finance Manager positions.

STRATEGIC PLAN

Not applicable.

FISCAL IMPACT

There is no fiscal impact as a result of these changes.

ATTACHMENTS

1. Resolution 2018-07 Amending the Authority's Conflict of Interest Code to Amend Five Position Titles, Add Two Positions, and Delete Two Positions
2. Resolution 2018-06 Amending the Organization Chart, Job Classifications and Salary Schedule

RESOLUTION NO. 2018-07

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY'S CONFLICT OF INTEREST CODE TO AMEND FIVE POSITION TITLES, ADD TWO POSITIONS, AND DELETE TWO POSITIONS

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

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

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

WHEREAS, the Board of Directors of the Authority has adopted a conflict of interest code, and has amended this code as appropriate due to changed circumstances, with the most recent code adopted by Resolution 2018-02; and

WHEREAS, the Board of Directors, after consultation with the County of Santa Clara as its code reviewing body, desires to amend the list of designated positions in Appendix A by changing the titles of five existing positions, adding two positions, and deleting two positions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2018-02 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

BE IT FURTHER RESOLVED that The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years following notice and instructions from the County of Santa Clara as the code-reviewing body for the Authority, in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code are required, the Authority shall submit a response as indicated in the instructions provided by the County of Santa Clara no later than October 1st of the same year, stating that amendments to the Authority's Conflict of Interest Code are not required.

ADOPTED AND APPROVED this 13th day of June, 2018.

Chair

ATTEST:

Clerk

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

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

The most current version of 2 Cal. Code of Regs. Section 18730 is available on the website of the Fair Political Practices Commission (<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730.pdf>).

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

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

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Member of Board of Directors	1
Alternate Member of Board of Directors	1
Chief Executive Officer	1
General Counsel	1
Account Services Manager	2
Community Outreach Manager	2
Director of Finance & Administration	1
Director of Customer Care	2
Director of Power Resources	1
Director of Decarbonization & Grid Innovation Programs	2
Manager of Regulatory & Legislative Effectiveness	2
Senior Regulatory Analyst	2
Power Contracts & Compliance Manager	1
Power Settlements & Compliance Analyst	1
Consultant	3
Newly Created Position	*

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's conflict

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

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

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

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

APPENDIX "B"

DISCLOSURE CATEGORIES

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

Category 1: Persons in this category shall disclose:

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

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

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

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

RESOLUTION NO. 2018-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE ORGANIZATION CHART, JOB CLASSIFICATIONS AND SALARY SCHEDULE

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, under Section 2.5.2 of the Joint Powers Agreement creating the Authority, the Authority has the power to employ agents and employees; and

WHEREAS, the Board of Directors adopted Resolution No. 2016-06 on August 10, 2016 establishing an Organization Chart for the Authority and salary ranges for the established positions; and

WHEREAS, the Board of Directors adopted Resolution No. 2017-07 on June 14, 2017 amending the adopted Organization Chart to delete one Community Outreach Specialist and add one additional Account Services Representative; and

WHEREAS, the Board of Directors adopted Resolution No. 2017-10 on December 13, 2017 amending the adopted Organization Chart to add the position of Manager of Regulatory & Legislative Affairs, remove the position of Regulatory/Legislative Analyst, and modify the salary ranges for all positions; and

WHEREAS, to meet the needs of the Authority and to better represent the work being performed, the Chief Executive Officer has recommended that the Board amend the adopted Organization Chart and schedule of job classification titles and salary ranges.

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

Section 1. The Authority’s schedule of job classification titles and salary ranges is amended to add new positions and salary ranges, modify existing position titles, and remove existing positions, as shown below. The following schedule of job classification titles and salary ranges shall replace and supersede the schedule shown in Resolution 2017-10:

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Account Representative I	64,890	101,970
Account Representative II	77,868	122,364
Account Services Manager	103,824	163,152
Administrative Analyst	77,868	122,364
Administrative Assistant	51,912	81,576

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Associate Legislative Analyst	67,053	105,369
Board Clerk / Executive Assistant	95,172	149,556
Community Outreach Manager	103,824	163,152
Community Outreach Specialist	56,238	88,374
Director of Customer Care	138,432	217,536
Director of Decarbonization and Grid Innovation Programs	122,802	189,546
Director of Finance & Administration	138,432	217,536
Director of Power Resources	164,388	258,324
IT Specialist	77,868	122,364
Manager of Regulatory & Legislative Effectiveness	115,824	175,152
Power Contracts & Compliance Manager	129,780	203,940
Power Settlements & Compliance Analyst	95,172	149,556
Senior Regulatory Analyst	90,846	142,758

Section 2. The organization of positions shall be as shown in Attachment 1: SVCEA Organization Chart. This new Organization Chart shall replace and supersede the Organization Chart adopted by Resolution 2017-10.

Section 3. The Chief Executive Officer shall create and maintain as needed job descriptions for each classification.

Section 4. The Chief Executive Officer is authorized to initiate recruitments and hire for all new positions.

ADOPTED AND APPROVED this 11th day of April, 2018.



 Chair

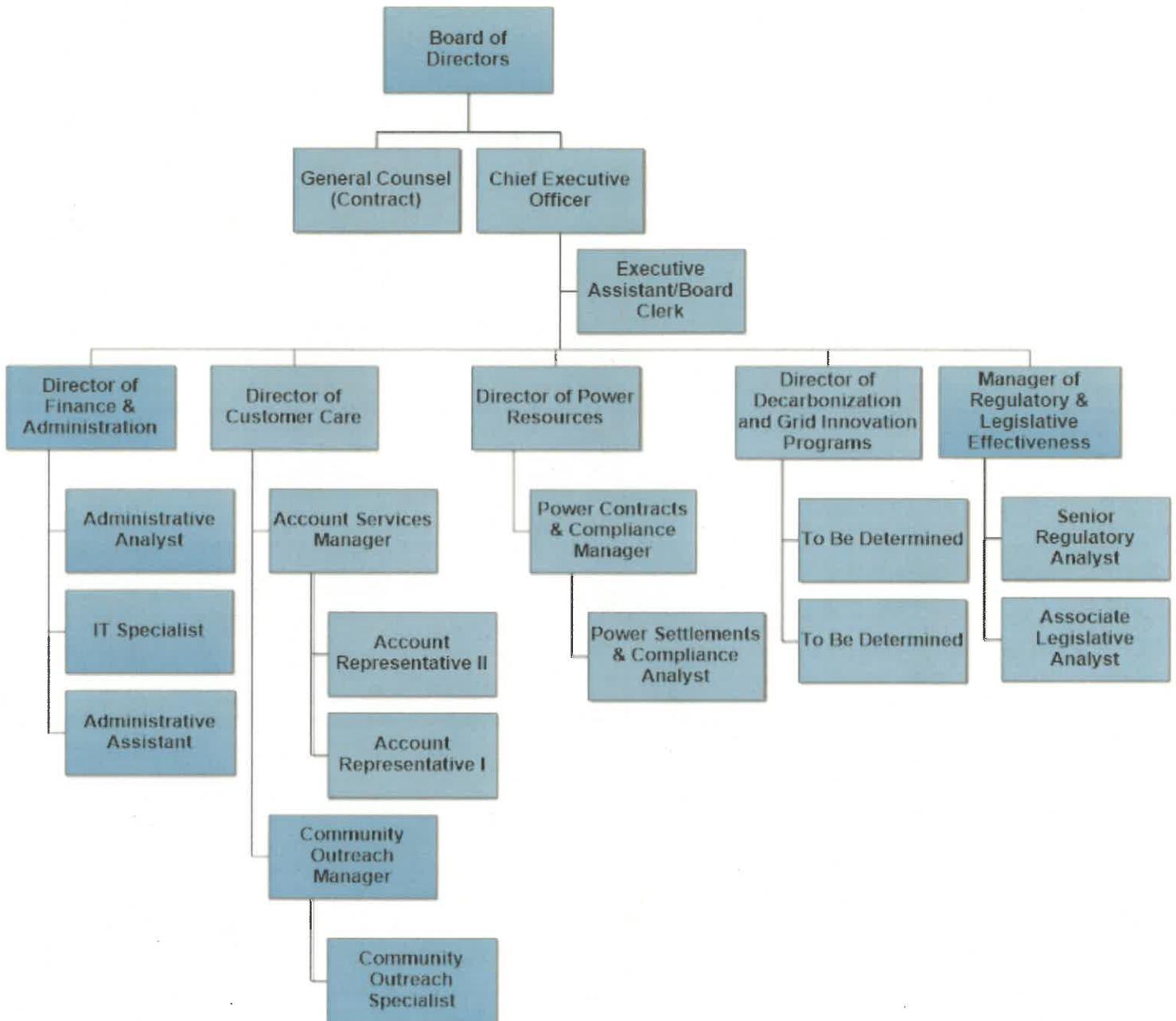
ATTEST:



 Clerk

Attachment 1: SVCEA Organization Chart

SVCE Organization Chart





Staff Report – Item 1f

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1f: Approve Amendment to Reserves Policy

Date: 6/13/2018

RECOMMENDATION

Staff recommends that the Board of Directors approve the proposed amended Financial Policy #9 – Cash Reserve Policy.

FINANCE COMMITTEE RECOMMENDATION

The Finance and Administration Committee approved recommendation to the Board to approve the proposed amended Financial Policy #9 – Cash Reserve Policy at the May 30, 2018 Finance and Administration Committee meeting.

BACKGROUND

At the March 8, 2017 Board of Directors meeting, the Board adopted the Reserves Policy to codify targets with respect to projected operating surpluses; this policy recommends an annual review.

ANALYSIS & DISCUSSION

As part of the annual review of the Reserves Policy, amendments are recommended to provide more clear and concise language to address the following:

- Purpose
- Level of reserves
- Funding of reserves
- Conditions for use of reserves
- Procedures for drawing below minimum and exceeding maximum levels
- Reporting and review.

This update fine tunes the current policy. Staff will continue to review the policy annually or sooner if needed to assess the targeted reserves, policy objectives, the industry and agency specific risk and to support SVCE in obtaining a credit rating.

STRATEGIC PLAN

SVCE's Board-adopted Strategic Plan identifies support of fiscal management.

ALTERNATIVE

Should the Board decide not to approve the amended policy, Staff will make necessary changes based on feedback received and return with a revised policy.

FISCAL IMPACT

None.

ATTACHMENTS

1. Proposed Financial Policy #9 – Cash Reserve Policy (clean)
2. Current Financial Policy #9 – Reserves Policy (with proposed amendments)
3. Moody’s Credit Opinion – Marin Clean Energy



FP9

Category: FINANCE

CASH RESERVE POLICY

I. PURPOSE

The Cash Reserve Policy outlines the appropriate types and target levels (minimum and maximum) of unrestricted, undesignated reserves as prescribed in the following policy.

The primary reason for a reserve policy is to be prepared for contingencies, but other reasons also exist. The five most important purposes of a reserve policy are to help:

- 1. Plan for contingencies.** SVCE will maintain sufficient reserves to minimize rate increase due to market volatility (power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.
- 2. Maintain good standing with rating agencies.** SVCE will maintain sufficient reserves to obtain, maintain or improve credit ratings.
- 3. Avoid interest expense.** Having sufficient reserves avoids interest expense to cover short-term cash shortfalls using reserves instead of debt.
- 4. Ensure cash availability when revenue is unavailable.** Reserves can be used to bridge times of the year that normally see temporary low levels of cash. Maintaining adequate reserves can balance intra-period differences in cash availability.
- 5. Create a better working relationship between the Board of Directors and staff.** A formal reserve policy creates a shared understanding of the proper level and use of reserves.



FP9

Category: FINANCE

II. POLICY

Reserve Target Levels

SVCE shall maintain a minimum reserve balance equal to 25% (90 days) of the following fiscal year's operating budget expenditures, with a goal of increasing the reserve or reserve-equivalent to 50% (180 days) of the following fiscal year's operating budget expenditures. The maximum reserve balance is 75% (270 days) of the following fiscal year's operating budget expenditures.

Funding the Target Amount

Funding of the reserve balance targets will generally come from excess revenues over expenditures or one-time revenues.

Conditions for Use of Reserves

SVCE will strive to avoid the appropriation of reserve balance for recurring operating expenditures.

The reserve balance may be used at the discretion of the Board of Directors to:

- Provide revenues to make up for temporarily decreased revenues or power supply shocks.
- Provide temporary resources in the event of an economic downturn while expenditure reductions and/or rate adjustments are implemented.
- Provide resources to meet emergency expenditures.

The CEO is authorized to make recommendations to the Board of Directors for use of reserves. A majority vote of the Board of Directors will be required to use reserves. Any recommendations shall be accompanied by a proposal for the replenishment of the reserves to the Board of Directors.



FP9

Category: FINANCE

Replenishment of Reserves

Reserve levels below the minimum targeted reserves would leave SVCE exposed to significant operational risks. Should SVCE draw down reserves below the minimum targeted level, SVCE will implement plans to return reserves to their minimum targeted levels within two (2) years. Such plans will be provided within six (6) months.

Excess Reserves

If reserve funds exceed the maximum level, SVCE would seek approval from the Board of Directors to use the excess to finance programs, capital improvements, pay down existing debt, offset other long-term liabilities, and reduce rates or other strategic purposes.

Reserves between Minimum and Maximum

To the extent that reserves are above target and below the maximum, the Board of Directors has the flexibility to direct staff to utilize those available funds to pay for program investments, capital projects, pay down unfunded liabilities, decrease outstanding debt, or fund other strategic objectives. No other action by SVCE would be required if reserves are between the minimum and maximum level unless directed by the Board of Directors.

Periodic Review of Targets

If the risk factors behind the target are eliminated or new risk factors emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve will be reviewed and the funding level may be adjusted accordingly.

Reporting

Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports. Reserve target levels (minimum and maximum) will be analyzed annually and over/under reserve determination shall be made in conjunction with year-end financial



FP9

Category: FINANCE

results. These results will be reports to the Board of Directors as part of the year-end financial report presentation.



FP9

Category: FINANCE

RESERVES POLICY CASH RESERVE POLICY

I. PURPOSE

Adequate Reserves will enable the Authority to satisfy working capital requirements, procure energy at competitive rates, adhere to loan covenants, cover unanticipated expenditures, and support rate stability.

The Cash Reserve Policy outlines the appropriate types and target (minimum and maximum) levels of unrestricted, undesignated reserves as prescribed in the following policy.

The primary reason for a reserve policy is to be prepared for contingencies but other reasons also exists. The five most important purposes of a reserve policy are to help:

- 1. Plan for contingencies.** SVCE will maintain sufficient reserves to minimize rate increase due to market volatility (power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.
- 2. Maintain good standing with rating agencies.** SVCE will maintain sufficient reserves to obtain, maintain or improve credit ratings.
- 3. Avoid interest expense.** Having sufficient reserves avoids interest expense to cover short-term cash shortfalls using reserves instead of debt.
- 4. Ensure cash availability when revenue is unavailable.** Reserves can be used to bridge times of the year that normally see temporary low levels of cash. Maintaining adequate reserves can balance intra-period differences in cash availability.
- 5. Create a better working relationship between the Board of Directors and staff.** A formal reserve policy creates a shared understanding of the proper level and use of reserves.

II. POLICY

- ~~1. The Authority will retain its operating surplus in calendar years 2017 and 2018 for the purpose to:
 - ~~a. Fund a Working Capital Reserve equivalent to 90 days of operating expenses, excluding power supply expenses; and~~
 - ~~b. Retire all debt and lines of credit; and~~
 - ~~c. Fund a Rate Stabilization/Contingency Reserve to mitigate rate increases due to volatility in the power markets, Power Charge Indifference Adjustments (PCIA), and economic downturns.~~~~

- ~~2. Authority to spend from reserves must align with Board approved Budgets.~~

- ~~3. Staff will review the Reserve Policy annually to ensure it meets the needs of the agency.~~

Reserve Target Levels

SVCE shall maintain a minimum reserve balance equal to 25% (90 days) of the following fiscal year's operating budget expenditures, with a goal of increasing the reserve or reserve-equivalent to 50% (180 days) of the following fiscal year's operating budget expenditures. The maximum reserve balance is 75% (270 days) of the following fiscal year's operating budget expenditures.

Funding the Target Amount

Funding of the reserve balance targets will generally come from excess revenues over expenditures or one-time revenues.

Conditions for Use of Reserves

SVCE will strive to avoid the appropriation of reserve balance for recurring operating expenditures.

The reserve balance may be used at the discretion of the Board of Directors to:

- Provide revenues to make up for temporarily decreased revenues or power supply shocks.
- Provide temporary resources in the event of an economic downturn while expenditure reductions and/or rate adjustments are implemented.
- Provide resources to meet emergency expenditures.

The CEO is authorized to make recommendations to the Board of Directors for use of reserves. A majority vote of the Board of Directors will be required to use reserves. Any recommendations shall be accompanied by a proposal for the replenishment of the reserves to the Board of Directors.

Replenishment of Reserves

Reserve levels below the minimum targeted reserves would leave SVCE exposed to significant operational risks. Should SVCE draw down reserves below the minimum targeted level, SVCE will implement plans to return reserves to their minimum targeted levels within two (2) years. Such plans will be provided within six (6) months.

Excess Reserves

If reserve funds exceed the maximum level, SVCE would seek Board of Directors approval to use the excess to finance programs, capital improvements, pay down existing debt, offset other long-term liabilities, and reduce rates or other strategic purposes.

Reserves between Minimum and Maximum

To the extent that reserves are above target and below the maximum, the Board of Directors have the flexibility to direct staff to utilize those available funds to pay for program investments, capital projects, pay down unfunded liabilities, defease outstanding debt, or fund other strategic objectives. No other action by SVCE would be required if reserves are between the minimum and maximum level unless directed by the Board of Directors.

Periodic Review of Targets

If the risk factors behind the target are eliminated or new risk factors emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve will be reviewed and the funding level may be adjusted accordingly.

Reporting

Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports. Reserve target (minimum) and maximum levels will be analyzed annually and over/under reserve determination shall be made in conjunction with year-end financial results. These results will be reports to the Board of Directors as part of the year-end financial report presentation.

CREDIT OPINION

18 May 2018

Rate this Research >>

Contacts

Dan Aschenbach +1.212.553.0880
Senior Vice President
dan.aschenbach@moodys.com

A. J. Sabatelle +1.212.553.4136
Associate Managing Director
angelo.sabatelle@moodys.com

Frieda Shalam +1.212.553.6836
Associate Analyst
frieda.shalam@moodys.com

Thomas Brigandi +1.212.553.2985
Associate Lead Analyst
thomas.brigandi@moodys.com

CLIENT SERVICES

Americas 1-212-553-1653

Asia Pacific 852-3551-3077

Japan 81-3-5408-4100

EMEA 44-20-7772-5454

Marin Clean Energy, CA

Moody's assigns Baa2 Issuer Rating to Marin Clean Energy; First Community Choice Aggregator (CCA) Rating

Summary

Moody's Investors Service has assigned a first-time Baa2 Issuer Rating to Marin Clean Energy (MCE). The rating outlook is stable. MCE is a not for profit community choice aggregator (CCA) with an established operating record as a California Joint Powers Agency (JPA).

MCE's creditworthiness factors in the strength of the related sound state statutes, its self-regulated rate-setting authority, and its consistently improving financial and operational performance. MCE's credit profile recognizes the economic strength of its service territory, an adequate liquidity profile, strong regulatory and legislative support for renewables in the state, and a business model that recognizes risks related to energy procurement in an evolving industry structure.

Exhibit 1
Marin Clean Energy Service Area



Source: Marin Clean Energy

MCE's credit profile considers the strength of the California JPA statute and the MCE JPA agreement which together underpin MCE's creation and business model, and help fortify the ongoing stability of its existing customer base. The credit profile recognizes the self-regulated rate-setting authority afforded to MCE, its established track record of operations

and consistently improving financial performance, and the economic strengths within its growing service territory. MCE has an adequate liquidity profile and the credit profile considers management efforts to strengthen liquidity levels to manage risk and support customer growth. We believe that state and municipal policymakers remain supportive of the CCA model, and view it as a tool to advance the use of renewable resources throughout the state. We view MCE's current relationship with the California Public Utilities Commission (CPUC) from a policy standpoint to be favorable to MCE's credit quality.

These credit strengths are balanced against several challenges facing MCE, the most significant of which involves their ability to manage power procurement risk which is accompanied by resource production variability and uncertainties about future market structure. While MCE has been able to manage the strong customer growth experienced over the last several years reasonably well, MCE's ability to procure resources to support future growth objectives introduces incremental risk given its move to a more diversified power procurement portfolio it has to manage.

A particular challenge is the potential for MCE to procure more energy under long term contracts than is needed to serve their customers' load requiring them to sell the more expensive excess energy into the wholesale power market at lower market prices. According to MCE's financial statements, MCE has entered into forward purchase commitments for delivery of renewable energy on an as-available basis that aggregates \$1.8 billion at year-end 2017. In an extreme scenario where there is a sudden decline in customer load, MCE could find itself in an under collected position should contracted power prices paid by MCE under these long-term arrangements exceed wholesale market prices for a sustained period. This scenario, for example, could emerge should a substantially higher than normal number of customers "opt-out" and return to Pacific Gas & Electric Company (PG&E A3 negative) for their generation product or through sustained technological advances which permanently limit customer load growth. To date, MCE has experienced a very modest level of customers "opting-out", with most of the migration occurring during the initial 120 day enrollment period. MCE appears to have mitigated the procurement risk by layering in contractual arrangements with differing tenors from a diverse list of energy suppliers with no dominant contract, and by maintaining a net short supply position in the mid to long term, and in an extreme case, has the ability to raise retail rates on its remaining customers if needed.

In addition to power procurement risk, additional challenges facing MCE are the newness of the CCA model within the California market, the continued evolution of the California electric market which continues to be on the cutting edge of change, the unresolved nature of the Power Cost Indifference Adjustment (PCIA) hearings with the investor-owned utilities, which could impact the cost competitiveness of MCE relative to the local investor-owned utility, and the pressure for MCE to maintain its customer value proposition as a provider of affordable renewable energy, as the business model offers customers choice.

MCE customer base now exceeds over 400,000 customers making it the third largest municipally governed electric enterprise in California, behind Los Angeles Department of Water and Power (LADWP) (Aa2 stable) and Sacramento Municipal Utility District (SMUD) (Aa3 stable). About 89% of customers have remained with MCE after the initial automatic enrollment. MCE's customer base continues to expand which has more than offsets any customer opt-outs. There is no dominant customer.

Credit strengths

- » Statutory benefits of the business model
- » Demonstrated evidence that the business model is working based on sound operational and financial performance
- » Article 7 of the MCE-JPA agreement requires a departing municipality satisfy any pro-rata share of its power related obligations taken out on its behalf
- » Customer and state policymakers support for CCAs as a vehicle for growing the state's clean energy policies
- » Low customer delinquency rates and above average household income for the customer base as a whole
- » Full recovery of costs through independent local rate-setting

This publication does not announce a credit rating action. For any credit ratings referenced in this publication, please see the ratings tab on the issuer/entity page on www.moody's.com for the most updated credit rating action information and rating history.

- » Local control over Integrated Resource planning
- » Low "opt out" rate that continues with new customer additions
- » Continued diversification of energy procurement contracts to 90 contracts from 29 suppliers
- » MCE retail rates are competitive with PG&E

Credit challenges

- » Very sizable long-term energy purchase commitments entered into by MCE relative to the size of the balance sheet with surplus energy remarketing risk should customers depart
- » Even though MCE generates free cash flow annually, target liquidity levels approved by MCE's board will take several years to reach
- » MCE has authority to charge a "cost recovery charge"; however, no experience doing so
- » Energy price plus the PCIA are at times higher than the IOU's retail rate for generation services
- » Evolving nature of the California's electric industry which could lead to potential regulatory changes and legislative actions might impact MCE's business model and prospective financial performance
- » Ability to manage rate design including allocation of PCIA costs in a manner that is not detrimental to competitive position

Rating outlook

The rating outlook is stable incorporating a view that the CCA business model will remain intact including the statutory and municipal ordinances that permit full cost recovery, that CCAs will continue to enjoy independent local retail rate-setting authority, that MCE will be able to manage power procurement risk and reach and maintain appropriate liquidity targets that support its growth.

Factors that could lead to an upgrade

- » Continued trend of sound financial operations with days liquidity on hand at a consistent 140 days and a level that mitigates at least 20% energy requirement loss
- » Demonstrated track record of managing power procurement and related liquidity risks
- » Narrowing of remarketing risk
- » Ability to demonstrate resiliency to technological change or economic weakness

Factors that could lead to a downgrade

- » Liquidity profile not keeping pace with customer growth
- » Competitive position being challenged owing to lower cost options being offered by competitors and MCE's customers having to pay higher transition fees
- » Liquidity profile not keeping pace with customer growth
- » Change in direction on power procurement strategy to one that is more focused on ownership versus purchases which is aggressively financed and does not include protective covenants for debt or lease investors
- » Sudden increase in customers opting out relative to historical levels

Key indicators

Exhibit 2

Marin Clean Energy - Financial Liquidity Trend

Marin Clean Energy	2014	2015	2016	2017
Days Cash on Hand	38	40	65	86
Adjusted Days Liquidity on Hand (incl. Bank Lines)(days)	38	40	65	86
Operating expenses (\$000)	83,714	96,807	135,181	166,618

(1) Moody's estimates adjusted days liquidity on hand will be close to FY 2017 levels at year-end 2018.

Source: Audited Financial Statements

Profile

MCE was formed in 2008 pursuant to the California Joint Exercise of Powers Act. MCE provides electric service under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2. Electric service is provided to customers located in Marin, Napa, Solano, Contra Costa Counties. MCE procures energy and capacity for its customers, while PG&E continues to provide transmission and distribution services. MCE charges appear on the customer's PG&E bill.

Detailed credit considerations

REVENUE GENERATING BASE

MCE is a government agency and a joint powers authority formed to reduce energy related greenhouse gas emissions and promote renewable energy sources in the PG&E's service territory. The MCE-JPA agreement is the operative document establishing a program locally. MCE supplies clean energy to over 400,000 customers in 2018 in 33 communities. MCE began its delivery operations to several communities in May 2010. MCE operates with no local tax funds nor is it required to pay taxes.

CCA Framework

Under the California CCA structure, electricity is procured by MCE primarily from commercial suppliers and delivered through PG&E's existing infrastructure with the utility continuing to provide transmission, distribution, billing and related collection services to MCE customers. Once a city ordinance is adopted for a city to join a CCA such as MCE, all customers in the city automatically become CCA customers unless the customer elects to "opt-out" and return to PG&E in this case. A customer can "opt-out" without penalty in the first 60 days but may have to pay a cost recovery charge later. MCE has not implemented a charge given the very low "opt-out" rates and its continued customer growth. MCE is responsible for the full energy requirement to serve its customers with a major component required to be renewable energy.

A critically important credit consideration are the CCA's key governing documents including the California JPA statute requirement (Title 1, Division 7, Chapter 5, Article 1 (or Section 6500-6539) as well as MCE's JPA agreement which has been executed by each of the 33 participating municipalities after each of the municipalities passed a municipal ordinance to join the JPA. An important credit consideration in the MCE JPA is the language in Article 7 which stipulates that a municipality must pay their remaining cost obligations, including energy mark to market losses, attributed to their respective load should it choose to depart from MCE. The language outlined in Article 7 helps to mitigate MCE's substantial exposure to future power commitments and is the mechanism by which there could be recourse to each of the participating municipalities should one elect to depart from MCE. While the ultimate legal underpinning of this municipal obligation to MCE has not been court tested as to its effectiveness, our credit assessment recognizes that all participating members acknowledged and accepted this risk prior to executing their respective MCE-JPA agreement. Any MCE municipal member that chooses to depart would have to give six-months' notice before MCE's fiscal year-end, fund its remaining obligations procured on their behalf; and receive a super majority (67%) vote of approval from the MCE board making such a decision a high hurdle to reach and one that if it occurred, would most likely conclude in a credit benign way.

Since each municipality are a party to their respective MCE-JPA, which collectively serves the basis for the issuer's existence, assessing the credit quality of the participants is an important data point to consider. Moreover, as described above, in an extreme scenario,

Article 7 of the MCE JPA, which provides direct recourse to obligations owed by each of the municipalities, highlights the importance of the municipalities' credit quality. In that regard, we view the weighted average credit quality of the MCE municipal pool to fall within the A rating category. That said, we recognize the strong socioeconomic factors for the majority of the communities served by MCE, including the economic strength of their customer base. Moreover, we acknowledge that the cash flow needed to satisfy MCE's operating expenses and pay debt service is derived from revenues received by the individual customers that MCE serves and that there is no specific recourse to any of the municipalities for such payments, other than those obligations arising under Article 7 of the MCE-JPA.

CCA's Advance State's Renewable Objectives

A key aspect of the value proposition offered by MCE and other California CCAs is that renewable and clean energy be a major component of the customers' power supply mix. In that regard, during 2017, renewable energy is projected to account for 62% of MCE's retail sales. We believe that state and municipal policymakers remain supportive of the CCA model as a tool to advance the use of renewable resources throughout the state, a key consideration, and we view the current relationship with the CPUC from a policy standpoint to be favorable to MCE's credit quality. MCE's electric rates continue to remain moderately lower than PG&E, and we view favorably PG&E's role as the billing servicer for MCE's customers which helps to support the strong performance of MCE's accounts receivable.

Regarding MCE's retail rates, MCE has a sound competitive position relative to PG&E. While MCE has a statutory and independent ability to change rates at any time, MCE typically set rates in April of each year for the following twelve months. Moody's recognizes that the outcome of rulemaking activities in California concerning the allocation of IOU generation costs to CCA customers, referred to as PCIA charges, will continue to impact CCA's competitiveness relative to PG&E's bundled rate, but not enough, in our opinion, to affect clean energy customer choice as it remains a high priority for California regulators, legislators, and consumers.

Independent Rate Setting

MCE's Board of Directors independently sets its rates to recover its costs and build reserves. Rate action by the board can be taken at any time. Typically, it is taken place in April of each year at the time that the budget is established but for example a mid-year decrease took place in 2016. PG&E, the investor owned utility, bills and collects MCE's revenues from the end use customer and transfers it to MCE. The amounts collected by PG&E are remitted daily to MCE's account. Accounts receivable are of high quality and consistent with the collection experience at PG&E. Should customers opt out of the MCE program, they revert to default service from PG&E and are not able to return to MCE for an entire year.

Implementation Plan

As MCE starts service in a new community, it must file an Implementation Plan (IP) with the CPUC. Pursuant to MCE's IP filed with the CPUC, MCE can enact a "customer cost recovery charge" on individual customers who choose to "opt-out" of MCE after the initial 60 day period and go back to PG&E. The charge could prospectively be used to narrow any revenue shortfall from a departing customer, should it occur. To date, MCE has not assessed this charge on any departing customer's bill, given the very low "opt-out" rates as described above, and the fact that new customer additions have significantly exceeded "opt-out" customers. The basis for this charge is a part of the current state legislative and regulatory board review concerning the allocation of generation charges (PCIA).

Integrated Resource Plan

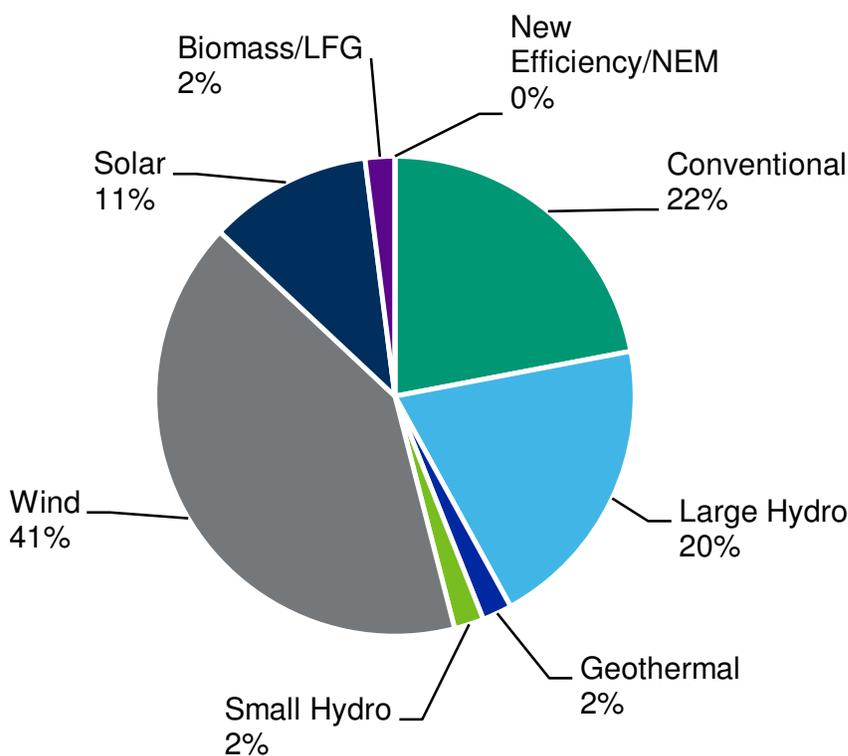
The MCE Integrated Resource Plan (IRP) for 2018-2027 has the objective of maintaining a minimum renewable energy content of 50% during the ten-year planning period with further objective to reach 100%. The IRP plan is ambitious given the objective of reaching 80% renewable energy and 100% carbon free energy by 2025 which is likely to test the depth of California's renewable energy market. The IRP objectives include a reduction in greenhouse gas emissions, an expansion of energy efficiency programs, and access to competitively priced renewable energy.

Supply Mix

As mentioned earlier, MCE passed a major milestone in transitioning from a power supply portfolio from a few suppliers to a diverse mix of 90 energy contracts sourcing energy including renewables from a geographically diverse area with 29 different suppliers. The contracts are short, medium and long term in duration. The IRP is locally decided by MCE's board which asserts local control on power supply decisions and includes several state mandates such as ensuring it meets a state required reserve capacity margin, energy storage targets, greenhouse gas standards and energy efficiency requirements.

Notwithstanding the diversity of supply in the current portfolio, an additional related procurement issue stems from MCE's ability to manage the declining costs of renewable resources. Of concern is the scenario where MCE enters into long-term arrangements that over time become less competitive relative to new renewable arrangements owing to their declining cost and technological advances that increases the efficiency of new renewable resources. While MCE's portfolio approach serves to mitigate this risk, maintaining a portfolio of competitively renewable resources is an accompanying risk when having power procurement responsibilities in a state that continues to "push the envelope" in setting renewable targets.

Exhibit 3
MCE 2018 Resource Mix

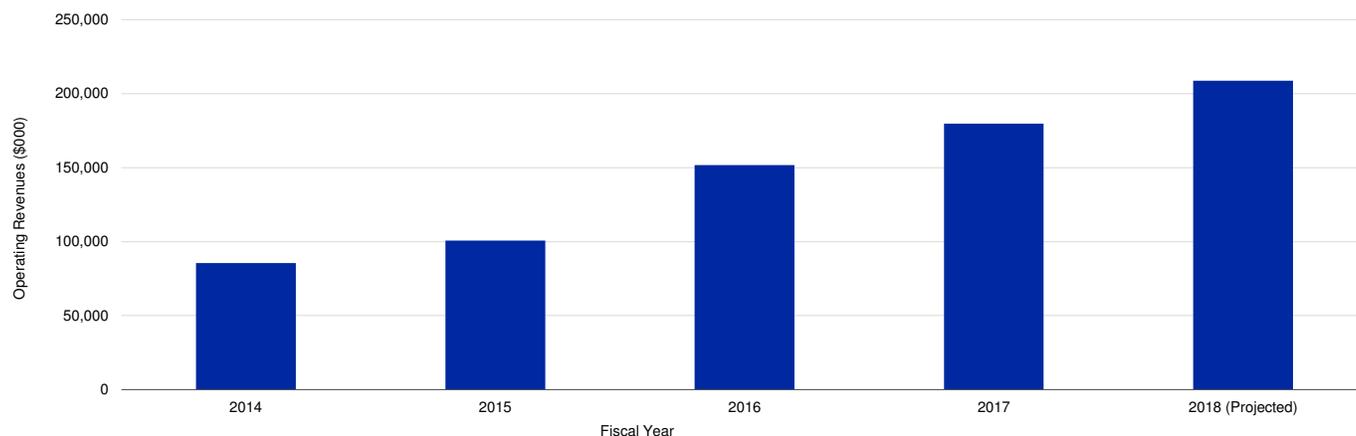


Source: Marin Clean Energy; Moody's Investors Service

Financial Operations and Position

MCE has matured as its customer base has grown and MCE's Board has established financial policies to guide its operation. For example, in recognition that power procurement risk is significantly growing, it has developed an energy risk management plan and a reserve policy to govern the expected challenges it may face. In FY 2018, MCE exceeded \$200 million in expenses, primarily purchased power. Managing purchased power contracts, maintaining adequate financial liquidity, and ensuring its rate process is adequate are key tasks. The addition of numerous new customers in FY 2019 represents a challenge and MCE has implementing policies to ensure it adequately balances its commitments and revenues. New challenges MCE is focused on include continuing to diversify its power supply risk, potential ownership of new local area renewable generation, and ensuring compliance with the myriad of state policy mandates.

Exhibit 4

Growth in Operating Revenues Reflect MCE Customer Growth

Source: Audited Financial Statements; MCE; Moody's Investors Service

LIQUIDITY

Maintaining a strong liquidity profile is a critical credit consideration when procuring power for customers. Liquidity provides time for MCE to react with its rate setting and other power procurement mitigation measures. Our credit assessment assumes that MCE maintains growing levels of internal liquidity on its balance sheet as its customer base expands and also has access to sufficient levels of supplemental external liquidity appropriate for an investment grade rated issuer. In that regard, we acknowledge MCE's new Board reserve policy that is centered around MCE's continued ability to generate annual free cash flow.

In FY 2014, MCE recorded 32 days cash on hand which has grown to 86 days cash on hand at FY 2017 (or \$37 million) owing to customer growth and strong financial performance. Internal liquidity is supplemented by a \$25 million committed line of credit that has no conditionality for advances. For FY 2018, which ended March 31, 2018, MCE expects cash on hand close to the level of FY 2017. Because of new customer additions that became effective in April 2018, MCE projects days liquidity on hand to increase further to 140 days by FY 2020 (March 31, 2020).

MCE has a \$25 million revolving credit agreement with River City Bank (RCB) which expires on August 31, 2019. RCB's line of credit is backed by a Letter of Credit issued by MUFG Union Bank, NA (A2 stable) strengthening the quality of MCE's external liquidity.

MCE's working capital needs appear to be modest as it receives cash payments from PG&E each day for its portion of the PG&E bill while paying its suppliers for purchased power at regular intermittent times over the course of the month. As such, MCE is typically able to generate positive cash flow each month, including the shoulder months of the year.

DEBT STRUCTURE

MCE has no long-term debt. It may borrow longer term to construct local area generation but has no plans to do so before 2025. Long-term debt would require a bond indenture with security provisions and bonds or notes can be issued on a tax-exempt basis.

DEBT-RELATED DERIVATIVES

none

Pensions and OPEB

Not a material credit risk for MCE.

MANAGEMENT AND GOVERNANCE

The 33 member MCE Board of Directors governs MCE which consists of representatives of the communities that are members. MCE has the authority to establish rates without state regulatory board review; has the authority to establish its integrated resource plan; and establish budgets.

RATING METHODOLOGY

The principal methodology used in this rating was US Municipal Joint Action Agencies All-Requirements published in October 2016. Please see the Credit Policy page on www.moody's.com for a copy of this methodology.

The scorecard rating is notched down one to reflect the new business model MCE operates under and an additional notch down relating to the uncertainties about the evolving California power market and wholesale power market exposure.

Exhibit 5

Marin Clean Energy JPA - Methodology Grid

Factor	Subfactor/Description	Score
1. Participant Credit Quality and Cost Recovery Framework	a) Weighted Average participant credit quality. Unregulated rate setting including participants. Cost recovery structure and governance.	A3
2. Resource Risk Management	a) Resource Diversity. Asset quality and complexity. Resource supply contract terms and counterparty credit quality. Wholesale market purchase exposure	Baa
3. Competitiveness	a) Cost competitiveness relative to regional peers	A
4. Financial Strength and Liquidity	a) Adjusted days liquidity on hand (3-year avg) (days)	A
	b) Debt ratio (3-year avg) (%)	Baa
	c) Fixed obligation charge coverage ratio (3-year avg) (x)	Ba
5. Willingness to Recover Costs with Sound Financial Metrics	a) Rate Setting Record. Timeliness of rate recovery. Stability and strength of financial metrics	A
Notching Conventions		Notch
	1 - Contractual Structure and Legal Environment	-1
	2- Participant Diversity and Concentration	
	3 - Construction Risk	
	4 - Debt Service Reserve, Debt Structure and Financial Engineering	
	5 - Unmitigated Exposure to Wholesale Power Markets	-1
Scorecard Indicated Rating:		Baa2

Source: Moody's Investors Service

© 2018 Moody's Corporation, Moody's Investors Service, Inc., Moody's Analytics, Inc. and/or their licensors and affiliates (collectively, "MOODY'S"). All rights reserved.

CREDIT RATINGS ISSUED BY MOODY'S INVESTORS SERVICE, INC. AND ITS RATINGS AFFILIATES ("MIS") ARE MOODY'S CURRENT OPINIONS OF THE RELATIVE FUTURE CREDIT RISK OF ENTITIES, CREDIT COMMITMENTS, OR DEBT OR DEBT-LIKE SECURITIES, AND MOODY'S PUBLICATIONS MAY INCLUDE MOODY'S CURRENT OPINIONS OF THE RELATIVE FUTURE CREDIT RISK OF ENTITIES, CREDIT COMMITMENTS, OR DEBT OR DEBT-LIKE SECURITIES. MOODY'S DEFINES CREDIT RISK AS THE RISK THAT AN ENTITY MAY NOT MEET ITS CONTRACTUAL, FINANCIAL OBLIGATIONS AS THEY COME DUE AND ANY ESTIMATED FINANCIAL LOSS IN THE EVENT OF DEFAULT. CREDIT RATINGS DO NOT ADDRESS ANY OTHER RISK, INCLUDING BUT NOT LIMITED TO: LIQUIDITY RISK, MARKET VALUE RISK, OR PRICE VOLATILITY. CREDIT RATINGS AND MOODY'S OPINIONS INCLUDED IN MOODY'S PUBLICATIONS ARE NOT STATEMENTS OF CURRENT OR HISTORICAL FACT. MOODY'S PUBLICATIONS MAY ALSO INCLUDE QUANTITATIVE MODEL-BASED ESTIMATES OF CREDIT RISK AND RELATED OPINIONS OR COMMENTARY PUBLISHED BY MOODY'S ANALYTICS, INC. CREDIT RATINGS AND MOODY'S PUBLICATIONS DO NOT CONSTITUTE OR PROVIDE INVESTMENT OR FINANCIAL ADVICE, AND CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT AND DO NOT PROVIDE RECOMMENDATIONS TO PURCHASE, SELL, OR HOLD PARTICULAR SECURITIES. NEITHER CREDIT RATINGS NOR MOODY'S PUBLICATIONS COMMENT ON THE SUITABILITY OF AN INVESTMENT FOR ANY PARTICULAR INVESTOR. MOODY'S ISSUES ITS CREDIT RATINGS AND PUBLISHES MOODY'S PUBLICATIONS WITH THE EXPECTATION AND UNDERSTANDING THAT EACH INVESTOR WILL, WITH DUE CARE, MAKE ITS OWN STUDY AND EVALUATION OF EACH SECURITY THAT IS UNDER CONSIDERATION FOR PURCHASE, HOLDING, OR SALE.

MOODY'S CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT INTENDED FOR USE BY RETAIL INVESTORS AND IT WOULD BE RECKLESS AND INAPPROPRIATE FOR RETAIL INVESTORS TO USE MOODY'S CREDIT RATINGS OR MOODY'S PUBLICATIONS WHEN MAKING AN INVESTMENT DECISION. IF IN DOUBT YOU SHOULD CONTACT YOUR FINANCIAL OR OTHER PROFESSIONAL ADVISER. ALL INFORMATION CONTAINED HEREIN IS PROTECTED BY LAW, INCLUDING BUT NOT LIMITED TO, COPYRIGHT LAW, AND NONE OF SUCH INFORMATION MAY BE COPIED OR OTHERWISE REPRODUCED, REPACKAGED, FURTHER TRANSMITTED, TRANSFERRED, DISSEMINATED, REDISTRIBUTED OR RESOLD, OR STORED FOR SUBSEQUENT USE FOR ANY SUCH PURPOSE, IN WHOLE OR IN PART, IN ANY FORM OR MANNER OR BY ANY MEANS WHATSOEVER, BY ANY PERSON WITHOUT MOODY'S PRIOR WRITTEN CONSENT.

CREDIT RATINGS AND MOODY'S PUBLICATIONS ARE NOT INTENDED FOR USE BY ANY PERSON AS A BENCHMARK AS THAT TERM IS DEFINED FOR REGULATORY PURPOSES AND MUST NOT BE USED IN ANY WAY THAT COULD RESULT IN THEM BEING CONSIDERED A BENCHMARK.

All information contained herein is obtained by MOODY'S from sources believed by it to be accurate and reliable. Because of the possibility of human or mechanical error as well as other factors, however, all information contained herein is provided "AS IS" without warranty of any kind. MOODY'S adopts all necessary measures so that the information it uses in assigning a credit rating is of sufficient quality and from sources MOODY'S considers to be reliable including, when appropriate, independent third-party sources. However, MOODY'S is not an auditor and cannot in every instance independently verify or validate information received in the rating process or in preparing the Moody's publications.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability to any person or entity for any indirect, special, consequential, or incidental losses or damages whatsoever arising from or in connection with the information contained herein or the use of or inability to use any such information, even if MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers is advised in advance of the possibility of such losses or damages, including but not limited to: (a) any loss of present or prospective profits or (b) any loss or damage arising where the relevant financial instrument is not the subject of a particular credit rating assigned by MOODY'S.

To the extent permitted by law, MOODY'S and its directors, officers, employees, agents, representatives, licensors and suppliers disclaim liability for any direct or compensatory losses or damages caused to any person or entity, including but not limited to by any negligence (but excluding fraud, willful misconduct or any other type of liability that, for the avoidance of doubt, by law cannot be excluded) on the part of, or any contingency within or beyond the control of, MOODY'S or any of its directors, officers, employees, agents, representatives, licensors or suppliers, arising from or in connection with the information contained herein or the use of or inability to use any such information.

NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, TIMELINESS, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SUCH RATING OR OTHER OPINION OR INFORMATION IS GIVEN OR MADE BY MOODY'S IN ANY FORM OR MANNER WHATSOEVER.

Moody's Investors Service, Inc., a wholly-owned credit rating agency subsidiary of Moody's Corporation ("MCO"), hereby discloses that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by Moody's Investors Service, Inc. have, prior to assignment of any rating, agreed to pay to Moody's Investors Service, Inc. for appraisal and rating services rendered by it fees ranging from \$1,500 to approximately \$2,500,000. MCO and MIS also maintain policies and procedures to address the independence of MIS's ratings and rating processes. Information regarding certain affiliations that may exist between directors of MCO and rated entities, and between entities who hold ratings from MIS and have also publicly reported to the SEC an ownership interest in MCO of more than 5%, is posted annually at www.moody.com under the heading "Investor Relations — Corporate Governance — Director and Shareholder Affiliation Policy."

Additional terms for Australia only: Any publication into Australia of this document is pursuant to the Australian Financial Services License of MOODY'S affiliate, Moody's Investors Service Pty Limited ABN 61 003 399 657 AFSL 336969 and/or Moody's Analytics Australia Pty Ltd ABN 94 105 136 972 AFSL 383569 (as applicable). This document is intended to be provided only to "wholesale clients" within the meaning of section 761G of the Corporations Act 2001. By continuing to access this document from within Australia, you represent to MOODY'S that you are, or are accessing the document as a representative of, a "wholesale client" and that neither you nor the entity you represent will directly or indirectly disseminate this document or its contents to "retail clients" within the meaning of section 761G of the Corporations Act 2001. MOODY'S credit rating is an opinion as to the creditworthiness of a debt obligation of the issuer, not on the equity securities of the issuer or any form of security that is available to retail investors. It would be reckless and inappropriate for retail investors to use MOODY'S credit ratings or publications when making an investment decision. If in doubt you should contact your financial or other professional adviser.

Additional terms for Japan only: Moody's Japan K.K. ("MJJK") is a wholly-owned credit rating agency subsidiary of Moody's Group Japan G.K., which is wholly-owned by Moody's Overseas Holdings Inc., a wholly-owned subsidiary of MCO. Moody's SF Japan K.K. ("MSFJ") is a wholly-owned credit rating agency subsidiary of MJJK. MSFJ is not a Nationally Recognized Statistical Rating Organization ("NRSRO"). Therefore, credit ratings assigned by MSFJ are Non-NRSRO Credit Ratings. Non-NRSRO Credit Ratings are assigned by an entity that is not a NRSRO and, consequently, the rated obligation will not qualify for certain types of treatment under U.S. laws. MJJK and MSFJ are credit rating agencies registered with the Japan Financial Services Agency and their registration numbers are FSA Commissioner (Ratings) No. 2 and 3 respectively.

MJJK or MSFJ (as applicable) hereby disclose that most issuers of debt securities (including corporate and municipal bonds, debentures, notes and commercial paper) and preferred stock rated by MJJK or MSFJ (as applicable) have, prior to assignment of any rating, agreed to pay to MJJK or MSFJ (as applicable) for appraisal and rating services rendered by it fees ranging from JPY200,000 to approximately JPY350,000,000.

MJJK and MSFJ also maintain policies and procedures to address Japanese regulatory requirements.

REPORT NUMBER 1121564

Contacts

Dan Aschenbach +1.212.553.0880
Senior Vice President
dan.aschenbach@moodys.com

CLIENT SERVICES

Americas	1-212-553-1653
Asia Pacific	852-3551-3077
Japan	81-3-5408-4100
EMEA	44-20-7772-5454



Staff Report – Item 1g

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1g: Authorize the Chief Executive Officer to Negotiate an Office Lease Agreement to Expand Existing Office

Date: 6/13/2018

RECOMMENDATION

Staff recommends that the Board of Directors authorize the CEO to negotiate a lease agreement with Biagini Properties to lease an adjacent suite to SVCE’s current office. A final agreement would be brought back to the Board of Directors for approval.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

At the May 30, 2018 meeting, the Finance and Administration Committee voted 4-0 to recommend to the Board that Staff proceed with negotiating a lease agreement with Biagini Properties to expand SVCE’s existing office by leasing an adjacent suite. The Committee also recommended Staff explore the long-term goal of purchasing a permanent office space.

BACKGROUND

When SVCE moved into its current location in November 2017, the agency was in start-up phase. As SVCE approaches a normal state, the responsibilities of the business will change to include investments in programs as part of operations as well as incorporating changes to the table of organization to meet current and anticipated future challenges.

Over the next twelve months, the table of organization is anticipated to expand from 21 to 25 full-time positions. As Staff develops the programs roadmap and implements various programs, facility space will also be needed to accommodate contractors, interns, and other part-time staff. At the May Board meeting, during discussion related to FY 18-19 Budget Priorities, the Board encouraged staff to review options to expand the current space.

SVCE’s current facility space will be difficult to accommodate the resources needed for the agency to meet its goals. A constraint is the lease of the office does not expire until January 2022.

ANALYSIS & DISCUSSION

Expanding SVCE’s current office space by leasing an adjacent suite would increase our current office size from 5,080 square feet to 7,080 square feet, and would bring the following workplace benefits:

- More Space for Additional & Current Employees
- Additional & Larger Conference Room
- Less Offsite Meetings
- More Customizable Space
- Possible Additional Offices
- Storage Space
- Larger Break Area

Pending Board authorization to begin negotiations with Biagini Properties, Staff will follow the timeline below:



STRATEGIC PLAN

SVCE's Board-adopted Strategic Plan identifies the following strategies under Workplace:

- Build an environment that encourages creativity and innovation
- Ensure that staff has the tools necessary to effectively do the job

Sunnyvale continues to serve as an ideal office location central to most SVCE Staff and resides in SVCE's service territory. Staff plans to maintain this location for the long term.

ALTERNATIVES

In addition to expansion, Staff considered 3 additional options: take no action, capital investment to improve existing facilities, and purchase permanent SVCE office space. Based on feedback received at the May 30 Finance and Administration Committee, Staff recommends moving forward with expanding existing office space.

FISCAL IMPACT

SVCE's current lease with Sunnyvale Village Associates declares a 5-year, 3-month term commencing on November 1, 2016 and ending on January 11, 2022. Initial base rent was \$25,375 per month, with a ~10% annual increase for the remainder of the lease.

With the challenging real estate market in Silicon Valley, commercial rental rates are expected to continue to rise. Staff recommends securing competitive rates for office space expansion as soon as possible.

The estimated fiscal impact for expanding our existing office space is as follows:

	Expand Office Space
Capital Costs	
IT Infrastructure*	\$15,000
Audio/Visual**	\$30,000
Furniture*	\$54,000
Construction	To Be Negotiated
TOTAL:	\$99,000
Annual Costs	
Additional Rent	To Be Negotiated
Additional Printer	\$6,500
TOTAL:	\$6,500 + Added Rent

*IT Infrastructure and Furniture cost estimates are based on initial total cost for setup for our current office space, per square foot.

**Audio/Visual cost estimates are based on the cost of setup for Monterey Bay Community Power's permanent, on-site Board meeting room.



Staff Report – Item 1h

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1h: Approve Amendment to Employee Handbook to Establish Flexible Spending Accounts

Date: 6/13/2018

RECOMMENDATION

Approve the following amendment to the SVCE Employee Handbook to establish a Flexible Spending Account (FSA) health care option for employees:

- **Section 125 (Cafeteria Plan):** Through the flexible spending account or the health savings account, you may designate an annual dollar amount of your before-tax income to pay for certain eligible expenses. Particular care should be taken to assure that the funds required in the flexible spending account are not over estimated as unused funds cannot be returned to the participant at the end of the plan year. Please refer to the Flexible Benefit Plan (SPD) and the Health Spending Account (SPD) booklets for information about the program. If you need additional information or change forms, please speak with the Director of Finance and Administration.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

At the May 30, 2018 Finance and Administration Committee meeting, the Committee was in consensus to recommend Board approval of this benefit since it is a common benefit offered and results in no fiscal impact to the agency.

BACKGROUND

An FSA is a special account which the employee puts money into that the employee can use to pay for certain out-of-pocket health care costs. The employee does not pay taxes on this money.

ANALYSIS & DISCUSSION

FSAs are limited to \$2,650 per year per employee. If the employee is married, the spouse can put up to \$2,650 in an FSA as well. The funds can be used to pay for certain medical and dental expenses for the employee, spouse and dependents.

STRATEGIC PLAN

The recommendation supports the “Best Place to Work” goal of the strategic plan.

ALTERNATIVE

SVCE would not offer Flexible Spending Accounts as a health care option for SVCE Employees.

FISCAL IMPACT

There is no fiscal impact to the agency for adoption of this benefit.



Staff Report – Item 1i

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1i: Approve Employee Recruitment Incentive Policy

Date: 6/13/2018

RECOMMENDATION

Approve HR Policy #2 establishing an employee recruitment policy authorizing the Chief Executive Officer (CEO) to offer a recruitment incentive that will not exceed the greater, of 10% of the salary, referenced in the offer letter, or \$15,000.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

At the May 30, 2018 meeting, the Finance and Administration Committee approved this recommendation.

BACKGROUND

Silicon Valley Clean Energy is competing for the best employees. The Bay Area is a very competitive job market and many new Community Choice Aggregators (CCAs) are, or soon will be, in the market to hire. Also, a prospective applicant will be in situations where he/she will be forced to leave benefits behind in their current job by joining SVCE.

ANALYSIS & DISCUSSION

A recruitment incentive is a one-time investment in the prospective applicant. It will not impact the annual salary offered or the costs associated with the benefits that are based on the salary (e.g. deferred compensation).

STRATEGIC PLAN

This recommended policy supports the “Best Place to Work” goal of the strategic plan.

ALTERNATIVE

SVCE would not implement a recruitment incentive policy and would engage in alternative suggestions provided by the Board.

FISCAL IMPACT

Assuming a proposed headcount of 25 positions, with 17 positions filled, there is approximately a \$120,000 fiscal impact to fill vacancies.

Assuming a 10% employee turnover, there would be an annual fiscal impact of \$50,000.

ATTACHMENTS

1. HR Policy #2 – Employee Recruitment Incentive Policy



HRP2

Category: HUMAN RESOURCES

EMPLOYEE RECRUITMENT INCENTIVE POLICY

I. PURPOSE

A recruitment incentive is a lump sum of money and/or reimbursement for one-time benefits that the agency provides to a prospective employee. The purpose of the recruitment incentive is to entice the applicant to sign-on with the organization.

II. POLICY

The Chief Executive Officer (CEO) is authorized to offer one-time incentives that do not exceed the greater of 10% of the salary referenced in the offer letter or \$15,000 to prospective applicants.



Staff Report – Item 1j

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1j: Approve Workplace Electric Vehicle Charging Policy

Date: 6/13/2018

RECOMMENDATION

Approve General and Administrative Policy #3 establishing Workplace Electric Vehicle Charging.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

At the May 30, 2018 Finance and Administration Committee meeting, the Committee was in consensus to recommend Board approval of this benefit since it supports the mission statement of the agency and results in minimal fiscal impact.

BACKGROUND

Electric Vehicles (EVs) are a growing sector of the transportation system. Currently SVCE has one charging station in the garage of our facility with plans to install another one in the next year. Having a workplace charging station offers many benefits to SVCE. They visibly demonstrate the Agency's commitment to sustainable energy and decarbonization of the grid, and by making them available and easily accessible to employees can serve as a tool to attract and retain employees.

ANALYSIS & DISCUSSION

Due to the growing sector of EVs, the capability to "refuel" while parked at workplace charging stations creates the need for policies when charging stations are provided for employees at the workplace.

As the agency continues to grow and the number of electric vehicles owned by employees and visitors also grows, competition can arise for the charging station parking spot. To facilitate smooth integration of EVs and charging stations in the agency garage, a policy is recommended.

STRATEGIC PLAN

The recommendation supports the "Best Place to Work" goal and the overall mission of decarbonization in the strategic plan.

ALTERNATIVE

The agency owned charging station(s) would be reserved for the company vehicle(s) only.

FISCAL IMPACT

There is minimal fiscal impact in implementing the proposed policy.

ATTACHMENTS

1. GAP #3 – Workplace Electric Vehicle Charging Policy



GAP3

Category: GENERAL & ADMINISTRATIVE

WORKPLACE ELECTRIC VEHICLE CHARGING POLICY

I. PURPOSE

This policy defines the valid use of Silicon Valley Clean Energy's charging station(s) by employees and visitors.

II. POLICY

Vehicles must be actively charging when parked in the charging station stall.

Vehicle is limited to four (4) hours parking in the charging station stall. When your charge is complete, move your vehicle so other employees and visitors can use the station. Authorized SVCE personnel may disconnect your vehicle at any time.

Neatly replace the charging cord when finished. Cords left on the ground are safety hazards.

SVCE assumes no responsibility or liability for damage to vehicles using the electrical charging station(s).

Electric vehicle charging station station(s) may be closed for maintenance.

Do not count on the availability of SVCE charging station(s) as a primary justification in your decision to purchase plug-in electric vehicles.



Staff Report – Item 2

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 2: Employee Recognition and Introductions

Date: 6/13/2018

RECOGNITION

Kelly Hoogland and Victoria Yu

SVCE would like to recognize Climate Corp Fellows Kelly Hoogland and Victoria Yu for their hard work; their fellowship will conclude in June after being with us for the past 10 months. During their time with SVCE, they assisted with outreach efforts to our local communities, and planned and implemented the inaugural Bike to the Future e-bike competition. Kelly also assisted with maintaining CalCCA's website, and Victoria created two videos for SVCE; one of which earned an award (SVCE's Understanding Your Bill video).

Dennis Dyc-O'Neal

Dennis has been a key member of our team as the Power Contracts & Compliance Manager since the summer of 2017, and has been serving as our Director of Power Resources since March. Dennis will be leaving SVCE to work for his hometown CCA, Monterey Bay Community Power. Dennis has been an excellent asset for us and we wish him the very best in his new position.

INTRODUCTIONS

Monica Padilla

Monica Padilla started June 4 as the new Power Supply Manager. Monica worked for Palo Alto Utilities for 31 years. For the last 10 years she served as a Senior Resource Planner and was responsible for the development and implementation of their long term integrated resource plans, the 2018 Utilities Strategic Plan, the Carbon Neutral Plan, the Local Solar Plan, the Electric Front Office team leader, negotiating supply contracts, the primary liaison to Western Area Power Administration and Northern California Power Agency. In her prior role as a Resource planner, she handled all procurement to balance the electric portfolio, maintained the complex computer models to track and project costs, supply resources and demand, negotiated and established wholesale commodity enabling agreements with multiple power suppliers, and assisted on rate design and reserve policy development. For the first 11 years of her career in Palo Alto she was responsible for various demand-side management programs and also facilitated an implementation plan to transition from a regulated to deregulated market.

Aimee Gotway Bailey

Aimee Gotway Bailey has been selected to be SVCE's Director of Decarbonization and Grid Innovation. Her last position was at the EDF Innovation Lab as a Principal Energy Analyst. Prior to EDF, Aimee held positions at Pacific Gas & Electric, City of Palo Alto Utilities, Global Environmental Institute (Beijing, China) and the U.S. Department of Energy, focused on solar technology and policy, climate policy, emerging technologies and strategic planning. Aimee has a BSE in materials science from the University of Pennsylvania in Philadelphia and a PhD in physics from Imperial College in London.



Staff Report – Item 3

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 3: Customer Program Advisory Group Progress Update Report

Date: 6/13/2018

RECOMMENDATION

Receive progress update report from Customer Program Advisory Group (CPAG).

BACKGROUND

In October of 2017, the SVCE Board of Directors voted to form the CPAG, chartered to:

- Serve as a conduit for community input and review of prospective residential customer programs
- Consider residential customer program recommendations through qualitative analysis
- Prioritize and recommend candidate programs through quantitative analysis
- Communicate and promote Board-adopted programs

The work of the CPAG will expand and complement programmatic input from the Member Agency Working Group (MAWG). The MAWG, formed by the CEO earlier in 2017, meets monthly and is comprised of staff representatives from SVCE's member agencies with roles in sustainability, communications, and general administration.

The MAWG reviewed and provided input to the CPAG charter. Qualitative analysis performed by the CPAG will consider community needs, priorities and engagement opportunities in the recommended set of programs. It was established that detailed quantitative analysis of prospective programs would be completed utilizing program measurement criteria and metrics established by staff and the MAWG. CPAG members will not be expected to perform the calculations; however the quantitative analysis will be an important process for CPAG members to understand. In addition, the CPAG can play a critical role as a focus group, providing input on how to make proposed programs as relevant as possible to SVCE customers.

An initial readout of program recommendations from the CPAG was set for June of 2018. In subsequent monthly meetings of the CPAG, the group will act on input from the SVCE Board, and provide additional customer input on key programs recommended by staff.

ANALYSIS & DISCUSSION

Initial program recommendations and subsequent input from the CPAG will be folded into an overall SVCE process for forming a program roadmap. As outlined below, SVCE staff is also working with the MAWG to establish common electrification and decarbonization program priorities across the member agencies.

Several member agencies, including the Cities of Sunnyvale and Mountain View, have detailed climate action planning (CAP) updates in process. Similar to the purpose of the CPAG, these cities have established citizen taskforces to provide input to City staff in development of their CAP updates. At the July meeting of the MAWG, member agency representatives will share their respective CAP priorities with respect to decarbonization and electrification. The MAWG will then work to determine common electrification and decarbonization program priorities, a critical input into SVCE's program roadmap development process.



Candidate programs addressing the needs of commercial and industrial customers will be included in the SVCE program roadmap, through input provided by large commercial and industrial customers via SVCE workshops focused on electrification of transportation, the built environment, and energy storage and demand management (grid innovation). The roadmap will outline goals, strategies and tactics that extend over a multi-year period. Development of a multi-year roadmap is essential to establish decarbonization goals and, prioritize program and spending goals.

The program roadmap development process will be supported by SVCE's new Director of Decarbonization and Grid Innovation, joining the SVCE staff in June of 2018. A high-level program roadmap will be presented by SVCE in Fall of 2018, and in a more detailed format in Winter 2018. A multi-stakeholder workshop to receive input for the roadmap development is expected to be held in late-summer/early Fall.

STRATEGIC PLAN

The work of the Customer Program Advisory Group supports SVCE's strategic plan Goal 5, 'work with the community to achieve energy and transportation GHG reductions of 30% from the 2015 baseline, by 2021'.

FISCAL IMPACT

Input from the CPAG will help launch and guide SVCE's program roadmap development efforts. The roadmap will direct approximately \$5M in annual program investments currently budgeted by SVCE.

CONCLUSION AND RECOMMENDATIONS

Staff recommends that the Board receive the Customer Program Advisory Group's progress update report and provide input and direction for the CPAG, in the context of SVCE's overall program roadmap development process.

ATTACHMENTS

1. CPAG Progress Update Report from CPAG Chair, Peter Evans



Customer Program Advisory Group Progress Update

To: Silicon Valley Clean Energy Board of Directors

From: Peter Evans, CPAG Chair

Date: 6/13/2018

Progress Update from SVCE's Customer Program Advisory Group

Summary

In this report the CPAG provides our list of potential SVCE residential customer programs, prioritized by the committee, with accompanying quantitative and qualitative evaluation.

The committee's purpose here is to provide to the Board a list of potential residential energy customer programs that address topics the committee cares about and that the committee believes the communities and customers care about. The committee identified twelve potential programs, of which four received the strongest support:

- Residential Electricity Monitoring
- Electricity Bill Explorer
- Residential BE Ready Program, SF + MF Variants
- Residential & MF EV Charging - encourage vehicle electrification

The programs the committee considered are drawn from a fresh look at potential benefits residential energy customer programs might provide and what initiatives might achieve those benefits. The committee evaluated these programs for their potential to contribute to these benefits, for other factors the committee felt were important, and ultimately, based on individual committee members' preferences.

The programs themselves are not presented as defined in their final form, and the cost estimates are general, for comparison purposes. The CPAG anticipates this list is one input into a larger program selection, refinement and implementation process, which the committee looks forward to continuing to support.

Process

The SVCE Customer Program Advisory Group (CPAG) was created by SVCE's Board of Directors at its November 29, 2017 meeting. CPAG members were nominated by SVCE Board members and by the Board Chair; they represent ten of the SVCE member communities and unincorporated Santa Clara County.

Upon formation the CPAG was chartered to:

1. Serve as a conduit for community input and review of prospective residential customer programs.
2. Prioritize and recommend candidate programs through quantitative analysis.
3. Consider residential customer program recommendations through qualitative analysis.
4. Communicate and promote board-adopted programs.

We interpreted this charter as having two key elements that guided our process. The CPAG should consider new ideas from members (i.e., not just review and comment on existing proposals), and the CPAG should give voice to community and customer priorities and needs.

Potential Benefits of Customer Programs (February Meeting)

The committee first conducted an exercise to list the possible benefits that SVCE customer programs should provide, from CPAG members' perspectives. The initial list of customer benefits identified by the committee follows.

- Increase customer energy literacy
- Provide personalized customer engagement; promote active choices (e.g. upgrading to GreenPrime); increase SVCE awareness
- Engage customers in their energy use through comparisons with peers, benchmarks, their own trends (gamification)
- Improve transparency on decisions for customers
- Provide customers more choices and local control
- Increase engagement and participation in energy programs for disadvantaged communities
- Provide customer services or programs not offered by PG&E and leverage services and programs offered by PG&E
- Reduce customer bills by reducing usage and shifting usage from peak price periods
- Reduce customer costs in purchasing and using energy-consuming devices
- Reduce demand during peak hours and increase demand during peak PV production (duck curve)
- Reduce the need for/use of carbon-emitting peaker plants
- Reduce GHG emissions through reduced electricity use
- Promote local jobs and economic development
- Provide customer backup power
- "Transform markets"
- Accelerate adoption of clean energy devices and practices
- Alleviate climate change impacts (GHG reduction)
- Increase readiness for expanded use of clean electricity
- Improve indoor/outdoor air quality
- Increase SVCE sales of clean electricity

The committee intentionally did not assign priority to these potential benefits. For readability they are listed in a loose grouping – customer empowerment, demand/supply alignment, customer cost savings, and GHG reduction – that emerged in subsequent meetings.

Potential Program Ideas (March Meeting)

At its next meeting, the committee held an open and creative process to come up with as many program ideas as possible to address one or more of the potential program benefits identified in the prior meeting.

Between the March and April meetings, the CPAG members broke into sub-committees to develop "program briefs." These briefs were intended to provide enough information about each potential program – its use case, program elements, SVCE's role in the program, and what a successful program would look like – to allow the full committee to discuss it. A list of the program briefs the sub-committees produced follows.

- Residential Storage - reduce duck curve impacts
- Connected Home Devices - customer understanding and load management

- Residential & MF EV Charging - encourage vehicle electrification
- MF Residence Energy Efficiency - GHG and customer cost reduction
- Safety Preparedness & Resilience with Micro Grids
- Incentives or Rebates for Used Electric Cars and Smart Chargers
- Electricity Bill Explorer
- Residential Electricity Monitoring
- Residential BE Ready Program, SF + MF Variants
- Pilot "Mass Produced" Zero Emission Retrofit Approach
- Electrification Process "Survivorship Curve" Analysis
- BE Smart Residential Water and Space Heating Upgrade

Again, the committee did not give these program briefs any order or grouping. They are listed here in the order in which they were presented. The full text of the program briefs is provided as Attachment 1.

Program Evaluation (April and May Meetings)

At the April meeting, each sub-committee presented its program brief to the full committee. In turn, each CPAG member completed an evaluation of whether that program would directly contribute to, or detract from, or would be neutral to, each potential benefit. Attachment 3 shows, for each program, the total of the committee scores for a positive contribution to each benefit, and the total for all benefits. Attachment 4 shows, for each program, the total of the committee scores for a negative contribution to each benefit, and the total for all benefits. The green color indicates the programs with the highest third of total positive contributions to benefits and lowest third of negative contribution to benefits.

The committee also came up with a list of factors other than pure benefits that the committee viewed as relevant to a decision to adopt or implement a customer program. This list of other factors follows:

- Scalability (high/low)
 - high = can expand program with minimal additional resources
 - low = expansion requires additional or increasing resources
- Customer participation (broad/narrow)
 - broad = most customers can/will participate
 - narrow = few customers can/will participate
- Time to implement (short/long)
 - short = can be implemented immediately
 - long = may take more than one years to implement
- Time to outcomes/benefits (short/long)
 - short = within 1 yr
 - long = 3 yrs or more
- Uncertainty of outcomes/benefits (high/low)
 - low = uptake and outcomes are demonstrated
 - high = uptake or outcomes are undemonstrated
- Cost (high/low)*
- Cost of Carbon (high/low)*

*To support this evaluation, the chair developed rough range-of-cost and GHG reduction estimates for each program based on the program scope proposed by the program sub-committee. Staff reviewed these, but they are not the staff's product. These program cost, GHG reduction, and cost of carbon estimates and explanatory notes are included as Attachment 6.

At the May meeting, the committee evaluated each of the briefed programs for these other factors, and the aggregated results were presented to the committee. Attachment 5 provides for each program the committee total pro and con scores for each of these other factors. Green color indicates where the committee predominantly saw the factor as "pro" for the program, and orange color where the committee predominantly saw the factor as "con" for the program.

Importantly, in addition to these evaluation steps, the committee also hosted presentations followed by group discussions to illuminate real-world energy customer conditions and potential solutions. These included multifamily housing, residential heat pump hot water heater retrofits, and "mass produced" energy efficiency upgrades.

Finally, in the May meeting, to arrive at the group's prioritization of the briefed programs, CPAG members selected their favored programs using a three-dot vote. A ranked list of the programs follows, and the dot rank scores are included in Attachment 1; a second round of voting did not change the ordering.

1. Residential Electricity Monitoring
2. Electricity Bill Explorer
3. Residential BE Ready Program, SF + MF Variants
4. Residential & MF EV Charging - encourage vehicle electrification
5. Residential Storage - reduce duck curve impacts"
6. BE Smart Residential Water and Space Heating Upgrade
7. Incentives or Rebates for Used Electric Cars and Smart Chargers
8. MF Residence Energy Efficiency - GHG and customer cost reduction
9. Pilot "Mass Produced" Zero Emission Retrofit Approach
10. Connected Home Devices - customer understanding and load management
11. Electrification Process "Survivorship Curve" Analysis
12. Safety Preparedness & Resilience with Micro Grids

The top one-third (four) programs received broad support from the committee and generally also evaluated well in terms of their potential contribution to program benefits identified by the committee and in terms of the other factors the committee valued. That said, the precise ordering is probably not determinative -- the committee saw merit in all of these programs, and further refinement could change the order.

Going Forward

Now that the CPAG has identified and ranked some of the proposed programs, we will use the following meetings to further explore the top program ideas. Staff will provide additional input on program design considerations, such as lessons learned from other utilities, market opportunities and barriers.

In particular, we believe the committee provides a unique, close-to-the-customer perspective. Arguably whether a program is valued and embraced by customers is as important as its posited contribution to policy goals.

ATTACHMENTS

1. 12 Program Briefs
2. Program Dot Rank Results
3. Program Benefits Positive Results
4. Program Benefits Negative Results
5. Other Factors Results
6. Program Cost and Cost of Carbon Assessment



Title & Use Case (Do "x" for "y".)	Residential Storage Program Expand the use of residential storage to reduce duck curve impacts.
Specific Elements	<ul style="list-style-type: none"> • Pre-engineered package • Residential • 3 – 5 KW • Pair with solar? • New construction and/or retrofit? • Single family or MUD? • Financial modeling tools • Group buy • Permit assistance
SVCE's Role <i>(possible partners or collaborators)</i>	<ul style="list-style-type: none"> • Promotion • Bulk purchase • Storage-friendly rate structure • Installer pre-qualification • Collaborate with installers, startups and established manufacturers
Success <i>(define success)</i>	<ul style="list-style-type: none"> • Number of deployments as a direct result of program offering • Kilowatt hours under management • Kilowatt peak reduction



Title & Use Case (Do "x" for "y".)	Connected home for customer understanding and management of their loads and for load management
Specific Elements	<ul style="list-style-type: none"> ● web connected thermostats (off the shelf) ● web-connected pool pump controller (off the shelf?) ● app for customers with device operation and consumption data ● additional analytics ● device/load management capability (with customer over-ride) - e.g. peak reduction or summer-only AC management ● ability to move between solar production to grid and solar storage to optimize viz the Duck Curve for single family homes with solar.
SVCE's Role (possible partners or collaborators)	<ul style="list-style-type: none"> ● rebates for new participants? <ul style="list-style-type: none"> ○ rebates for thermostats ○ rebates for storage ● enlistment & customer permission ● work with one or more 3rd parties (e.g. Nest) - really its their platform; downselect from proposals
Success (define success)	<ul style="list-style-type: none"> ● participation rate (different targets for different devices) - find out how willing customers are to participate; maybe pilot 2,500 volunteer Nests with a history ● customer feedback (are they willing to continue) ● How much demand reduction there is (what does 2,500 participants map to in kW demand reduction); use control group



Title & Use Case <i>(Do "x" for "y".)</i>	Electric Vehicle Residential Charging Station Incentive program in order to encourage vehicle electrification.
Specific Elements	<ul style="list-style-type: none"> Financial assistance in the form of a rebate or reduced-interest loan to prepare for and install a vehicle charging station. Aimed to offset the split incentive problem.
SVCE's Role <i>(possible partners or collaborators)</i>	<ul style="list-style-type: none"> SVCE would offer the program to residential home and multi-family residence owners and tenants. Streamline the process with: <ol style="list-style-type: none"> 1) Reduced-cost of charging unit from bulk discount 2) Preferred contractors to carry out work 3) Streamlined permitting process Tenant – educate on cost and benefits of EVs with recommended tariffs, \$ benefits and GHG reduction. Property owner – inform about benefits of having a charging station on-site. e.g. better occupancy rates. Inform property owner about any incentives from city/state/government. SVCE would process the administration and billing of the charging stations on behalf of the landowner.
Success <i>(define success)</i>	<ul style="list-style-type: none"> Take up of program – measured vs a target based on installation and utilization of charging units at residences. This program is a double win for SVCE. Reduced GHG from EV use vs gasoline-fueled cars and electricity sourced from carbon-neutral sources.



Title & Use Case (Do "x" for "y".)	Multifamily (MF) residence energy efficiency program – program to reduce cost of living to residents and to reduce GHGs.
Specific Elements	<ul style="list-style-type: none"> • Incentives/financial assistance to increase energy efficiency at MF residences. • Suggested changes: solar panels, energy efficient appliances (e.g. washers and dryers), energy efficient AC and heating, switch from natural gas/propane to electric cookers. • EV Charging • Power storage to smooth demand • Ability for landowner to sell back excess electricity to reduce split incentive problem. • Either replace at end of life or retrofit energy efficient devices. • Energy rating scheme to incentivize landowners and inform tenants.
SVCE's Role (possible partners or collaborators)	<ul style="list-style-type: none"> • Financial assistance for work carried out. Either in the form of rebate, discount, or reduced interest-loan. • Streamlined permitting process with municipalities. • Inform end users and landowners on \$ and environmental benefits of specific energy efficient appliances and equipment. • Pilot these benefits in an everyday-use scenario. • Model the acceptance rate of each recommendation and the actual GHG reduction. (e.g. which devices/appliances had the biggest GHG-reduction impacts in aggregate). • Measure the customer experience. • Provide an energy efficiency rating. Measure \$ benefit to the landowner. • Inform about government rebates/tax benefits available to landowner. • Recommend energy tariffs to customers to maximize benefit. (e.g. solar or TOU tariff). • Partner with housing authorities, construction firms.
Success (define success)	<ul style="list-style-type: none"> • A numerical goal of customer monetary savings and GHG savings over 10 years balanced with a positive customer experience.

SVCE CPAG —Beneficial Electrification Subgroup—Not on Original List

April 16, 2018

<p>Safety Preparedness and resilience with micro grids</p>	<p>Assuring functional government and community safety in massive emergencies by assuring communications and functionality with micro grids for civic centers/Public Safety. Providing resilience with a distributed grid and power system.</p>
<p>Specific Elements</p>	<ul style="list-style-type: none"> • Separable from PGE grid in emergencies • Critical civic emergency response • Minimal renewables and storage on site for generation • Critical crisis response for regional governments • Critical services for residents and displaced people • Business continuity and disaster recovery • Possible connection to Electrification Readiness program
<p>SVCE’s Roles and possible partners or collaborators</p>	<ul style="list-style-type: none"> • SVCE with PGE as regional support and resources for grid assessment and design requirements especially as cities update their Civic Government buildings <p>Other potential collaborators:</p> <ul style="list-style-type: none"> • Cities • School Districts • Regional communications systems
<p>Success as defined by...</p>	<ul style="list-style-type: none"> • Emergency command centers up and running within 5 minutes • Functional government communication systems <p>Benefits</p> <ul style="list-style-type: none"> • Local and regional resilience • Community services including phone and computer charging availability in micro-grid areas • Enhanced local safety for government, residents, and businesses • Faster more efficient and effective emergency response • Fewer lives lost

SVCE CPAG —Beneficial Electrification Subgroup

April 16, 2018

<p>SVCE modified Sonoma Clean Power EV and Charger Program</p>	<p>Incentives or rebates for Used Electric Cars and Smart Chargers...</p>
<p>Specific Elements</p>	<ul style="list-style-type: none"> • Reduce GHG emissions • Help Grid balancing • Move from fossil fuels to clean electricity
<p>SVCE’s Roles and possible partners or collaborators</p>	<ul style="list-style-type: none"> • Provide Smart chargers to EV Customers • Possible rebates for used electric cars <p><u>Incentives:</u> Purchased Electric Vehicles qualify for government tax credits and state rebate programs:</p> <ul style="list-style-type: none"> • Federal Income Tax Credit for up to \$7,500. Learn more at fuelconomy.gov • California Rebates: \$1,500 to \$2,500 depending on the vehicle type. Learn more at cleanvehiclerebate.org • Carpool Lane Access: A limited number of single-occupancy carpool lane stickers are available for EV drivers. Learn more at dmv.ca.gov <p>Collaborators:</p> <ul style="list-style-type: none"> • Sellers of new and used EVs • Shared economy providers of things like Zip car services • Companies like Lyft
<p>Success as defined by...</p>	<ul style="list-style-type: none"> • Quantity of purchasers = GHG reduction • Thanks to Silicon Valley Clean Power’s clean electricity mix, charging an EV significantly reduces greenhouse gas emissions. An EV charged with our Green Prime product has 96%+ fewer emissions than a Toyota Prius Hybrid.



Title & Use Case (Do "x" for "y".)	Electricity Bill Explorer Make bills easy to understand and show how customers can reduce their bills and/or reduce carbon emissions
Specific Elements	<ul style="list-style-type: none"> • Import bill data (GreenButton standard or direct from PG&E) • Show how different rate plans would impact customer bill • Provide personalized comparisons of customer's usage with norms, peers, and customer's own past patterns to inform outliers and alert changes in usage. • Show how much money & CO2 emissions SVCE saves • Show how little it would cost to switch to GreenPrime (if not already a GreenPrime customer)
SVCE's Role <i>(possible partners or collaborators)</i>	<ul style="list-style-type: none"> • Develop system
Success <i>(define success)</i>	<ul style="list-style-type: none"> • Number of customer bills analyzed by system • Number of customers upgrading to GreenPrime after using system • Customer feedback



Title & Use Case (Do "x" for "y".)	Residential Electricity Monitoring Facilitate appliance-level (disaggregated) electricity monitoring to increase energy literacy and reduce electricity use
Specific Elements	<ul style="list-style-type: none"> • Customer site electricity monitoring with smart phone interface • RFP process to select appropriate monitoring vendor • Facilitate installation of devices • Study to follow up on energy literacy and electricity usage after installation
SVCE's Role (possible partners or collaborators)	<ul style="list-style-type: none"> • Conduct RFP for monitoring solution • Bulk purchase and/or rebate for devices • Connect customers to approved electricians able to install devices • Provide online forum for customers to discuss project among themselves • Possible partners: Sense Labs, Bidgely
Success (define success)	<ul style="list-style-type: none"> • Number customers participating in program • Increased energy literacy for participants • Reduced electricity usage for participants (lower bills & reduced carbon emissions)



<p>Title & Use Case (Do "x" for "y".)</p>	<p>Residential BE Ready Program (SF + MF variants) Increase readiness for planned, economic migration from fossil-fuel use to efficient, clean electricity ("Beneficial Electrification") use in residential homes. <i>(Two variants to address both Single-Family and Multi-Family homes.)</i></p>
<p>Specific Elements</p>	<ul style="list-style-type: none"> • Stand-alone program or combine as companion program to any Electrification Migration program. • Combine with Green Lease program for rental homes (SF & MF) that aligns cost-benefit interests of renters and landlords. • Promote pre-planning for a retrofit migration to a more-efficient and cleaner/safer electric home. • Promote an economic and ecological bundle of Beneficial Electrification technologies <ul style="list-style-type: none"> ○ Various applicable combinations of electric car/charger, heat-pump water heater, solar PV, heat-pump heat & cool, energy efficiency measures and energy storage. ○ Press the bundle/package concept since savings from EVs, solar and/or EE more than cover added expense over business-as-usual for heat-pumps until costs get lower. • Standard and simple BE Ready Assessment form, which would lead to educated customer, cost estimate and electrification migration Plan. (See attached examples of Assessment and Plan; focus on biggest impact items, but can lead to a complete all-electric plan.) • Pre-engineered best standard options for panel/sub-panel needs for going all-electric. • Promote that trade allies (electricians, solar contractors, HVAC contractors, others?) pitch and conduct a BE Ready Assessment of home as desired and whenever any electric-related work is to be done. (See attached draft BE pitch slide – with draft BE talking points.) • Draft program design research survey (attached) can morph into lead generation survey form.
<p>SVCE's Role (possible partners or collaborators)</p>	<ul style="list-style-type: none"> • Recruit, qualify? and train trade ally "participating" contractors to make BE Ready pitch and Assessments, leading to increased business opportunities for them.



	<ul style="list-style-type: none"> • Finalize program documents/outputs for Pitch, Assessment/Plan, Lead-Generation survey and standard set of best panel/sub-panel configs. • Education and Outreach to customers. • Possible nominal participation incentive, depending on how well the bundled-savings pitch works. • Coordinate integrated BE-favorable local policies of SVCE member jurisdictions (for remodels and new) <ul style="list-style-type: none"> ○ Green building codes ○ Permit fee and inspection streamlining • PG&E partner on local distribution service needs and energy efficiency savings programs/promotion • For Multi-family program variant, partner with union labor organizations, and apprenticeship programs (e.g. from NOVA). • For Multi-family variant, consider program design and partner collaboration options for different types of MF buildings, landlords and potential HOA partners. • Potential partnership/collaboration with BAAQMD and/or local water districts on grants, incentives. • Extend outreach and education via allied non-profit and climate advocacy groups, as well as members.
<p>Success <i>(define success)</i></p>	<ul style="list-style-type: none"> • Number of participating customers. <ul style="list-style-type: none"> ○ # with completed Assessments/plans ○ # of BE Ready work projects completed ○ # of Electrification-related technologies adopted (total and per home) • Kilowatt hours per customer. • Number and engagement level of participating trade allies. • Number of aligned policies among SVCE members. • Number of new Green Leases adopted. • Estimated total \$ savings for participants • Estimated total GHG reductions for participants



<p>Title & Use Case (Do "x" for "y".)</p>	<p>Pilot "Mass Produced" Zero Emission Retrofit Approach</p> <p>Run pilot program that attempts to locally replicate approach pioneered by "EnergieSprong" (http://energiesprong.eu/) in the Netherlands, to reduce hassle and upfront cost of Zero Emission housing retrofits using combination of financing techniques and demand aggregation that makes robust project coordination and more economical manufacturing (offsite prefabrication) feasible.</p> <p>3-minute overview video: https://youtu.be/gm_EIE99W0o</p>
<p>Specific Elements</p>	<p>Coordinate energy-efficiency+electrification retrofit project that aims to address all housing units in a defined area (e.g. a housing tract, or a single block within one) at once. Project has following characteristics:</p> <ul style="list-style-type: none"> ● Financing <ul style="list-style-type: none"> ○ Costs financed rather than paid up-front, using "Pay as you save" (PAYS) model – savings from increased efficiency cover monthly finance cost ● Timing <ul style="list-style-type: none"> ○ Everything that's aging out and/or ○ Strategically phased implementation ● Single solution provider <ul style="list-style-type: none"> ○ One party designing, coordinating, installing and financing ● Minimize Disruption to Homeowners' Lives <ul style="list-style-type: none"> ○ Fast installation due to pre-fabricated components made possible by similar housing stock (e.g. a housing tract) ○ Desirable improvements make it worthwhile
<p>SVCE's Role (possible partners or collaborators)</p>	<ul style="list-style-type: none"> ● Provide on-bill financing mechanism ● Identification of potential vendors ● (Potentially) Project Management ● Identification of potential pilot sites: institution/company that owns large amount of



	existing housing stock (e.g. university, large-scale private landlord)
Success <i>(define success)</i>	<ul style="list-style-type: none">• Pilot site retrofits completed; GHG emissions reduced at pilot site• Vendors identified for similar future projects (assuming they performed well)• SVCE gains knowledge/experience about how to facilitate these retrofit projects• Successful pilot gives later potential project sites example that "shows it can be done"



<p>Title & Use Case (Do "x" for "y".)</p>	<p>Electrification Process "Survivorship Curve" Analysis Identify current "theoretical maximum" number of existing homes that are potentially ready to fuel switch key fossil fuel end uses to electricity, and which prerequisites for electrification form the biggest barriers to increasing that pool of electrification-ready homes.</p> <p><i>NOTE: This program is not an end in itself, rather it is intended to create a clear decision-making tool that SVCE's policymakers can use over time to consider tradeoffs and effectively prioritize potential programs being considered for driving fuel switching from fossil fuels to electricity.</i></p>
<p>Specific Elements</p>	<ul style="list-style-type: none"> ● Identify bundle(s) of end uses to be converted (there may be several, e.g. "EV only," "EV+Water Heater" etc.) ● Map out key criteria that must be met before a home is ready to electrify the target set of end uses in each bundle (sufficient utility service connection, large enough panel for that bundle, etc.). Note that the definition of a criterion can vary depending on the bundle, e.g. the power requirements for a "sufficient" service connection go up as you attempt to electrify more end uses. ● Identify logical sequence in which those criteria would be addressed (e.g. a homeowner would not enlarge electrical panel if service connection cannot supply enough power) ● Starting with "all homes" (100%), graph for each successive criterion (for each bundle) how many homes in SVCE service area (or relevant sub-geography or sub-set of customers) meet that criterion, to produce a graphical depiction of where the current biggest opportunities are for SVCE's programs.
<p>SVCE's Role (possible partners or collaborators)</p>	<ul style="list-style-type: none"> ● Gather data for each criterion and update over time



	<ul style="list-style-type: none">• Partners: PG&E, member cities (sources of needed data)
Success <i>(define success)</i>	<ul style="list-style-type: none">• Clearly identify where the current opportunities are so that programs may be targeted appropriately.• Allow consideration of tradeoffs between depth of electrification (more electrified end uses at a site) vs. breadth (more sites electrified but with fewer end uses converted to electricity)



Based on a proposal by Carbon Free Palo Alto in collaboration with Carbon Free Silicon Valley for potential adoption by SVCE, PCE, City of Palo Alto Utility and other CCEs, Munis.

Title & Use Case (Do "x" for "y".)	BE Smart Residential Water & Space Heating Upgrade Program Mass B eneficial E lectrification for residential buildings
Specific Elements	<ul style="list-style-type: none"> • See also attached presentation & context slides. • On-bill financing of extra upfront costs: Customer still pays what would have paid for otherwise Business as Usual (BAU) case of a just another new natural gas (NG) unit, but extra up-front costs associated with new efficient electric heat pump water heaters or HVAC systems is financed on the customer bill to eliminate key barrier to adoption. Only about \$13/month extra, not including potential program rebate options. • Planned proactive replacement of units before usual failure at end of useful lives of 13 and 20 years for water heaters and furnaces, respectively, to avoid emergency replacement scenario that would prevent fuel-switching. • Concierge service: Managed by third-party contracted to SVCE – made easy for customers. • SVCE rebates optional. • Some details to decide on how to handle sale of home or other possible exceptions – customer may need to pay off remainder of financed amount. • Can integrate with potential BE Ready electrification readiness program.
SVCE's Role <i>(possible partners or collaborators)</i>	<ul style="list-style-type: none"> • Contract with third-party program manager to implement program details. • Possibly combine with Green Lease program for rental homes (SF & MF) that aligns cost-benefit interests of renters and landlords. • Arrange with PG&E for line item on bill for financing. • Education and Outreach to customers. • Possibly add rebate to make even more attractive to customers, although reduces budget available for other programs. • Coordinate integrated BE-favorable local policies of SVCE member jurisdictions (for remodels and new) <ul style="list-style-type: none"> ○ Permit fee and inspection streamlining ○ Green building codes, including, but not limited to:



Based on a proposal by Carbon Free Palo Alto in collaboration with Carbon Free Silicon Valley for potential adoption by SVCE, PCE, City of Palo Alto Utility and other CCEs, Munis.

	<ul style="list-style-type: none"> ▪ Add BE conduits/wires for HP water heater and EV charger, and possibly HP Heat/Cool, as a required component of solar PV installations. ▪ Other specific green codes to add? • Potential partnership/collaboration with BAAQMD and/or local water districts on grants, incentives. • Extend outreach and education via allied non-profit and climate advocacy groups, as well as members.
<p>Success <i>(define success)</i></p>	<ul style="list-style-type: none"> • Estimated total GHG reductions for participants • Number of participating customers. • # of Electrification-related technologies adopted (total and per home) • Kilowatt hours per customer. • Number and engagement level of participating trade allies. • Number of aligned policies among SVCE members. • Number of Green Leases adopted by participants.

**SVCE CPAG Program Evaluation
Worksheet -
DOT RANKING**

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Dot Score												
Total Blue Dots	7	6	6	5	4	4	3	2	2	0	0	0



SVCE CPAG Program Evaluation Worksheet - PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (+)												
Increase customer energy literacy	13	13	10	3	6	9	3	11	6	13	7	2
Provide personalized customer engagement; promote active choices (e.g. upgrading to GreenPrime); increase SVCE awareness	12	13	7	4	7	9	9	7	7	11	6	2
Engage customers in their energy use through comparisons with peers, benchmarks, their own trends (gamification)	12	8	4	4	7	4	3	7	4	13	4	1
Improve transparency on decisions for customers	11	11	7	3	5	7	4	7	4	10	7	3
Provide customers more choices and local control	9	10	13	8	11	8	10	9	8	8	7	10
Increase engagement and participation in energy programs for disadvantaged communities	4	7	6	5	3	9	10	10	12	2	6	4
Provide customer services or programs not offered by PG&E and leverage services and programs offered by PG&E	6	3	10	6	10	10	10	6	9	3	6	11



SVCE CPAG Program Evaluation Worksheet - PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (+)												
Reduce customer bills by reducing usage and shifting usage from peak price periods	12	8	4	5	13	6	5	10	6	10	2	2
Reduce customer costs in purchasing and using energy-consuming devices	10	6	10	6	7	13	11	14	8	11	4	0
Reduce demand during peak hours and increase demand during peak PV production (duck curve)	10	8	6	5	14	5	5	6	8	13	2	5
Reduce the need for/use of carbon-emitting peaker plants	6	7	6	6	13	5	4	9	9	12	2	6
Reduce GHG emissions through reduced electricity use	9	8	6	7	5	7	4	10	10	12	5	2
Promote local jobs and economic development	2	0	10	10	10	11	4	10	11	3	4	7
Provide customer backup power	1	0	2	2	13	0	3	2	1	1	1	11
Transform markets (accelerate adoption of clean energy devices and practices)	6	6	13	7	7	10	9	12	10	5	11	4



SVCE CPAG Program Evaluation Worksheet - PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (+)												
Alleviate climate change impacts (GHG reduction)	9	9	12	14	12	13	13	13	13	11	6	6
Increase readiness for expanded use of clean electricity	5	5	13	7	9	12	6	10	11	4	10	7
Improve indoor/outdoor air quality	6	5	9	11	5	10	10	8	11	2	3	5
Increase SVCE sales of clean electricity	5	4	12	13	6	9	13	6	6	1	3	4
Total Pluses	148	131	160	126	163	157	136	167	154	145	96	92

SVCE CPAG Program Evaluation
Worksheet -
PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (-)												
Increase customer energy literacy	0	0	0	0	0	0	0	0	0	0	-1	-1
Provide personalized customer engagement; promote active choices (e.g. upgrading to GreenPrime); increase SVCE awareness	0	0	0	0	-1	0	0	-1	0	0	-1	-1
Engage customers in their energy use through comparisons with peers, benchmarks, their own trends (gamification)	0	0	-1	0	0	0	0	0	0	0	-2	-1
Improve transparency on decisions for customers	0	0	-1	-1	-1	0	0	-1	0	0	-1	-1
Provide customers more choices and local control	0	0	0	-1	-1	0	0	-1	0	-1	-1	-1
Increase engagement and participation in energy programs for disadvantaged communities	0	0	-1	-3	-7	0	0	-1	0	-2	-1	-1
Provide customer services or programs not offered by PG&E and leverage services and programs offered by PG&E	0	-1	-1	-1	0	0	0	-1	0	-2	-1	0

SVCE CPAG Program Evaluation
Worksheet -
PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (-)												
Reduce customer bills by reducing usage and shifting usage from peak price periods	0	0	-2	-2	0	0	-3	-1	0	0	-1	-1
Reduce customer costs in purchasing and using energy-consuming devices	0	-1	-1	-1	-1	0	0	0	-1	0	-1	-1
Reduce demand during peak hours and increase demand during peak PV production (duck curve)	0	0	-1	0	0	-1	-1	0	0	0	-1	-1
Reduce the need for/use of carbon-emitting peaker plants	0	0	-1	-1	0	0	-3	-1	0	0	-1	0
Reduce GHG emissions through reduced electricity use	0	0	-1	-1	-3	0	-3	0	0	0	-1	0
Promote local jobs and economic development	0	-1	0	0	0	0	0	0	0	0	-1	-1
Provide customer backup power	-1	-1	-1	-2	0	-1	0	-1	0	-1	-2	0
Transform markets (accelerate adoption of clean energy devices and practices)	0	0	-1	0	-1	0	0	0	0	0	-1	-1

SVCE CPAG Program Evaluation
Worksheet -
PROGRAM BENEFITS

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Program Benefits (-)												
Alleviate climate change impacts (GHG reduction)	0	0	-1	0	0	0	0	0	0	0	-1	-1
Increase readiness for expanded use of clean electricity	0	0	0	0	0	0	0	0	0	0	-1	-2
Improve indoor/outdoor air quality	0	0	-1	0	0	0	0	0	0	0	-1	-1
Increase SVCE sales of clean electricity	-2	-2	-1	0	-3	-1	0	-4	-3	-5	-2	-1
Total Minuses	-3	-6	-15	-13	-18	-3	-10	-12	-4	-11	-22	-16



SVCE CPAG Program Evaluation Worksheet - Other Factors SCORING SHEET

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Other Factors												
Scalability (high/low)	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>
	9	12	8	3	5	8	6	8	0	9	7	2
	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>
	3	0	2	7	7	4	1	2	11	2	2	9
Customer participation (broad/narrow)	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>	<u>BROAD:</u>
	8	11	6	4	2	5	5	7	1	7	5	3
	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>	<u>NARROW:</u>
	3	1	4	7	9	6	5	4	11	4	5	9
Time to implement (short/long)	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>
	9	10	4	3	8	3	10	5	0	9	6	1
	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>
	2	1	6	8	5	8	1	6	10	3	2	11
Time to outcomes/benefits (short/long)	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>	<u>SHORT:</u>
	10	10	5	8	9	4	9	8	1	10	8	2
	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>	<u>LONG:</u>
	3	2	7	4	4	7	3	4	10	2	2	10
Uncertainty of Outcome (high/low)	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>
	3	4	4	0	9	6	5	3	9	7	6	6
	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>
	8	6	6	5	3	5	7	7	2	3	3	5
Cost (high/low)	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>
	4	1	4	5	7	6	6	7	8	3	1	7
	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>
	8	8	6	5	6	5	4	4	3	9	9	3
Cost of Carbon (high/low)	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>	<u>HIGH:</u>
	1	0	2	0	3	3	0	5	7	5	2	3
	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>	<u>LOW:</u>
	6	8	6	9	9	6	10	5	2	4	5	2

SVCE CPAG Program Evaluation
Worksheet -
COST and CARBON

	Residential Electricity Monitoring	Electricity Bill Explorer	Residential BE Ready Program, SF + MF Variants	Residential & MF EV Charging - encourage vehicle electrification	Residential Storage - reduce duck curve impacts	BE Smart Residential Water and Space Heating Upgrade	Incentives or Rebates for Used Electric Cars and Smart Chargers	MF Residence Energy Efficiency - GHG and customer cost reduction	Pilot "Mass Produced" Zero Emission Retrofit Approach	Connected Home Devices - customer understanding and load management	Electrification Process "Survivorship Curve" Analysis	Safety Preparedness & Resilience with Micro Grids
Cost & Carbon												
Program Scale	11k/yr	11k/yr	10s of thousands of participants	10k in 5 yrs	1,000 pilot then assess peak reduction benefit	4300/yr HPHWH, 2800/yr HPSC	350/yr used EV rebates, 750/yr smart chargers	6k/5 yrs	pilot site; but critical mass	2,500 pilot then assess peak reduction benefit	one-time analysis/market assessment	3 sites in 5 yrs
	[5]	[5]		[1]		[6]	[4]	[2]				[3]
5 Yr Program Cost Range	\$1m-\$5m	\$1m-\$5m	\$500k - \$1m	\$5m - \$10m	< \$500k	\$50m-\$100m	\$5m - \$10m	\$10m-\$50m	\$1m-\$5m	< \$500k	< \$500k	< \$500k
	[13]	[13]	[14]	[9]	[7]	[15]	[12]	[10]	[14]	[8]	[14]	[11]
	1. 10% MF penetration in 5 yrs					9. \$500/unit direct financial support plus program costs						
	2. About 25% capture of 1/20 annual renovation rate					10. \$1500/unit direct financial support plus program costs						
	3. 13 member agencies and 30 year facility refit interval (2 in 5 years) plus one other site					11. No direct financial support						
	4. Scaled from SCP experience					12. \$2k used vehicle rebate, \$400 smart charger rebate plus program costs						
	5. 5% per yr uptake rate					13. \$35/yr per endpoint plus program costs						
	6. 25% capture of 1/13 WH and 1/20 SC annual replacement rates					14. Program costs only						
	7. Pilot only; No direct financial support					15. HPHWH installs only; incremental cost: \$1000 plus \$1,700 installation; direct support or financing						
	8. Pilot only, based on 2017 Nest 'Seasonal Savings' quote											
Program GHG (mTCO2)	indirect	indirect	indirect	212,500	6,554	194,081	42,674	54,162	90	910	indirect	
				[19]	[16,17]	[20]	[21,22]	[20]	[20,23]	[16,18]		
Cost of Carbon (\$/mTCO2) at midpoint of cost range				35	38	386	176	554	33,234	275		
	16. 0.133 mTCO2/MWh benefit shifting from high GHG emission period (CAISO, NPT analysis)					22. half of 0.133 mTCO2/MWh shifting benefit per unit smart EVSE , 4.4 MWh/yr per unit						
	17. 13.5kWh/d load shift per unit (Powerwall rating)					23. Assumes 10 units converted in pilot						
	18. 2h shift of 1.5 kW load, or 3 kWh/d per unit, daily, 3mo/yr											
	19. Assumes every charger results in one EV, 4.25 mTCO2/yr per unit											
	20. HPHWH only; 170 T/yr avoided per unit (Carbon Free PA); 0.00531 mT/T nat gas emission factor (PG&E)											
	21. Gives full "additional" CO2 credit to used vehicles; 4.25 mTCO2/yr per unit, no "additional" CO2 credit to smart chargers											



Staff Report – Item 4

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 4: Adopt Resolution Authorizing the CEO to Execute a 15-year Power Purchase Agreement (PPA) for Renewable Supply with Duran Mesa LLC

Date: 6/13/2018

RECOMMENDATION

Staff recommends the Board adopt Resolution 2018-08, delegating authority to the Chief Executive Officer to (A) execute a Power Purchase Agreement (PPA) for Renewable Supply (PCC1) with Duran Mesa LLC, with terms consistent with those presented, in a form approved by the General Counsel; and (B) execute such other ancillary documents in a form approved by General Counsel as may be necessary to effectuate the purchases of power from Duran Mesa LLC.

BACKGROUND

In 2016, SB350 was enacted into law, requiring Load Serving Entities (LSE) to acquire a minimum of 65% of their Renewable Portfolio Standard (RPS) requirement, or a minimum of 20% of the LSE's total load obligations, through long-term Power PPAs (10 years or more), for delivery beginning in 2021.

On September 15, 2017, Silicon Valley Clean Energy (SVCE) and Monterey Bay Community Power (MBCP) issued a Joint Request for Offers (Joint RFO) for long-term power supply. The goal of the Joint RFO was to secure one or more long-term PPAs to meet the SB350 requirements, while maintaining reliability of the grid.

Eighty-seven (87) unique offers were received in October 2017. The offers proposed the building of forty-nine (49) new projects that were in various stages of development. Most of these proposed projects would be located in California, while the others were in neighboring states and one in Canada.

Three offers were selected (shortlisted) in November 2017 and contract negotiations began in December 2017.

ANALYSIS & DISCUSSION

One of the shortlisted projects, with the completion of negotiations over the terms, is being presented to the SVCE Board of Directors (Board) for approval. Staff is recommending the Board approve a PPA with the terms described below.

Counterparty Name	Duran Mesa LLC*
Product	Bucket 1 (PCC1) Renewable Energy, Wind technology
Delivery Term	15 years (December 31, 2020 through December 30, 2035)
Project Name	Corona Wind Farm
Contract Capacity	110 MWs**
Capacity Factor	48%
Location	Torrance and Lincoln Counties, New Mexico
Percentage of Retail Load Served	10%
Events of Default	Industry standard terms, including a requirement to deliver no less than an 80% minimum guaranteed energy production annually, and missing guaranteed milestones of GCSD (Guaranteed Construction Start Date=12/1/2019) and GCOD (Guaranteed Commercial Operation Date=12/31/2020).

*Duran Mesa LLC's parent company is Pattern SC Holdings LLC, an experienced wind developer and operator in North America.

**The Corona Wind project is a 200 MW wind farm with the output to be shared between SVCE and MBCP. The attached PPA reflects only SVCE's share of that output.

STRATEGIC PLAN

SVCE's Strategic Plan, Goal 9.1.2, directs staff to acquire long-term agreements to meet California's renewable mandate. Execution of this PPA satisfies this goal.

SVCE's Strategic Plan, Goal 10.2, directs staff to promote regionalization to enhance the value of out-of-state renewable resources. Execution of this PPA will allow this project, located in New Mexico, to be built and thus supports this goal.

ALTERNATIVE

The Joint RFO selection criteria considered all submitted offers against quantitative and qualitative criteria in order to meet SVCE's Strategic Plan. The Corona Wind project was selected as part of this competitive process. SVCE and MBCP have conducted and completed good faith negotiations with this developer over the last six months, all with the intent to execute the attached PPA. An alternative to the staff recommendation is to direct staff to re-negotiate specific contract terms with the supplier or reject the PPA with this supplier and direct staff to pursue other alternatives.

FISCAL IMPACT

The fiscal impact of the Corona Wind project will not exceed \$280 million over the term of the PPA.

Relative to short-term purchases, acquiring power from this project is likely to reduce SVCE's annual cost by \$3,000,000.

ATTACHMENTS

1. Power Purchase Agreement between Duran Mesa LLC and Silicon Valley Clean Energy Authority
2. Resolution 2018-08, Delegating Authority to the Chief Executive Officer to (A) Execute a Power Purchase Agreement with Duran Mesa LLC, a Limited Liability Company, and (B) Execute Such Other Ancillary Documents, in a Form Approved by General Counsel

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

Seller: Duran Mesa LLC, a limited liability corporation

Buyer: Silicon Valley Clean Energy Authority, a California joint powers authority

Description of Facility: The 200 MW wind-powered electricity generating facility described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones

Milestone	Date for Completion
Evidence of Site Control	Completed
Expected PTO Construction Start	12/31/2018
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	12/1/2019
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	6/30/2019
Executed Interconnection Agreement	12/1/2019
Financial Close	12/1/2019
Expected Construction Start Date	12/1/2019
Initial Synchronization	6/30/2020
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)	6/30/2020
Expected Commercial Operation Date	12/31/2020

Delivery Term: The period for Product delivery will be for 15 Contract Years.

Expected Energy (Note that the Expected Energy reflects Buyer's Share of the total annual expected energy output of the Facility):

Contract Year	Expected Energy (MWh)
1 – 15	██████████

Contract Price

The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 15	████████████████████ ████████████████████

Product

- Delivered Energy
- Green Attributes/Renewable Energy Credit (Bucket 1)
- Capacity Attributes
- Full Capacity Deliverability Status and Expected FCDS Date: N/A

Scheduling Coordinator: Seller/Seller Third-Party

Security, Damage Payment, and Guarantor

Development Security: \$6,600,000

Performance Security: ██████████

Damage Payment: ██████████

Guarantor: N/A (if applicable)

Notice Addresses:

Seller:

Duran Mesa LLC
1201 Louisiana St., Suite 3200
Houston, TX, 77002
Attention: Kellie Metcalf
Phone No.: (713) 308-4206
Fax No.: (415) 362-7900

With a copy to:

Duran Mesa LLC
Pier 1, Bay 3
San Francisco, CA, 94111
Attention: Andy Murray
Phone No.: (415) 283 - 4032
Fax No.: 415 362 7900

Scheduling:

Seller:

Name 24/7 Operations Control Center
Email: patternocc@patternenergy.com
Phone No.: 713-308-4242
Fax No.: 281-694-2848

Buyer:

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Girish Balachandran, CEO
Phone No.: (408) 721-5301
Email: girish@svcleanenergy.org

With a copy to:

Troutman Sanders LLP
100 SW Main St. Ste. 1000
Portland, Oregon 97204
Attention: Stephen Hall
Fax No.: (503) 290-2405
Phone No.: (503) 290-2336
Email: Steve.Hall@troutmansanders.com

SELLER
Duran Mesa LLC

By: _____
Name: _____

BUYER
Silicon Valley Clean Energy Authority

By: _____
Name: _____

Title: _____

Title: _____

TABLE OF CONTENTS

		Page
ARTICLE 1	DEFINITIONS.....	1
1.1	Contract Definitions.....	1
1.2	Rules of Interpretation.....	17
ARTICLE 2	TERM; CONDITIONS PRECEDENT.....	18
2.1	Contract Term.....	18
2.2	Conditions Precedent.....	18
2.3	Progress Reports.....	19
2.4	Remedial Action Plan.....	19
ARTICLE 3	PURCHASE AND SALE.....	20
3.1	Sale of Product.....	20
3.2	Sale of Green Attributes.....	20
3.3	Compensation.....	20
3.4	Imbalance Energy.....	21
3.5	Ownership of Renewable Energy Incentives.....	21
3.6	Future Environmental Attributes.....	22
3.7	Test Energy.....	22
3.8	Capacity Attributes.....	22
3.9	[Reserved].....	23
3.10	CEC Certification and Verification.....	23
3.11	Eligibility.....	23
3.12	California Renewables Portfolio Standard.....	23
3.13	Compliance Expenditure Cap.....	23
ARTICLE 4	OBLIGATIONS AND DELIVERIES.....	24
4.1	Delivery.....	24
4.2	Title and Risk of Loss.....	24
4.3	Scheduling Coordinator Responsibilities.....	25
4.4	Forecasting.....	26
4.5	Dispatch Down/Curtailment.....	27
4.6	Reduction in Delivery Obligation.....	28
4.7	Guaranteed Energy Production.....	29
4.8	WREGIS.....	29
ARTICLE 5	TAXES.....	30
5.1	Allocation of Taxes and Charges.....	30
5.2	Cooperation.....	31
ARTICLE 6	MAINTENANCE OF THE FACILITY.....	31
6.1	Maintenance of the Facility.....	31
6.2	Maintenance of Health and Safety.....	31
6.3	Shared Facilities.....	31

ARTICLE 7	METERING.....	32
7.1	Metering.....	32
7.2	Meter Verification.....	32
ARTICLE 8	INVOICING AND PAYMENT; CREDIT.....	32
8.1	Invoicing.....	32
8.2	Payment.....	33
8.3	Books and Records.....	33
8.4	Payment Adjustments; Billing Errors.....	33
8.5	Billing Disputes.....	33
8.6	Netting of Payments.....	34
8.7	Seller’s Development Security.....	34
8.8	Seller’s Performance Security.....	34
8.9	Financial Statements.....	34
8.10	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	35
8.11	Buyer Creditworthiness.....	35
ARTICLE 9	NOTICES.....	38
9.1	Addresses for the Delivery of Notices.....	38
9.2	Acceptable Means of Delivering Notice.....	38
ARTICLE 10	FORCE MAJEURE.....	38
10.1	Definition.....	38
10.2	No Liability If a Force Majeure Event Occurs.....	39
10.3	Notice.....	39
10.4	Termination Following Force Majeure Event.....	39
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION.....	40
11.1	Events of Default.....	40
11.2	Remedies; Declaration of Early Termination Date.....	42
11.3	Termination Payment.....	43
11.4	Notice of Payment of Termination Payment.....	43
11.5	Disputes With Respect to Termination Payment.....	43
11.6	Rights And Remedies Are Cumulative.....	43
11.7	Mitigation.....	44
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	44
12.1	No Consequential Damages.....	44
12.2	Waiver and Exclusion of Other Damages.....	44
ARTICLE 13	REPRESENTATIONS AND WARRANTIES; AUTHORITY.....	45
13.1	Seller’s Representations and Warranties.....	45
13.2	Buyer’s Representations and Warranties.....	46

13.3	General Covenants	46
13.4	Prevailing Wage.....	47
ARTICLE 14	ASSIGNMENT.....	47
14.1	General Prohibition on Assignments	47
14.2	Collateral Assignment.....	47
14.3	Permitted Assignment by Seller.....	49
ARTICLE 15	DISPUTE RESOLUTION	49
15.1	Governing Law.	49
15.2	Dispute Resolution.....	49
15.3	Attorneys’ Fees.	50
ARTICLE 16	INDEMNIFICATION.....	50
16.1	Indemnification.	50
16.2	Claims.	50
ARTICLE 17	INSURANCE.....	51
17.1	Insurance	51
ARTICLE 18	CONFIDENTIAL INFORMATION	52
18.1	Definition of Confidential Information.....	52
18.2	Duty to Maintain Confidentiality.....	52
18.3	Irreparable Injury; Remedies	53
18.4	Disclosure to Lender	53
18.5	Press Releases	53
ARTICLE 19	MISCELLANEOUS	53
19.1	Entire Agreement; Integration; Exhibits.....	53
19.2	Amendments	54
19.3	No Waiver.....	54
19.4	No Agency, Partnership, Joint Venture or Lease.....	54
19.5	Severability	54
19.6	Mobile-Sierra	54
19.7	Counterparts.....	54
19.8	Facsimile or Electronic Delivery	54
19.9	Binding Effect.....	55
19.10	No Recourse to Members of Buyer	55
19.11	Change in Electric Market Design.....	55

Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Contract Price
Exhibit D	Emergency Contact Information
Exhibit E	Progress Reporting Form
Exhibit F	Average Expected Energy
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Buyer Bid Curtailment and Buyer Curtailment Orders

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement (“Agreement”) is entered into as of _____ (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.”

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;
and

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

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

ARTICLE 1 DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.13.

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

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

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

“Alternative Delivery Point” means a Scheduling Point, as defined in the CAISO Tariff, other than the Delivery Point.

“Annual Customer Load” means the actual metered load of Buyer’s customers in MWh served by Buyer during a fiscal year period beginning October 1 and ending September 30 during the Delivery Term, as reported in the CAISO T+48 data report.

“Annual Load Notice” has the meaning set forth in Section 8.11(c).

“Approved Meter” means a CAISO approved revenue quality meter or meters, or if a CAISO approved meter is not available consistent with PTO requirements, then a PTO approved meter, together with a CAISO or PTO, as the case may be, approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

“Available Capacity” means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

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

“Bid” has the meaning set forth in the CAISO Tariff.

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

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to Seller or its designee SC for the Facility, if applicable, that, or by operation of the CAISO Tariff in the absence of a specific notice, Seller is required to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time (absent consideration of any Buyer Bid Curtailment or Buyer Curtailment Order);

(b) for the same time period as referenced in (a), Seller or its designee SC for the Facility, if applicable, consistent with Buyer’s Bid instructions or failure to provide Bid instructions:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice or obligation referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility (absent consideration of any Buyer Bid Curtailment or Buyer Curtailment Order); and

(c) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a) that prevents generation of any Energy from the Facility.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period that prevents generation of any Energy from the Facility.

“Buyer’s Share” means fifty-five percent (55%).

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

“CAISO Charges Invoice” has the meaning set forth in Section 1.1(c).

“CAISO Credit” means the amount, in dollars per MWh, that Seller receives for Scheduling Substitute Product with CAISO, which amount shall be deemed to be equal to the Index Price.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107

(2008), X-1 2 (2011), and 350 (2015), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“**Collateral Agent**” has the meaning in the Security Agreement.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

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

“**Construction Start**” has the meaning set forth in Exhibit B.

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

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

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

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

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either

in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**Coverage Ratio**” has the meaning set forth in Section 8.11(b).

“**Coverage Threshold**” has the meaning set forth in Section 8.11(d).

“**CPM Capacity**” has the meaning set forth in the CAISO Tariff.

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to 50 hours multiplied by Buyer's Share and multiplied by the Installed Capacity.

“**Curtailment Order**” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

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

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order. Curtailment Period shall not include periods during which Seller reduces generation as a result of a Buyer Bid Curtailment or a Buyer Curtailment Order.

"Customer Load Baseline" means the lesser of (a) the actual metered load of Buyer's customers in MWh served by Buyer during the period of October 1, 2017 through September 30, 2018 as reported in the CAISO T+48 data report or (b) the Annual Customer Load for the fiscal year occurring eight (8) years prior to the fiscal year in the applicable Annual Load Notice.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet.

"Day-Ahead LMP" has the meaning set forth in the CAISO Tariff.

"Day Ahead Forecast" has the meaning set forth in Section 4.4(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to Buyer's Share of the amount specified in the VER Forecast less the Buyer's Share of the amount of Delivered Energy during the Buyer Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0)

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.8(e).

"Delivered Energy" means all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the Approved Meter, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use. It is the Parties' expectation that the amounts of Delivered Energy will correspond with the amounts specified in the e-Tags associated with the Dynamic Schedules, after such e-Tags have become final and subject to rounding.

"Delivery Point" has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Dynamic Schedule**” has the meaning set forth in the CAISO Tariff.

“**Early Termination Date**” has the meaning set forth in Section 11.2.

“**Economic Bid**” has the meaning set forth in the CAISO Tariff.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy, measured in MWh.

“**Energy Supply Bid**” has the meaning defined in the CAISO Tariff.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Expected Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Expected Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Expected Energy**” means the quantity of Energy (with associated Product) that Seller expects to be able to deliver to Buyer during each Contract Year in the quantity specified on the Cover Sheet.

“**Extension Period**” has the meaning set forth in Exhibit B.

“**Facility**” means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

“**Financial Close**” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

“**Floor Price**” has the meaning set forth in Section 4.3(b).

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.8(a).

“**Future Environmental Attributes**” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by a wind generation facility as opposed to from a conventional generation resource.

“**Gains**” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

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

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide,

hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy generated by the Facility. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas 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 Facility.

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

"Guaranteed Capacity" has the meaning set forth in Exhibit A.

"Guaranteed Commercial Operation Date" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"Guaranteed Construction Start Date" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"Guaranteed Energy Production" has the meaning set forth in Section 4.7.

"Guarantor" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

“**Imbalance Energy**” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

“**Index Price**” means, for any given month, the weighted-average Day-Ahead LMP at the Delivery Point for such month, where the weighting shall be based upon the volumes for each hour set forth in Exhibit F.

“**Initial Synchronization**” means the initial delivery of Energy from the Facility to the Delivery Point.

“**Installed Capacity**” means the actual generating capacity of the Facility at the point of interconnection specified in the Interconnection Agreement, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“**Intercreditor and Collateral Agency Agreement**” means that certain 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 thereto, and Silicon Valley Clean Energy Authority.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Investment Grade Credit Rating**” means a Credit Rating of not less than BBB by S&P and Baa2 by Moody’s.

“**Joinder**” has the meaning set forth in the Intercreditor and Collateral Agency Agreement.

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated March 31, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

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

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, and (b) in a form substantially similar to the letter of credit set forth in Exhibit K or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in CAISO Tariff.

“**Lockbox Account**” has the meaning set forth in the Security Agreement.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Exhibit G.

“**Master File**” has the meaning set forth in the CAISO Tariff.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour measured in alternating current.

“**Negative LMP**” means, in any Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“**Other Buyer**” means the Buyer under and as defined in the Other Power Purchase Agreement.

“**Other Power Purchase Agreement**” means the Renewable Power Purchase and Sale Agreement entered into as of the same date as this Agreement between Seller and Monterey Bay Community Power Authority.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Product” has the meaning set forth on the Cover Sheet.

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits for which Seller is eligible in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Discount” means (i) \$ [REDACTED] or (ii) if Seller provides Replacement Capacity Attributes with Substitute Product, \$ [REDACTED].

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“**Scheduled Energy**” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, including Section 4.3, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“**Scheduling Infrastructure and Business Rules**” or “**SIBR**” has the meaning set forth in the CAISO Tariff.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Secured Creditor**” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“**Security Agreement**” means the Security Agreement, dated as of December 15, 2016, between Buyer and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“**Security Interest**” has the meaning set forth in Section 8.10.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Form of Construction Start Date Certificate in Exhibit J to Buyer.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to

lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“Substitute Product” has the meaning set forth in Exhibit B.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Termination Payment” has the meaning set forth in Section 11.3.

“Test Energy” means the Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“**VER Forecast**” means the forecast prepared by CAISO, or its consultant, for Variable Energy Resources as part of the EIRP, or a successor established in accordance with Section 4.5(e).

“**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 Deficit**” has the meaning set forth in Section 4.8(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer a completion certificate from a licensed professional engineer substantially in the form of Exhibit H;

(b) A Participating Generator Agreement and, if applicable, a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure or Buyer default,

Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. So long as Seller is in compliance with its obligations under this Section 2.4, its failure to meet one or more milestones shall not be a default under this Agreement, except as set forth in Section 11.1(b)(ii).

2.5 **Termination Right For Delay.** If either (a) the PTO has not issued a full notice to proceed to its primary construction contractor for the construction of its transmission facilities that will interconnect with the Facility on or before July 1, 2020 (which date may be extended by Seller until December 31, 2020 if Seller provides evidence reasonably satisfactory to Buyer that the PTO is reasonably likely to issue its full notice to proceed on or before December 31, 2020) or (b) Seller has not issued a full notice to proceed to its primary construction contractor for the construction of the Facility on or before June 1, 2021, then either Party may terminate this Agreement upon Notice to the other delivered on or before August 1, 2020 (in the case of (a) if there is no extension of the July 1, 2020 date), January 31, 2021 (in the case of (a) if there is an extension of the July 1, 2020 date) or July 1, 2021 (in the case of (b)). Upon any such termination, Seller shall forfeit to Buyer the Development Security and neither Party will have any further liability to the other under this Agreement.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, Buyer’s Share of the Product produced by the Facility. Buyer shall re-sell all Delivered Energy delivered by Seller hereunder (which, for the avoidance of doubt, shall equal Buyer’s Share of all Delivered Energy) and, at its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the remainder of the Product delivered by Seller hereunder (which, for the avoidance of doubt, shall equal Buyer’s Share of the remainder of the Product). Subject to Buyer’s obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes attributable to Buyer’s Share of the Delivered Energy produced by the Facility.

3.3 **Compensation.**

(a) Buyer shall pay Seller the Contract Price for each MWh of Product delivered hereunder, as measured by Buyer's Share of the amount of Delivered Energy plus all Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year. In addition, during the period in which Seller is eligible to receive PTCs, Buyer shall pay Seller the PTC Amount for all Deemed Delivered Energy; provided, however, no PTC Amount will be paid for Deemed Delivered Energy once Buyer's Share of the amount of Delivered Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, Buyer's Share of the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead LMP for each Settlement Interval.

(c) If during any Settlement Interval, Seller generates Product amounts in excess of the Installed Capacity, then the price applicable to Buyer's Share of all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price plus the PTC Amount.

(e) If (i) Buyer fails or is unable to take Buyer's Share of the Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller, as Seller's sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period plus the PTC Amount.

3.4 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy but shall not be required to curtail the Delivered Energy other than pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. So long as Seller is in compliance with its forecasting obligations under EIRP (if available) and Section 4.4, Buyer shall be responsible for Buyer's Share of all CAISO costs, and shall be entitled to Buyer's Share of all CAISO revenues, associated with Imbalance Energy.

3.5 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing

the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for Buyer's Share of such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim Buyer's Share of such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall offer to make available to Buyer Buyer's Share of such Test Energy. If Buyer desires to purchase Buyer's Share of the Test Energy, Buyer shall pay to Seller seventy five percent (75%) of the Contract Price for such Test Energy and Buyer shall be entitled to all Product associated therewith.

3.8 **Capacity Attributes.**

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer Buyer's Share of all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer Buyer's Share of all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting

requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.9 **[Reserved]**

3.10 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility'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.

3.12 **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed below, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at five thousand dollars (\$5,000) per MW of Guaranteed Capacity in any Contract Year and twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity in the aggregate over the Delivery Term ("**Compliance Expenditure Cap**"):

- (a) CEC Certification and Verification;
- (b) Green Attributes;
- (c) WREGIS; and
- (d) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions.**"

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer and the Other Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice and Seller shall have no further obligations to take, and no liability for an failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by Buyer (together with any similar compliance actions and costs agreed upon by the Other Buyer, if applicable) and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept Buyer’s Share of all Delivered Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Delivered Energy through Dynamic Schedules, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with Buyer’s Share of the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys Buyer’s Share of all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to Buyer’s Share of the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to Buyer’s Share of the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Scheduling Coordinator Responsibilities**

(a) **Seller as Scheduling Coordinator for the Facility.** Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. Seller or its designee shall submit Bids to the CAISO in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, the applicable CAISO Tariff and protocols (including the EIRP, if applicable), and Buyer's instructions on a day-ahead, hour-ahead, fifteen-minute market or real time basis; provided that (i) Buyer's instructions are communicated to Seller or its designee reasonably in advance of the deadlines for submitting such Bids to CAISO and in a form reasonably acceptable to Seller; (ii) such instructions, and the resulting Bids, are in full compliance with the CAISO Tariff, applicable Law and the standing dispatch instructions developed pursuant to Section 4.3(b); and (iii) such instructions are identical to the instructions of the Other Buyer under the Other Power Purchase Agreement. In the event that Buyer's instructions are not communicated to Seller or its designee reasonably in advance of the deadlines for submitting such Bids to CAISO, such instructions and Bids are not in full compliance with the CAISO Tariff and applicable Law or such instructions are not identical to the instructions of the Other Buyer under the Other Power Purchase Agreement, Seller shall submit Bids to CAISO in respect of Facility output in accordance with Prudent Operating Practice and the standing dispatch instructions developed pursuant to Section 4.3(b).

(b) **Standing Dispatch Instructions.** At least ninety (90) days before the beginning of the Delivery Term, the Parties shall establish mutually acceptable standing dispatch instructions with respect to scheduling, bidding, and conditions for curtailment (e.g., negative pricing). Such standing dispatch instructions shall be identical to the standing dispatch instructions established with the Other Buyer under the Other Power Purchase Agreement and will include (i) a requirement that Seller submit Energy Supply Bids in the Real Time Market with a floor price that is equal to the negative equivalent of the Contract Price plus any applicable PTC Amount ("Floor Price"), such that there will be no Scheduled Energy if the LMP in the Real Time Market at the Delivery Point is below the Floor Price and (ii) a requirement that, if Buyer wishes to submit Bids in the Day Ahead Market, such Bids will reflect no more than the Day Ahead Forecast.

(c) **CAISO Costs and Revenues.** Seller shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) in each case, associated with (i) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (ii) any other failure by Seller to abide by the CAISO Tariff. The Parties agree that any Availability Incentive Payments, as defined in the CAISO Tariff, are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges, as defined in the CAISO Tariff, are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility. Subject to the foregoing, Seller shall pass through to Buyer Buyer's Share of all CAISO costs and revenues associated with the Facility, including revenues and costs associated with Bids and with deviations between Scheduled

Amounts and Delivered Amounts. Such pass through shall be accomplished by netting against amounts owed to Seller in connection with the invoicing and payment provisions of Article 8.

(d) CAISO Settlements. Seller or its designee shall be responsible for all settlement functions with the CAISO related to the Facility. Seller shall render a statement to Buyer showing all CAISO revenues and charges for which each of Buyer and Seller is responsible under this Agreement after settlement information becomes available from the CAISO. Notwithstanding the foregoing, Buyer acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO revenues and charges.

(e) Dispute Costs. Seller or its designee, as SC for the Facility, may be required to dispute CAISO settlements in respect of the Facility. Upon Buyer's reasonable request, Seller or its designee will dispute, in accordance with the CAISO Tariff, CAISO charges for which Buyer is responsible, or CAISO revenues for which Buyer is entitled, hereunder, provided that Buyer agrees to pay Seller's or its designee's costs and expenses (including reasonable attorneys' fees) associated with Seller's or its designee's involvement with such CAISO disputes. If Buyer and the Other Buyer each request Seller or its designee to dispute the same item and the Other Buyer agrees to pay its share of the costs and expenses, Buyer shall pay Buyer's Share of the costs and expenses.

(f) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4 Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if EIRP is not available for any reason, the expected Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s)

shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if EIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts of Available Capacity. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

4.5 Dispatch Down/Curtailment.

(a) General. Subject to Sections 4.5(d), Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment.

(b) Buyer Curtailment. Subject to Sections 4.5(d), Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price. Each Buyer Curtailment Order or Buyer Bid Curtailment shall correspond to the Facility's operational limitations, as set forth in Exhibit O. Whenever the Real Time Market LMP at the Delivery Point is below the Floor Price, Buyer shall be presumed to have issued a Buyer Curtailment Order to Seller for the applicable time period. Buyer shall coordinate all Buyer Curtailment Orders with the Other Buyer and shall only issue Curtailment Orders jointly under this Agreement and under the Other Power Purchase Agreement.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, subject to Section 4.5(d), for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the product of (1) Buyer's Share and (2) the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties

or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Alternative Delivery Point/Third Party Sales. In the event that, and for so long as, Seller is unable to Dynamically Schedule or deliver all or a portion of Buyer's Share of the Product to Buyer at the Delivery Point, but is able to Dynamically Schedule and deliver Product to Buyer at an Alternative Delivery Point, such Alternative Delivery Point shall be considered the Delivery Point under this Agreement; provided, however, that Seller shall credit to Buyer against amounts owed to Seller under Article 8 any reduction in CAISO revenues resulting from Seller's delivery of Buyer's Share of the Product to Buyer at an Alternative Delivery Point. Subject to the foregoing sentence, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period to one or more third party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice. During any Buyer Curtailment Period reasonably expected to last for more than five (5) consecutive days, Seller shall use commercially reasonable efforts to sell Product to one or more third party buyers at a price above \$0.00/MWh. To the extent that Seller makes sales to one or more third party buyers at a price above \$0.00/MWh but below the Contract Price during any Buyer Curtailment Period, Seller shall pay to Buyer, for any such sales in excess of the Curtailment Cap, an amount equal to the product of (1) Buyer's Share, (2) the positive difference between the Contract Price and the price received by Seller for such third party sales, less any incremental costs incurred by Seller in making such third party sales and (3) the amount of Product sold. In the event that the price received by Seller for such third party sales in excess of the Curtailment Cap, less any incremental costs incurred by Seller in making such third party sales, equals or exceeds the Contract Price, Seller shall pay to Buyer an amount equal to the product of (1) Buyer's Share, (2) the Contract Price and (3) the amount of Product sold.

(e) VER Forecasts. If Seller determines that an alternative methodology for determining Deemed Delivered Energy is more accurate than the EIRP-based VER Forecast, based upon no less than six months of recorded data comparing the VER Forecast, the results of the alternative methodology and actual Delivered Energy data, such alternative methodology (or such other methodology as agreed to by the Parties) shall, subject to Buyer's consent (not to be withheld or delayed unreasonably), be considered the VER Forecast and used to determine the Deemed Delivered Energy; provided, that any such successor VER Forecast shall itself be subject to periodic review by the Parties under the foregoing criteria.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each two (2) consecutive Contract Year period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the average Expected Energy (as set forth on the Cover Sheet) for such period. The calculation will be performed once each Contract Year, beginning with the second anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, Curtailment Periods, and Buyer Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit G) delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days of the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product

to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid Buyer's Share of all Taxes on or with respect to the delivery to and purchase by Buyer of Buyer Share of the Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed on the high voltage side of the Seller's transformer and maintained at Seller's cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practices and CAISO or PTO, as applicable, requirements. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility, as applicable.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Buyer's Share of the Product no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the Approved Meter, the Contract Price applicable to such Product, deviations between the Scheduled Energy and the Delivered Energy, the LMP prices at the Facility PNode and Delivery Point for each Settlement Period, and all CAISO costs and revenues for which Buyer is responsible; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Buyer's Share of the Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated

with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied. In any event, Buyer shall provide to Seller unaudited quarterly financial statements on or before

December 1 of each year and audited annual financial statements on or before February 15 of each year, in each case including a balance sheet and statements of income and cash flows, all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, from the Effective Date until Buyer obtains a credit rating reasonably satisfactory to Seller.

8.10 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.10:

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.11 **Buyer Creditworthiness.**

(a) No later than February 15 of each year beginning in 2019, Buyer shall determine and provide to Seller a Notice indicating its Coverage Ratio as of the end of the prior fiscal year ending on October 1 (“**Credit Notice**”).

(b) The “**Coverage Ratio**” shall be determined from Buyer’s audited financial statements and Buyer shall include with the Credit Notice all information, including its audited

financial statements, used in determining the Coverage Ratio. The Coverage Ratio is calculated as follows:

$$\frac{\text{Total Revenues} - \text{Total Expenses (less Actual PPA Payment to Seller)} + \text{Total Cash Reserve Balance}}{\text{Actual PPA Payment to Seller}}$$

The Total Cash Reserve Balance in the above calculation shall be as of the beginning of the relevant fiscal year and shall only include cash reserves that are not committed (whether by lien, pledge or other encumbrance).

(c) No later than February 15 of each year beginning in 2020, Buyer shall determine and provide to Seller a Notice indicating its Annual Customer Load served during the prior fiscal year (“**Annual Load Notice**”).

(d) As used in this Agreement, the “**Coverage Threshold**” shall be ■■■■, except that, beginning in 2020, if (i) the Annual Customer Load in the Annual Load Notice is not more than ■■■■

(e) In the event that Buyer’s Coverage Ratio is less than the Coverage Threshold, Buyer shall provide to Seller within fifteen (15) days of the date that the Credit Notice is due cash or a Letter of Credit in an amount equal to ■■■■ (“**Seller Security**”). If Buyer is required to provide Seller Security, Buyer may re-determine the Coverage Ratio each calendar quarter thereafter on a rolling four-quarter basis using the same sources of information (including audited quarterly financial statements) as previously used. Buyer shall maintain Seller Security until the Coverage Ratio is equal to or greater than the Coverage Threshold over a four consecutive calendar quarter period; Buyer shall not be obligated to maintain Seller Security once the Coverage Ratio exceeds the Coverage Threshold over a four consecutive calendar quarter period. If Buyer’s obligation to maintain Seller Security is excused as a result of its reaching a Coverage Ratio in excess of the Coverage Threshold over a four consecutive calendar quarter period that does not correspond to Buyer’s full fiscal year, the provisions of Section 8.11(e) shall apply anew to Buyer at the end of Buyer’s then current fiscal year.

(f) If the issuer of Buyer’s Letter of Credit (i) suffers a River City Downgrade, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Seller’s properly documented request to draw on such Letter of Credit by such issuer, Buyer shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit.

(g) To secure its obligations under this Agreement, and until released as provided herein, Buyer hereby grants to Buyer a present and continuing first-priority security interest (“**Seller Security Interest**”) in, and lien on (and right to net against), and assignment of the Seller Security, any other cash collateral and cash equivalent collateral posted pursuant to Section 8.11 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Seller, and Buyer agrees to take all action as Seller reasonably requires in order to perfect Seller’s Security Interest

in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(h) Upon or any time after the occurrence of an Event of Default caused by Buyer, an Early Termination Date resulting from an Event of Default caused by Buyer, or an occasion provided for in this Agreement where Seller is authorized to retain all or a portion of the Seller Security, Seller may do any one or more of the following (in each case subject to the final sentence of this Section 8.11(g):

- (a) Exercise any of its rights and remedies with respect to the Seller Security, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Seller as Seller Security; and
- (c) Liquidate all Seller Security then held by or for the benefit of Seller free from any claim or right of any nature whatsoever of Buyer, including any equity or right of purchase or redemption by Buyer.

Seller shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Buyer's obligations under this Agreement (Buyer remains liable for any amounts owing to Seller after such application), subject to Seller's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

(i) The provisions of Section 8.11 shall not apply for so long as Buyer maintains an Investment Grade Credit Rating.

(j) [REDACTED]

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming

Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure by Seller to achieve Commercial Operation by the Guaranteed Commercial Operation Date;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer’s reasonable satisfaction, within ten (10)

Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(c) with respect to Buyer as the Defaulting Party, if Buyer defaults under the Security Agreement or the Intercreditor and Collateral Agency Agreement.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.9, 4.6, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES

BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of New Mexico.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each

jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform work or provide services at the Site are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable New Mexico law, if any (“Prevailing Wage Requirement”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any New Mexico labor laws.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party; provided, however, that a change of control of Seller shall not require Buyer’s consent in connection with tax-equity financing or if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

(a) Buyer shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; *provided*, such cure period may, in Buyer's sole discretion, be extended by no more than an additional one hundred eighty (180) days;

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or

indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if, Seller satisfies all of the following requirements in the case of an assignment under clause (b) of this Section 14.3:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

If Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Permitted Transferee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer. Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15 DISPUTE RESOLUTION

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

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such

dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however,* that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold

the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried

pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law,

(b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement (including in connection with transactions involving the Other Buyer under the Other Power Purchase Agreement). If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as

a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via

overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

SELLER

BUYER

By: _____

By: _____

Name: _____

By: _____

Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Duran Mesa Wind

Site includes all or some of the following APNs: [To be provided]

County: Torrance County, New Mexico

Technology: Siemens Wind Turbines - SWT 2.3-108, SWT 2.5-120, SWT 2.625-120

Guaranteed Capacity: 110 MW

Delivery Point: Palo Verde

P-node: APN - PALOVRDE_ASN_APND

Participating Transmission Owner: SunZia Transmission, LLC (as of the Effective Date and to be confirmed or modified as of the Construction Start Date)

Notwithstanding anything to the contrary in Exhibit A or elsewhere in the Agreement, at any time prior to the Commercial Operation Date and upon written notice to Buyer, Seller may substitute for the facility at the Site described herein an alternative wind powered electricity generating facility at an alternative Site within the geographical area shown on the map below, so long as the technology, Guaranteed Capacity, Delivery Point and P-node remain the same and so long as Seller certifies that it remains able to comply with its obligations under this Agreement.

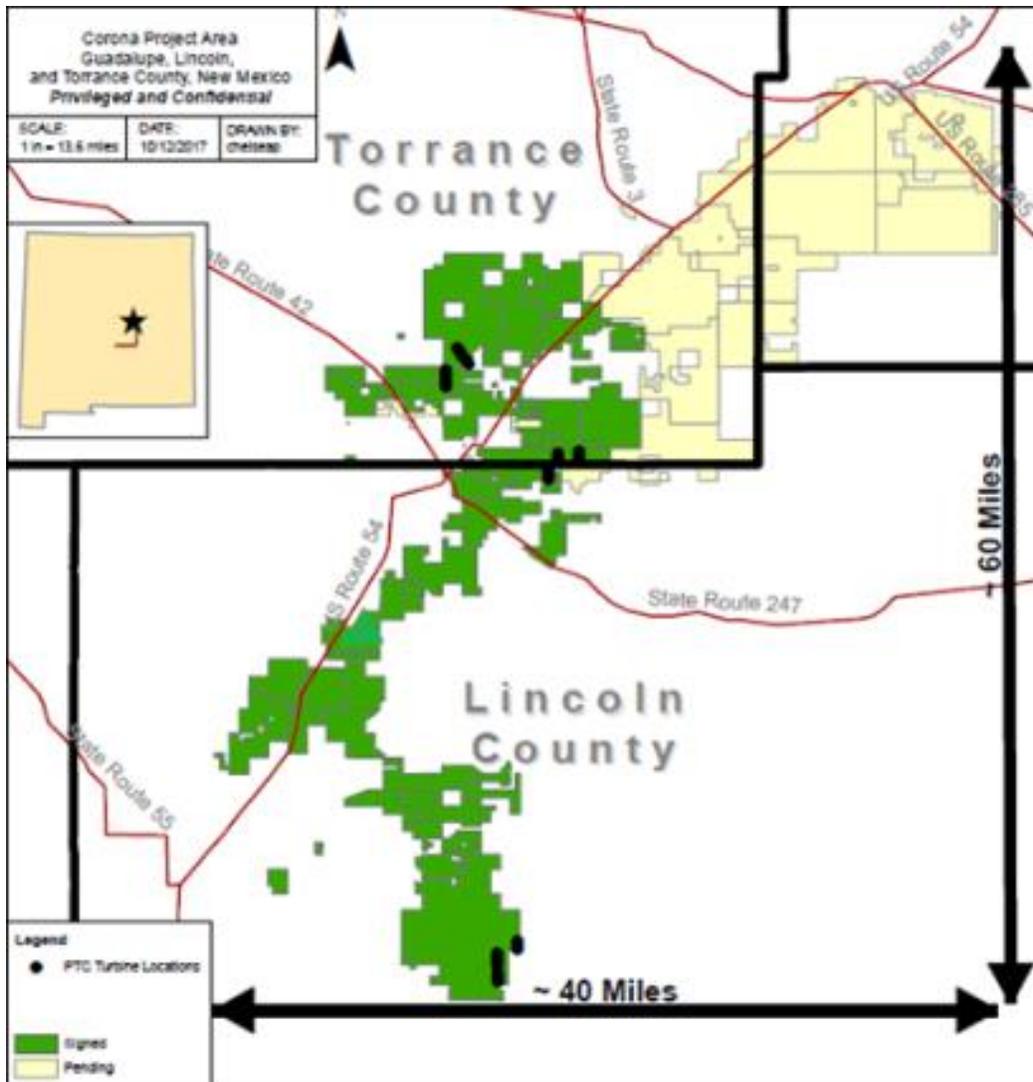


Exhibit A - 2

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. “**Construction Start**” will occur following Seller’s execution of an EPC Contract related to the Facility and issuance of a Full Notice to Proceed with the construction of the Facility. The date of Construction Start will be evidenced by Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and Buyer’s acceptance and written acknowledgement thereof, and the dated certified therein shall be the “**Construction Start Date**.” The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until the earlier of (i) Seller reaches Construction Start of the Facility or (ii) the Daily Delay Damages equal the amount of the Development Security. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.

- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the earlier of (i) the Commercial Operation Date or (ii) the aggregate of any Daily Delay Damages paid by Seller and not refunded by Buyer plus any Commercial Operation Delay Damages paid by Seller equals the amount of the Development Security. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation by the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the following delays:
 - a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to construct, interconnect, operate or permit the Seller and Facility to make available and sell Product by the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller;
 - b. a Force Majeure Event occurs;
 - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Expected Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller;
 - d. a delay in the construction of transmission facilities by the PTO; or
 - e. Buyer has not made all necessary arrangements to receive the Delivered Energy at the Delivery Point by the Expected Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under clauses 4(a), 4(b), 4(c) and 4(d) of the Development Cure Period shall not exceed [REDACTED], for any reason, including a Force Majeure Event. The Development Cure Period will be extended on a day-for-day basis for extensions granted pursuant to clause 4(e). No extension shall be given if (i) the delay was the result of Seller's

failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Substitute Product**. If Seller extends the Guaranteed Commercial Operation Date under clause 4(a), 4(b), 4(c) or 4(d), Seller shall provide to Buyer Substitute Product beginning as of the date that would have been the Guaranteed Commercial Operation Date if not for any such extension and ending on the Commercial Operation Date ("**Extension Period**"). Buyer acknowledges that the extensions under clauses 4(a) through 4(e) may be taken concurrently or consecutively and that any one or more of such extensions may extend the Guaranteed Commercial Operation Date to a date that is after the date on which the PTO's transmission facilities are placed into service. The amount of Substitute Product to be delivered, for the entire Extension Period (and not, for the avoidance of doubt, on a daily or monthly basis), shall be equal to the sum, for each month within the Extension Period, of the product of (a) the amount per day set forth in Exhibit F multiplied by (b) the number of days in the relevant month that fall within the Extension Period. Seller shall deliver Substitute Product at the Delivery Point or at an Alternative Delivery Point. Seller shall invoice Buyer within fifteen (15) days following the end of each month after the beginning of the Extension Period for an amount equal to the product of (a) the Contract Price minus the Index Price and minus the RA Discount, multiplied by (b) the amount of WREGIS Certificates delivered to Buyer during such month in respect of Substitute Product. Buyer may waive its right to receive Substitute Product upon Notice to Seller no later than ten (10) days following Notice from Seller of a PTO Extension with respect to the Guaranteed Commercial Operation Date. "**Substitute Product**" means Replacement Green Attributes plus the associated Replacement Energy and, at Seller's option, Replacement Capacity Attributes.
6. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

7. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof and Buyer shall replenish the Development Security to its full amount within three (3) Business Days after such draw. Notwithstanding anything herein to the contrary, Seller's maximum liability hereunder for any delay in meeting the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, including if Seller terminates this Agreement as a result thereof, shall be an amount equal to the Development Security.

EXHIBIT C

CONTRACT PRICE

(i) The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 15	██████

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Girish Balachandran, CEO
Phone No.: (408) 721-5301
Email: girish@svcleanenergy.org

SELLER:

Operations Control Center 1201 Louisiana St., Suite 3200
Houston, TX, 77006
Fax No: Phone No: 713-308-4242
Email: patternocc@patternenergy.com

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT F

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN	[REDACTED]																							
FEB	[REDACTED]																							
MAR	[REDACTED]																							
APR	[REDACTED]																							
MAY	[REDACTED]																							
JUN	[REDACTED]																							
JUL	[REDACTED]																							
AUG	[REDACTED]																							

Exhibit F - 1

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Contract Year, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: Buyer’s Share of the Delivered Energy + Lost Output + Replacement Product.

“Lost Output” means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, Buyer Curtailment Period or Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

“Replacement Green Attributes” means Renewable Energy Credits meeting the requirements of Portfolio Content Category 1 of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Contract Year for which the Replacement Green Attributes are being provided.

“Replacement Capacity Attributes” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

“Replacement Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all Replacement Green Attributes.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Contract Year, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Contract Year.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Silicon Valley Clean Energy Authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Duran Mesa LLC (“**Seller**”) and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
- (2) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _____ [DATE] _____.
- (4) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____ [DATE] _____.
- (5) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____ [DATE] _____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Silicon Valley Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Duran Mesa LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The Facility performance test for the Facility demonstrated peak Facility electrical output of ___MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Duran Mesa LLC (“**Seller**”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) the EPC Contract related to the Facility was executed on _____;
- (2) the Full Notice to Proceed with the construction of the Facility was issued on _____ (attached) (the “**Construction Start Date**”);
- (3) the Construction Start Date has occurred;
- (4) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

DURAN MESA LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Ladies and Gentlemen:

On behalf of [XXXXXXXX] (“Applicant”), we, **[insert bank name and address]** (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXXXX] and 00/100), pursuant to that certain **[AGREEMENT]** dated as of _____, 201- (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of _____, 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. Beneficiary may contact the Issuer at (xxx) xxx-xxxx to confirm receipt of the transmission. Beneficiary’s failure to seek such a telephone confirmation does not affect the Bank’s obligation to honor such a presentation. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

Exhibit K - 1

Partial draws are permitted under this Letter of Credit.

If presented in person or by mail or courier the original of this Letter of Credit must be presented together with the above documents in order to endorse the amount of each drawing on the reverse side and will be returned to the Beneficiary unless it is fully utilized.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit shall not extend past and shall finally expire on **XXX XX, XXXX** if it has not previously expired in accordance with the preceding paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit K - 2

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [XXXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain [AGREEMENT] dated as of [XXXXXXXX] (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____.
or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority, a California joint powers authority

[Name and Title of Authorized Representative]

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [_____] (the "Effective Date") by and between [_____] a [_____] ("Guarantor"), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

- A. Buyer and Duran Mesa LLC, a _____ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such

failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. 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 GUARANTY 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 THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. 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 GUARANTY 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) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) 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) 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).

- (iii) 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.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

Exhibit L - 7

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Duran Mesa LLC (“**Seller**”) to Silicon Valley Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.9(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

DURAN MESA LLC

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

<p><i>Duran Mesa LLC</i> (“Seller”)</p>	<p><i>Silicon Valley Clean Energy Authority</i> (“Buyer”)</p>
<p>All Notices: Street: Pier One, Bay Three City: San Francisco, CA Attn: General Counsel Phone: 415-283-4000 Facsimile: 415-362-7900 Email:</p>	<p>All Notices: Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 Attention: Girish Balachandran, CEO Phone No.: (408) 721-5301 Email: girish@svcleanenergy.org</p>
<p>Reference Numbers: Duns: Federal Tax ID Number:</p>	<p>Reference Numbers: Duns: 080462990 Federal Tax ID Number: 81-2158638</p>
<p>Invoices: Attn: Jim Cai Phone: (415) 283-4089 Facsimile: E-mail: Jim.Cai@patternenergy.com</p>	<p>Invoices: Attn: SVCE Power Settlements Phone: (408)721-5301E-mail: SVCEpowersettlements@svcleanenergy.org</p>
<p>Scheduling: Attn: Phone: Facsimile: Email:</p>	<p>Scheduling: Attn: Phone: Facsimile: Email:</p>
<p>Confirmations: Attn: Phone: Facsimile: Email:</p>	<p>Confirmations: Attn: Phone: Facsimile: Email:</p>
<p>Payments: Attn: Phone: Facsimile: E-mail:</p>	<p>Payments: Attn: SVCE Power Settlements Phone: (408)721-5301 E-mail: SVCEpowersettlements@svcleanenergy.org</p>

<p><i>Duran Mesa LLC</i> (“Seller”)</p>	<p><i>Silicon Valley Clean Energy Authority</i> (“Buyer”)</p>
<p>Wire Transfer: BNK: ABA: ACCT:</p>	<p>Wire Transfer: BNK: River City Bank ACCT Title: SVCE ABA: ██████████ ACCT: ██████████</p>
<p>Credit and Collections: Attn: Phone: Facsimile: E-mail:</p>	<p>Credit and Collections: Attn: SVCE Power Settlements Phone: (408)721-5301 E-mail: SVCEpowersettlements@svcleanenergy.org</p>
<p>With additional Notices of an Event of Default to: Attn: Phone: Facsimile: E-mail:</p>	<p>With additional Notices of an Event of Default to: Troutman Sanders LLP Attn: Stephen Hall 100 SW Main, Suite 1000 Portland, Oregon 97204 Fax: (503) 290-2405 Phone: (503) 290-2336 Email: stephen.hall@troutmansanders.com</p>
<p>Emergency Contact Information: Attn: Phone: Facsimile: E-mail:</p>	<p>Emergency Contact Information: Attn: Phone: Facsimile: E-mail:</p>

EXHIBIT O

BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders, are as follows.

- Pmax of the Project: [200] MW
- Minimum operating capacity: [0.0] MW
- Maximum number of hours annually for Buyer Curtailment Periods: [REDACTED]
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff). As of the Effective Date, this is five minutes.
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): [REDACTED]
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): [REDACTED]
- Ramp Rate: [REDACTED]
- Minimum Down Time: N/A

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2018-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE A POWER PURCHASE AGREEMENT WITH DURAN MESA LLC AND TO EXECUTE SUCH OTHER ANCILLARY DOCUMENTS AS MAY BE NECESSARY

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

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

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

WHEREAS, SVCE is purchasing energy, renewable energy, carbon free energy, and related products and services (the “Products”);

WHEREAS, in Fall 2017, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, SVCE administered a competitive process to select one or more power supply providers;

WHEREAS, one of the providers selected by SVCE through this competitive process is Duran Mesa LLC, based on its desirable offering of Products, pricing, and terms;

WHEREAS, Staff has presented to the Board, and the Board has reviewed, the negotiated form of a Power Purchase Agreement between SVCE and Duran Mesa LLC;

WHEREAS, because of the timing of the execution of the Power Purchase Agreement with Duran Mesa LLC, the Board recognizes that it may be impractical to bring such agreement back to the Board prior to execution. Accordingly, the Board wishes to delegate to the Chief Executive Officer the authority to approve any non-material changes, additions, variations or deletions (“Changes”) to the form of the Power Purchase Agreement between SVCE and Duran Mesa LLC;

WHEREAS, the Board also wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Power Purchase Agreement and to do all things necessary or appropriate for the execution and delivery of, and the performance of SVCE’s obligations under, the Power Purchase Agreement and any other ancillary documents required for said purchase of power from Duran Mesa LLC.

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

Section 1. The Board hereby delegates authority to the Chief Executive Officer to execute the Power Purchase Agreement with Duran Mesa LLC with terms consistent with those presented to the Board, in a form approved by the General Counsel, subject to such Changes as the Chief Executive Officer may deem necessary or appropriate. The total contract cost shall not exceed two hundred eighty million dollars (\$280,000,000.00) over the fifteen-year term.

Section 2. The Board hereby delegates authority to the Chief Executive Officer to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of SVCE's obligations under, the Power Purchase Agreement (including any other instruments, documents, certificates and agreements executed by SVCE in connection therewith) and such other ancillary documents, in a form approved by General Counsel, as may be necessary to effectuate purchase of such power from Duran Mesa LLC.

ADOPTED AND APPROVED this 13th day of June, 2018.

Chair

ATTEST:

Clerk



Staff Report – Item 5

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 5: SVCE Employee Compensation and Benefits Strategy

Date: 6/13/2018

RECOMMENDATION

Consider receiving a report on compensation and benefits strategies for Silicon Valley Clean Energy (SVCE). Based on input from the Board of Directors, specific recommendations will be brought to the Board at the July or September meetings.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

At the May 30, 2018 meeting, Staff presented the Finance and Administration Committee various benefit proposals for consideration. The Committee recommended the following proposals to the Board of Directors for approval:

- Establish a Flexible Spending Account (FSA) benefit.
- Recruitment Incentive policy.
- Workplace Charging Station Policy.

The Committee recommended Staff to categorize the benefit proposals for presentation to the Board of Directors at the June 13th Board meeting to obtain input and direction.

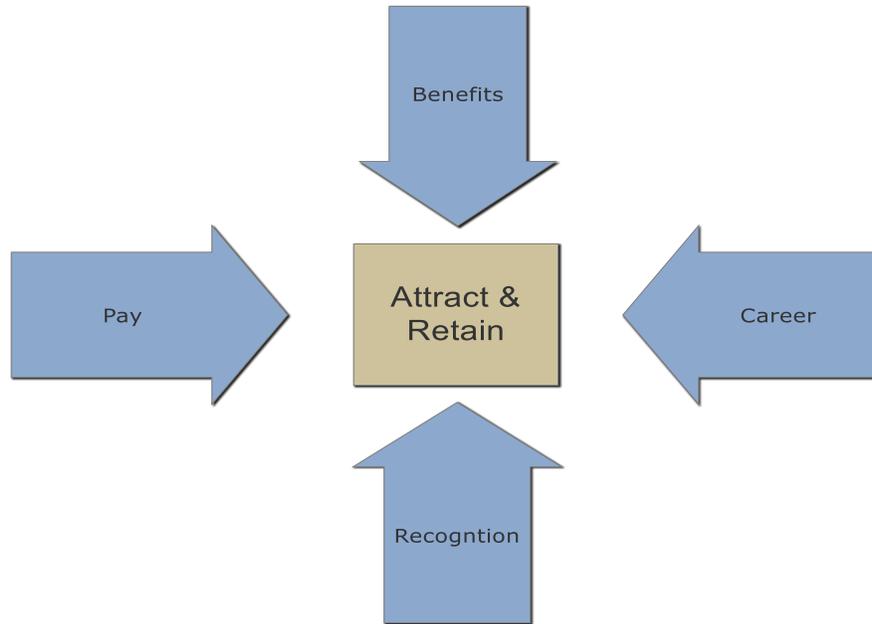
BACKGROUND

The current policies defining employee compensation and benefits were established soon after the agency was formed in 2016. Over the last two years, the landscape has significantly changed. The labor market in the Bay Area has become even more competitive compared to two years ago. There are now sixteen (16) Community Choice Aggregators (CCAs) in various states of operations in California with further expansion and four (4) CCA's neighboring SVCE's territory that are active in the labor market.

The current benefits structure was developed when SVCE's working capital was funded by the Member Agencies. SVCE is now self-sufficient, in financially stable condition and has paid off all long-term debt.

ANALYSIS & DISCUSSION

Compensation and benefits are key factors in recruiting and retaining the best talent for any level job in every industry. SVCE is aware it is tough to find and keep good talent. As a public agency, there is a limit on compensation and therefore the agency must strategically include benefits, career development and employee recognition as methods to attract and retain.



A. Compensation

Staff has commissioned Bryce Consulting to conduct a compensation study. The goal of the study is to compare the agency's salary structure with other agencies including CCAs, Public Power, and Local Government. The study will be completed in mid-June and reviewed on June 19th with the Finance and Administration Committee. Staff anticipates presenting recommendations to the Board of Directors at the July 11th Board meeting.

B. Employee Goodwill

Recognition programs are an underutilized tool that can help organizations engage and retain workers. Staff is considering \$10,000 per year funding through the budget process. Examples include:

- i. Annual picnics;
- ii. Gift cards for extra efforts; and
- iii. Ice cream socials and various other forms of recognition and team building exercises.

C. Support of the Mission Statement

Benefits can be a means to incentivize employees to support the mission statement. SVCE's mission includes the reduction of reliance on fossil fuels and de-carbonization of the grid. Staff recommends funding through the budget process for employee benefits that support the mission statement.

Examples include:

- i. Public Transportation Stipend – a monthly stipend to eligible employees that would offset the costs of using public transportation such as CalTrain, VTA, etc. Staff is considering a stipend of \$300 per employee per month. If all employees became eligible, a maximum annual cost of \$76,000 based on 21 positions would be included in the budget.
- ii. Employer provided rebate for Electric Vehicle (EV) purchase – aiding employees in the purchase of EVs. The dollar amount of the rebate has yet to be defined.
- iii. Workplace Charging Facilities – funding for the installation of an additional charging station at the agency's building. SVCE would also offer free charging to employees and visitors that would have minimal fiscal impact.

D. Traditional Benefits

Staff recommends enhancements to what would be referred as “traditional” benefits in the short-term with a longer-term strategy to include consideration of a “self-directed” approach where the agency provides a flat dollar towards a wide range of benefits and the employee chooses which to fund.

Enhancements to existing benefits or new benefits proposed include the following:

- i. “In-Lieu Of” – an opt-out offer to employees of \$500 per month that would save the agency \$6,000 per employee annually. This benefit is limited to employees who are already covered by another plan, such as a spouse’s health plan.
- ii. Additional Leave – Employees more than ever value work-life balance and offering additional paid leave supports that balance. Rather than traditional 9/80 approach though, Staff proposes a week of paid leave between Christmas and New Year’s holidays, a week of paid leave in the summer, and seven (7) additional days that may be partially tied to agency performance or other conditions.
- iii. Cash-Out of Paid-Time-Off (PTO) – There are times when financial hardship will occur for an employee and allowing partial cash-out of accrued PTO can be a valued resource.
- iv. Telecommuting – With the transportation challenges in the Bay Area, a TeleCommunting policy is recommended to allow employees to occasionally work from home.
- v. Health Club Membership – Offering incentives to employees for health clubs is a great way to not only support a healthy workforce but also can help control health care costs.
- vi. Health Care Premiums – A comprehensive review of employer paid premiums of health care insurance and plan offerings is recommended.
- vii. Pay-for-Performance (PFP) – Staff recommends developing a PFP policy that would tie performance to pay increases through a formal review process.
- viii. Cost of Living Adjustment (COLA) policy – budget a cost of living adjustment based on the Consumer Price Index (CPI) for the Bay Area with a cap of 4%. Any adjustment above 4% would require Board approval.
- ix. Educational/Job Training – SVCE wants to be the destination of the employee’s career rather than a job. Staff proposes aiding for formal education expenses such as pursuing an advanced degree related to agency’s mission or job training such as continuing professional education to maintain or pursue a professional license. The aid would be capped and also be aligned to class grades.
- x. Retirement Planning – Increasing the amount of employer contribution based on years of service is another method to reward employees for longevity.

Conclusion

Of the benefits listed above in sections A-D, the ones referenced in Ci, Cii, and Dvi would be considered as part of a self-directed plan.

Staff seeks Board input and general direction on the benefits proposals. Based on the input, recommendations will be brought to the Board at the July and September meetings.

The high-impact low-cost benefits Staff recommends for policy presentation at the July Board meeting includes Ci (transportation stipend), Di (In-Lieu-Of), Dii (Additional Leave) and Div (Telecommuting).

STRATEGIC PLAN

This report supports the “Best Place to Work” goal of the strategic plan. The section from the Strategic Plan that addresses “Workforce” is attached.

ALTERNATIVE

There are many alternatives with respect to compensation and benefits strategy. However, a status-quo approach will hinder the agency’s ability to attract and retain its workforce and impact SVCE’s effectiveness.

FISCAL IMPACT

Enhancements to employee compensation and benefits will have fiscal impact. Some benefits, such as increase PTO and In-Lieu-Of has a neutral or cost-reducing impact. As details become more defined, Staff will be able to provide that information.

ATTACHMENTS

1. Excerpt from SVCE's Strategic Plan related to Workforce



Excerpt from SVCE's Strategic Plan –
Adopted by the Board on June 14, 2017

Workplace

Human capital is a successful organization's greatest asset, and at SVCE we strive to build a highly talented and dedicated team that will ensure the success and prosperity of our organization. Valuing this team and nurturing its talent will require a start-up culture that supports creativity, open communication, and the free flow of ideas to spur innovation. We will provide an infrastructure within SVCE that supports and cultivates our employees through professional and personal development, recognizes and rewards their contributions to achieving our mission, and offers opportunities that position our people, as well as SVCE, for success. In attracting and maintaining skilled employees, SVCE will continue to provide a rewarding workplace experience.

Goal 1: Build a high-performing team with 90% employee engagement and less than 10% employee turnover per year

Strategy 1.1: Build an environment that encourages creativity and innovation

- 1.1.1) Support professional development by paying for memberships, conferences and other continuing education opportunities
- 1.1.2) Encourage staff to attend conferences and networking events

Strategy 1.2: Support employee health and wellness

- 1.2.1) Promote healthy habits
- 1.2.2) Provide flexible schedules to accommodate family needs

Strategy 1.3: Build an inclusive and fulfilling company culture

- 1.3.1) Monthly, arrange opportunities for staff to socialize in or outside of the office
- 1.3.2) Annually, sponsor family events (e.g. holiday celebration, summer picnic, etc.)
- 1.3.3) Promote team building through volunteer work
- 1.3.4) Maintain an open-door policy for CEO and directors

Strategy 1.4: Provide effective and safe feedback processes

- 1.4.1) Research and develop an annual feedback process to be implemented in 2018, promoting an open and safe performance assessment
- 1.4.2) Conduct an annual survey to measure employee engagement

Strategy 1.5: Provide opportunities for cross-team interaction and collaboration



1.5.1) Establish a monthly all-hands meeting

Strategy 1.6: Reward staff to keep them engaged

1.6.1) Annually, update compensation schedule to account for cost of living adjustment

1.6.2) Continue to provide competitive benefits

1.6.3) Ensure that staff has the tools necessary to effectively do the job



Staff Report – Item 6

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 6: CEO Report

Date: 6/13/2018

REPORT

SVCE Staff Update

Our new Power Contracts and Compliance Manager, Monica Padilla, started with us on June 4. Monica worked for Palo Alto Utilities for 31 years, and brings experience in the development and implementation of long term integrated resource and strategic plans, supply contract negotiations, rate design and reserve policy development, and power procurement.

Aimee Gotway Bailey has been selected as SVCE's Director of Decarbonization and Grid Innovation; she will join us on June 25. Aimee most recently worked for EDF Innovation Lab as a Principal Energy Analyst, and previously worked for Pacific Gas & Electric, City of Palo Alto Utilities, Global Environmental Institute (Beijing, China) and the U.S. Department of Energy. Aimee has a BSE in materials science from the University of Pennsylvania in Philadelphia and a PhD in physics from Imperial College in London.

2017 Power Content Labels

Staff have submitted to the California Energy Commission (CEC) the 2017 Power Content Labels for SVCE's Green Start and Green Prime product offerings, as part of the CEC's annual Power Source Disclosure Program compliance requirements.

Long-Term Joint RFO Update

SVCE staff, along with staff from Monterey Bay Community Power (MBCP), have been in negotiations with three developers, simultaneously, to acquire long-term rights to the output of three projects. One of the 3 projects has been presented today for Board approval, and negotiations continue with the two Solar PV + Storage projects. Staff's goal is to bring at least one to the July Board meeting for approval.

IRP Update

A memorandum to the Board is attached.

Marin Clean Energy's Credit Rating

Moody's Investors Services, one of the three major rating agencies, issued a Baa2 rating to Marin Clean Energy (MCE) in May. This is the first credit rating for a CCA, and is exciting news for the CCA community. Moody's report outlines the areas for SVCE to focus on, such as liquidity and risk management of power procurement, in obtaining a rating in the future. SVCE is already on a solid path to meet or exceed

Agenda Item: 6**Agenda Date: 6/13/2018**

expectations in the scoring matrix for a strong rating but will most likely require another 2 years of operating history. A copy of the report is attached to the Amended Cash Reserves Policy staff report.

The table below provides an overview of the credit rating scales utilized by the three United States rating agencies.

Moody's		S&P		Fitch		Rating description	
Long-term	Short-term	Long-term	Short-term	Long-term	Short-term		
Aaa	P-1	AAA	A-1+	AAA	F1+	Prime	Investment-grade
Aa1		AA+		AA+		High grade	
Aa2		AA		AA			
Aa3		AA-		AA-			
A1	P-2	A+	A-1	A+	F1	Upper medium grade	
A2		A		A			
A3		A-		A-			
Baa1	P-3	BBB+	A-2	BBB+	F2	Lower medium grade	
Baa2		BBB		BBB			
Baa3		BBB-		BBB-			
Ba1	Not prime	BB+	B	BB+	B	Non-investment grade speculative	
Ba2		BB		BB			
Ba3		BB-		BB-			
B1		B+		B+		Highly speculative	
B2		B		B			
B3		B-		B-			
Caa1		C		CCC+		C	CCC
Caa2	CCC		Extremely speculative				
Caa3	CCC-		Default imminent with little prospect for recovery				
Ca	CC						
C	D	/	DDD	/	/	In default	
/			DD				
			D				

Source: https://en.wikipedia.org/wiki/Bond_credit_rating

CEO Agreements Executed

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

- 1) Epoch Times: Agreement for advertising services, not to exceed \$5,000

CEO Power Supply Agreements Executed

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

- 1) Marin Clean Energy: Two agreements; one for purchase of System Resource Adequacy, and one for sale of Local Resource Adequacy for the period October through December 2018.

Agenda Item: 6**Agenda Date: 6/13/2018**

- 2) NRG Power Marketing: One agreement for purchase of Resource Adequacy for the period January through December 2019
- 3) Pacific Gas & Electric: Two agreements for purchase of Resource Adequacy for the period July 2018.
- 4) Monterey Bay Community Power: Two agreements for sale of Resource Adequacy for the period July 2018.
- 5) High Desert Power Project: One agreement for the purchase of Resource Adequacy for the period January 2019 through December 2020

These agreements are attached.

Lobby Day

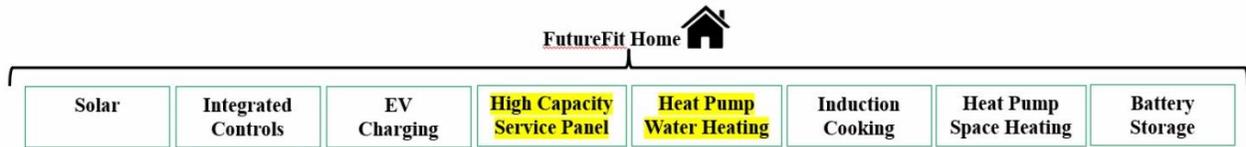
SVCE and MBCP undertook a Sacramento Lobby Day on May 16. The SVCE delegation was led by Directors Nancy Smith and Rod Sinks. The MBCP delegation was led by Directors Bruce McPherson and Trina Coffman-Gomez. It was an extremely busy day and outside of a 60 minute break mid-morning, the team was going from office to office all day. We visited the offices of ten legislators and met with six. The letter signed by all SVCE Board members was effective in carrying our message. This letter combined with the visit sets up a foundation and framework from which we can follow-up with staff and legislators in the coming weeks and months.

The key points made in the SVCE Board letter and the accompanying materials were communicated very effectively by Directors Smith and Sinks. They led the discussions at all the offices where the legislator had the majority of their district in the SVCE service area. MBCP elected officials led the discussions in the remaining offices. All the offices had questions that were answered and we also engaged in several strategic discussions related to the energy industry and its future.



BAAQMD Grant – SVCE Awarded \$325,000

The BAAQMD Board approved a \$325,000 grant to SVCE for its Future Fit home grant application.



This initiative serves as the foundation for the all-electric home of the future:

- Switch Natural Gas water heaters to Electric Heat Pump Water Heaters
- Create public data sets on impacts of fuel switching – usage and costs

Next steps:

- Review Terms & Conditions of Air District Grant award
- Develop Program guidelines and allocate Staff resources

Ultimately, this grant+program still needs to be approved by the Board.

BAAQMD had set aside \$4.5 million to funds programs in two categories: Reducing GHG Emissions in Existing Buildings, and Fostering Innovative Strategies. It received a total of 22 applications requesting \$6,123,884. Four projects, including SVCE’s application, requested approximately \$500,000. According to BAAQMD staff, several of these applications contain activities that overlap with other applications and therefore their recommendation to award lower levels of funding than was requested is based on potential overlap in activities across applications and the desire to allow for more funding to be offered to other worthy applications.

Creating a New JPA to achieve economies of scale in procurement of capacity, renewable power and energy services

At CalCCA, we are working on creating a new joint powers agency that will focus on achieving economies of scale for purchase of capacity, renewable energy and energy services. The experience we have had over the last year or so has made clear that efficiencies could be obtained via joint procurement. The areas of interest and value include the acquisition of wholesale power supplies, resource adequacy and renewable attributes, the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products, the offering of energy risk management and CAISO scheduling services and other energy related programs. Benefits include achieving economies of scale, shared risks and opportunities and enhancing weaker credit.

The issues around RA procurement and credit support for renewable contracts make clear that a joint approach to purchasing could result in immediate benefits from cost and strategic viewpoints. At the July Board meeting and in committee meetings we plan to discuss this initiative and obtain feedback from the Board. We expect to bring an agreement to the SVCE Board in September.

SVCE Award

Our "Understanding your Bill" video gold award has arrived; a reminder that SVCE won this award in the 'government – electronic media' category of the Hermes Creative Awards. These awards are administered and judged by the Association of Marketing and Communication Professionals in an international competition.

**ATTACHMENTS**

1. Memorandum to the Board re: IRP Update
2. Power Supply Agreements Executed
3. Regulatory/Legislative Update, June 2018
4. Community Outreach Update, June 2018
5. Agenda Planning Document, June 2018 – November 2018



333 W El Camino Real, Suite 290 | Sunnyvale, CA 94087 | 1-844-474-SVCE (7823) | SVCleanEnergy.org

TO: Silicon Valley Clean Energy Board of Directors

FROM: Hilary Staver, Manager of Regulatory and Legislative Affairs

DATE: June 13, 2018

RE: Approval process for SVCE's Integrated Resource Plan

Silicon Valley Clean Energy's first Integrated Resource Plan is due to the California Public Utilities Commission on August 1, 2018. This is the first year that Integrated Resource Planning ("IRP") is being implemented in California, and the compliance process is evolving weekly as CCA staff identify points of ambiguity and work with the CPUC to clarify them. SVCE's IRP will be included on the agenda for the July Board meeting, so this memo provides a preparatory preview of the IRP's structure, purpose, and approval process.

The requirements that have emerged from the CPUC IRP proceeding (R.16-02-007) outline a different kind of document from the IRPs that some CCAs (e.g. [MCE](#) and [PCE](#)) have produced voluntarily in the past. Rather than being a standalone document, the CPUC-mandated IRP is part of a larger two-year cycle of IRP planning at the CPUC. The **main steps of the IRP process** are:

1. **Statewide modeling** at the CPUC to determine the aggregate transitions needed for the electricity sector to meet its 2030 GHG reduction goals under SB 350. This was completed in fall 2017 and published as the [Reference System Plan](#).
2. **Individual Load Serving Entity ("LSE") IRPs** are submitted to the CPUC, due August 1, 2018.
3. **Aggregation** of the individual IRPs into the Preferred System Plan, which represents the aggregate behavior of the electricity sector if all LSEs procure according to their IRPs. This is done by inputting data from the IRPs into the same statewide model used to produce the Reference System Plan.
4. **Comparison** between the Reference System Plan and the Preferred System Plan to determine whether sector-wide GHG mitigation targets will be met and whether corrective action is needed.

The main purpose of the individual IRPs is thus to provide CPUC staff with the model inputs they need to forecast industry-wide outcomes. The CPUC has come up with a **required structure for IRPs** that fulfills this function¹:

1. **A pair of Excel spreadsheet templates** where LSEs document their existing and planned contracts

¹ All materials described below are available on the CPUC's website here: <http://cpuc.ca.gov/irp/filingtemplates/>



333 W El Camino Real, Suite 290 | Sunnyvale, CA 94087 | 1-844-474-SVCE (7823) | SVCleanEnergy.org

2. **An Excel GHG calculator tool** LSEs use to determine their projected future GHG emissions under a CPUC-selected GHG accounting methodology
3. **A written report** documenting the goals, methodology, and assumptions behind the data in the Excel materials. The report follows a standardized outline developed by CPUC staff.

These parts add up to more of a technical compliance document written for CPUC staff than a public-facing document written for SVCE's customers. The latter better describes the voluntary IRPs produced by CCAs in the past few years, and SVCE plans to produce a similar document this fall. However, since it is difficult to write for such disparate audiences simultaneously, the IRP SVCE will submit in August prioritizes the needs and specifications of the CPUC staff.

At next month's meeting, the IRP materials described above will be submitted to the SVCE Board for approval. Preparation of the IRP does not involve any new policy decisions or changes to SVCE's existing, Board-approved procurement priorities or procedures, so our IRP will be presented on the consent agenda. Additionally, SVCE staff reserve the right to make changes to the IRP after Board approval if the CPUC issues new guidance on compliance specifications between Board approval and the IRP due date. A final version of the IRP submitted to the CPUC will be made available to the Board in August.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
MARIN CLEAN ENERGY
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Marin Clean Energy**, a California joint powers authority ("Seller") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of April 27, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 20, 2017, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Topaz Solar Farms
Location	San Luis Obispo County, CA
CAISO Resource ID	TOPAZ_2_SOLAR
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	Solar
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

Name	Colusa Generating Station
Location	Colusa, CA
CAISO Resource ID	COLUSA_2_PL1X3
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as

specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: October 1, 2018, through December 31, 2018, inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	TOPAZ_2_SOLAR RAR Contract Quantity (MWs)	COLUSA_2_PL1X3 RAR Contract Quantity (MWs)	Total RAR Contract Quantity (MWs)
October			
November			
December			

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement with respect to each Showing Month, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) of the month following the Monthly Delivery Period, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)
October	\$ [REDACTED]
November	\$ [REDACTED]
December	\$ [REDACTED]

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or

operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO

- markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
 - (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any,

made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

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

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**MARIN CLEAN ENERGY, A
CALIFORNIA JOINT POWERS
AUTHORITY**

By: 
Name: Dawn Weiss
Title: CEO

**SILICON VALLEY CLEAN ENERGY AUTHORITY, A
CALIFORNIA JOINT POWERS AUTHORITY**

By: 
Name: Girish Balachandran
Title: Chief Executive Officer

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MARIN CLEAN ENERGY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller") and **Marin Clean Energy**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of April 27, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 20, 2017, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Colgate Hydro Unit 1
Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT 1
Unit SCID	YCWA
Unit NQC	Varies
Unit EFC	N/A
Resource Type	Hydro
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to

be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: October 1, 2018, through December 31, 2018, inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	COLGAT_7_UNIT 1 LAR Contract Quantity (MWs)
October	
November	
December	

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "**Notification Deadline**" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "**Replacement Unit**"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement with respect to each Showing Month, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) of the month following the Monthly Delivery Period, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	LAR Capacity Price (\$/kW-month)
October	\$ [REDACTED]
November	\$ [REDACTED]
December	\$ [REDACTED]

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for resale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or

operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO

- markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
 - (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any,

made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

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

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

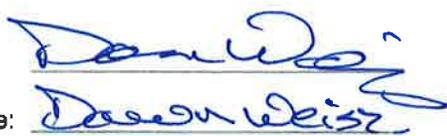
**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT POWERS
AUTHORITY**

By: 

Name: Girish Balachandran

Title: Chief Executive Officer

**MARIN CLEAN ENERGY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 

Name: Dawn Weisz

Title: CEO

15232732
15232731

**CONFIRMATION LETTER
BETWEEN
NRG POWER MARKETING LLC
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between NRG Power Marketing LLC ("Seller") and Silicon Valley Clean Energy Authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of May 2, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 1.1 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet immediately below and ending prior to "Article 1 Transaction" containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: NRG Power Marketing LLC
("Party A")

Name: Silicon Valley Clean Energy Authority
("Party B")

All Notices:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Contract Administration
Telephone: 609-524-4543
Facsimile: 609.524.4540
Duns: 02-825-5979
Federal Tax ID Number: 41-1910737

All Notices:

Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087
Attn: Girish Balachandran
Phone: 408-721-5301
Facsimile:
Email: girish@svcleanenergy.org
Duns:
Federal Tax ID Number: 81-2158638

Invoices:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Accounting – Physical Power
Telephone: 713.795.6038
Facsimile: 713.795.7482

Invoices:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301

Scheduling:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Scheduling Desk
Telephone: 609.524.4558
Facsimile: 609.524.4540

Scheduling:

Phone: 916-221-4327
Street: 604 Sutter Street, Suite 250
City: Folsom, CA Zip: 85630
Email: eric@zglobal.biz

15232732
15232731

Payments:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Accounting – Physical Power
Telephone: 713.795.6038
Facsimile: 713.795.7482

Payments:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301
Facsimile:
Email:

Wire Transfer:

Bank Name: Bank of New York Mellon
Bank ABA: [REDACTED]
Account Name: NRG Power Marketing
LLC
Account Number: [REDACTED] ATTN:

Wire Transfer:

Confirmation Specialist - Power
Telephone: (609) 524-4788
Facsimile: (609) 525-4779

Credit and Collections:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Director, Credit Risk
Telephone: 609.524.4846
Facsimile: 609.524.4605

Credit and Collections:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301
Facsimile:
Email:

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

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Asst. General Counsel
Telephone: 609.524.4500
Facsimile: 609.524.4501

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

15232732
15232731

The Parties hereby agree that the General Terms and Conditions set forth as Article One through Article Ten of the Master Agreement are hereby incorporated by references as if set forth in full herein and the following elections and modifications are hereby designated as the "Cover Sheet" to the Master Agreement:

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: _____ Cross Default Amount: _____
- Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
- Party B: _____ Cross Default Amount: _____
- Other Entity: _____ Cross Default Amount: _____

5.6 Closeout Setoff

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

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: None
- (b) Credit Assurances:
 - Not Applicable

15232732
15232731

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

Other:
Specify: _____

(e) Guarantor for Party B: None.

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify:

Option C Specify: None

(b) Credit Assurances:

Not Applicable

15232732
15232731

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following: N/A

It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

Other:
Specify: _____

(e) Guarantor for Party A:

Guarantee Amount: _____

Article 10

Confidentiality

Option A: Confidentiality Applicable. If not checked, inapplicable.

Schedule M

Party A is a Governmental Entity or Public Power System

Party B is a Governmental Entity or Public Power System

Add Section 3.6. If not checked, inapplicable

Add Section 8.4. If not checked, inapplicable

15232732
15232731

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

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

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

3. The following defined term is added as Section 1.26A:

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

4. Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

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

6. Section 2.2 is amended by deleting "(including any Confirmations accepted in accordance with Section 2.3)" from the second sentence.

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

2.3 "No Oral Agreements or Modifications. The Parties shall confirm a Transaction by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified."

8. Section 2.4 is amended by deleting "pursuant to Section 2.3" and "either orally or" in the sixth line.

9. Section 5.2 is amended by adding the following:

"If the Non-Defaulting Party's calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00)."

10. Section 5.2 is amended by deleting the following phrase from the last two lines: "under applicable law on the Early

15232732
15232731

Termination Date, as soon thereafter as is reasonably practicable)." The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable), and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision in this Section or any provision in this Agreement to the contrary."

11. Section 10.11 is amended by adding the following at the end of the last sentence:

"Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand

15232732
15232731

of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

12. The following is added as Section 10.12:

"10.12 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016 (the "Joint Powers Agreement") and is a public entity separate from its members. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's constituent members, in connection with this Agreement."

13. Section 10.2(ii) of the Master Agreement shall be modified by inserting "Except for the conditions precedent described in Section 2.2 of this Confirmation," at the beginning of the first sentence in such section.

14. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

"THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT."

15. Schedule P: Products and Related Definitions shall be deleted in its entirety.

15232732
15232731

**ARTICLE 1
TRANSACTION**

1.1 Product

Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes of the Units (collectively, the "Product"). Seller shall deliver to Buyer the Product in the amount of the Contract Quantity. Seller shall deliver the Product with Flexible RA Attributes only if selected in Section 1.1(c), below. Product does not confer to Buyer any right to dispatch or receive the energy or ancillary services from the Units. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

- (a) [Reserved.]
- (b) [Reserved.]
- (c) Flexible RA Attributes

If selected, Seller shall deliver Flexible RA Attributes in an amount specified in Section 1.4, Flexible RA Quantity. Seller's obligation to deliver the Flexible RA Quantity for any Showing Month may be reduced pursuant to Seller's sole discretion and determination in the event and to the extent the Unit EFC is reduced by the CAISO from the Unit EFC as specified in Appendix B. To the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction.

1.2 Delivery Period

The Delivery Period shall be: January 1, 2019 through December 31, 2019 inclusive, unless terminated earlier in accordance with the terms of this Agreement.

1.3 Contract Quantity

The Contract Quantity for each applicable Showing Month is as follows:

Contract Quantity (MWs)

Showing Month	Contract Quantity (MWs)
January 2019	
February 2019	
March 2019	
April 2019	
May 2019	
June 2019	
July 2019	
August 2019	
September 2019	
October 2019	
November 2019	
December 2019	

15232732
15232731

1.4 Flexible RA Quantity

The Flexible RA Quantity for each applicable Showing Month is as follows:

Showing Month	Flexible RA Quantity (MWs)
January 2019	
February 2019	
March 2019	
April 2019	
May 2019	
June 2019	
July 2019	
August 2019	
September 2019	
October 2019	
November 2019	
December 2019	

For purposes of clarity, the Flexible RA Quantity is not in addition to the Contract Quantity, but represents the portion of Contract Quantity that currently possesses Flexible RA Attributes.

**ARTICLE 2
DELIVERY OBLIGATIONS**

2.1 Adjustments to Contract Quantity

- (a) Seller's obligation to deliver the applicable Contract Quantity for each Showing Month may be reduced by Seller in the event of Force Majeure. In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from Replacement Units, provided that Seller provides and identifies such Replacement Units in accordance with Section 2.2.
- (b) Seller's obligation to deliver the Contract Quantity for any Showing Month shall be reduced in the event the Unit NQC is reduced from the Unit NQC as specified in Appendix B. In such an event, the Unit Contract Quantity for such Unit may be reduced in a pro rata amount with all other Product sales calculated with reference to the difference in the Unit NQC as specified in Appendix B and the then current Unit NQC.

2.2 Alternate Capacity

If Seller is unable to deliver the full Contract Quantity for any Showing Month for any reason (including without limitation due to one of the reasons specified in Section 2.1), or if Seller desires to deliver the Contract Quantity, either in whole or in part, for any Showing Month from a different

15232732
15232731

generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit and Replacement Units for each Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer of its intent to provide replacement Product and identify Replacement Units meeting the above requirements no later than ten (10) Business Days before the relevant deadlines for Buyer's Compliance Showings related to such Showing Month; and
- (b) the designated Replacement Unit is accepted by the CAISO as a substitute for the original Unit.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.2, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

2.3 Delivery of Product

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans in accordance with the Tariff to identify and confirm the Expected Contract Quantity provided to Buyer for each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each Showing Month equals the Expected Contract Quantity for such Showing Month. Upon satisfaction of this requirement, the Product shall be deemed delivered for such Showing Month for purposes of this Confirmation.

2.4 Damages for Failure to Provide Capacity

If Seller fails to deliver the Expected Contract Quantity of Product for any Showing Month, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Expected Contract Quantity not provided by Seller with capacity having equivalent Capacity Attributes as the Expected Contract Quantity not provided by Seller ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Expected Contract Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual price paid by Buyer for any Replacement Capacity times its applicable quantity, plus (B) each Capacity Replacement Price times the amount of the Expected Contract Quantity neither provided by Seller nor purchased by Buyer pursuant to Section 2.4(a) for all applicable portions of the Showing Month, and (ii) the Expected Contract Quantity not provided for all applicable portions of the Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

15232732
15232731

2.5 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from Seller's failure to deliver any portion of the Expected Contract Quantity for any portion of the Delivery Period. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation. Seller will have no obligation to Buyer under this Section 2.5 in respect of the portion of the Expected Contract Quantity for which Seller has paid damages under Section 2.4 hereof.

2.6 Reserved

2.7 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

**ARTICLE 3
PAYMENT**

3.1 Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment to Seller, after the applicable Showing Month, as follows ("Monthly Payment"):

$$Payment = (A \times B \times 1,000)$$

where:

A = applicable Contract Price for the Delivery Period (expressed as \$/kW-month)

B = Contract Quantity as specified in Section 1.3

The Monthly Payment calculation shall be rounded to two decimal places.

3.2 Monthly Contract Price

The monthly Contract Price is as follows:

CAPACITY FLAT PRICE TABLE

Delivery Period	RA Capacity Flat Price (\$/kW-month)
January 2019	\$ [REDACTED]
February 2019	\$ [REDACTED]
March 2019	\$ [REDACTED]
April 2019	\$ [REDACTED]
May 2019	\$ [REDACTED]
June 2019	\$ [REDACTED]
July 2019	\$ [REDACTED]

15232732
15232731

Delivery Period	RA Capacity Flat Price (\$/kW-month)
August 2019	\$ [REDACTED]
September 2019	\$ [REDACTED]
October 2019	\$ [REDACTED]
November 2019	\$ [REDACTED]
December 2019	\$ [REDACTED]

3.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor, but excluding payments described in Section 3.3(a)(i)-(iv)).
- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (i) all such Buyer revenues described in this Section 3.3, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller under this Confirmation; and
 - (ii) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.3, but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's SC, owner, or operator fails to remit those revenues to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer under this Confirmation.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

15232732
15232731

**ARTICLE 4
RESERVED**

**ARTICLE 5
OTHER BUYER AND SELLER COVENANTS**

5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable Compliance Obligations; provided that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

5.2 Seller's Representations, Warranties and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and the Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC for that Unit;
- (f) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Confirmation;
- (g) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and
- (h) Seller agrees that no portion of the Product will be from a coal or nuclear resource.

**ARTICLE 6
CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the sale of the Contract Quantity under this Transaction to any Governmental Body, the

15232732
15232731

CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Contract Quantity and the applicable Expected Contract Quantity for each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information.

**ARTICLE 7
COLLATERAL REQUIREMENTS**

The Parties agreed that no collateral is required to be posted in connection with this Transaction by either Party.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE
REFERENCED IN THE OPENING PARAGRAPH:**

NRG Power Marketing LLC

Silicon Valley Clean Energy Authority

By: 
Name: Andrew Shaw
Title: Portfolio Director

By: 
Name: Girish Balachandran
Title: CEO

15232732
15232731

APPENDIX A DEFINED TERMS

"Alternate Capacity" means replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.2.

"Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

"Availability Incentive Payments" has the meaning set forth in the Tariff.

"Availability Standards" has the meaning set forth in the Tariff.

"Buyer" has the meaning specified in the introductory paragraph of this Confirmation.

"CAISO" means the California Independent System Operator or any successor entity performing the same functions.

"Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) RA Attributes,
- (b) Local RA Attributes (if specified as applicable in Appendix B),
- (c) Flexible RA Attributes (if elected in Section 1.1c), and
- (d) other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct or framework applied to any Compliance Obligations.

"Capacity Flat Price" means the price specified in the Capacity Flat Price Table in Section 3.2.

"Capacity Replacement Price" means the market price for the quantity of Product not provided by Seller under this Confirmation as determined in a commercially reasonable manner. For purposes of this Transaction and Confirmation, the "Capacity Replacement Price" shall be deemed to be the "Replacement Price" as defined in Section 1.51 of the Master Agreement.

"Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with the Capacity Attributes as established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

"Contract Price" means, for any Showing Month, the product of the Capacity Flat Price and the Price Shape for such period.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW's) set forth in the table in Section 1.3 which Seller has agreed to provide to Buyer from the Unit for each such Showing Month.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024,

15232732
15232731

14-06-050, 15-06-063, 16-06-045, and 17-06-027 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

"CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

"Delivery Period" has the meaning specified in Section 1.2.

"EEl Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's Flexible RAR requirements.

"Expected Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such Showing Month, but less any reductions to Contract Quantity for such Showing Month specified in Section 2.1 with respect to which Seller has not elected to provide Alternate Capacity.

"Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.

"Flexible RA Quantity" means the amount of Flexible RA Attributes associated with the Product to be delivered by Seller to Buyer by each Unit as set forth in Section 1.4.

"Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"GADS" means the Generating Availability Data System, or its successor.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Local Capacity Area" has the meaning set forth in the Tariff.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"LSE" means load-serving entity.

"Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Monthly Payment" has the meaning specified in Section 3.1.

"NERC" means the North American Electric Reliability Corporation, or its successor.

"Net Qualifying Capacity" has the meaning set forth in the Tariff.

"Non-Availability Charges" has the meaning set forth in the Tariff.

"Planned Outage" means any outage, including Maintenance Outages, that are designated "Approved Planned" in the SLIC System.

"Price Shape" means the Price Shape specified in Section 3.2. In the absence of the specification of a Price Shape for a particular month in Section 3.2, the Price Shape shall be deemed to be 100%.

15232732
15232731

"Product" means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and
- (c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

"RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"Replacement Capacity" has the meaning specified in Section 2.4.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 2.2.

"Resource Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"SC" has the meaning set forth in the Tariff.

"Seller" has the meaning specified in the introductory paragraph of this Confirmation.

"Showing Month" shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"Supply Plan" has the meaning set forth in the Tariff.

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

"Term" shall have the following meaning: The "Term" of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (a) the expiration of the Delivery Period or (b) the date the Parties' obligations under this Agreement have been satisfied.

"Unit" shall mean the generation assets described in Appendix B (including any Replacement Units), from which Product is provided by Seller to Buyer.

"Unit EFC" means the Effective Flexible Capacity that is or will be set by the CAISO for the applicable Unit. As of the Confirmation Effective Date, the Unit EFC is as specified in Appendix B. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date as specified in Appendix B, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit.

"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

15232732
15232731

**APPENDIX B
UNIT INFORMATION**

Name: Sunrise Power Project AGGREGATE II

Location: Fellows, CA

CAISO Resource ID: SUNRIS_2_PL1X3

Unit NQC (as of the Confirmation Effective Date): 586.02 MW

Unit EFC (as of the Confirmation Effective Date): 461.02 MW

Resource Type: GEN

Resource Category (1, 2, 3 or 4): 4

Current CAISO Zone (NP15, ZP26 or SP15): ZP26

Local Capacity Area (if any, as of Confirmation Effective Date): NA

Flexible Category: 1

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

**MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY ("PARTY A")
AND
PACIFIC GAS AND ELECTRIC COMPANY ("PARTY B")**

This confirmation letter ("Confirmation") confirms the Transaction between Party A and Party B, which becomes effective once fully executed by both parties (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Appendix B of this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: Party A

Seller: Party B

Product: The Product, including the Capacity Attributes of the Unit(s), Alternate Unit(s) or Shown Unit(s), is as defined in Appendix B. The Product does not include any right to the energy or ancillary services of the Unit(s), as outlined in Section 3.2(a).

Delivery Period: July 1, 2018 through July 31, 2018.

Contract Quantity and Price: The Contract Quantity and Price for each day during the Delivery Period as listed in Appendix B.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Firm RA Product

Seller's obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

2.2 Seller To Identify Shown Unit

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit Information listed in Appendix C upon the Confirmation Effective Date for the corresponding Compliance Showings applicable to the relevant Showing Month. The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC. Seller's notice under this Section 2.2(a) shall be deemed acceptable to and approved by Buyer upon receipt.

2.3 Seller To Provide Alternate Capacity

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is not more or less than the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics specified in Appendix B upon the Confirmation Effective Date for the submission of Compliance Showings related to the applicable Showing Month. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt.

2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
 - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's SC to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
 - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit

(iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered.

- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 8, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix C to be completed and included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix C, the Parties agree to communicate such changes to each other promptly.

2.5 RA Replacement Capacity

- (a) Following Seller's submission of a Supply Plan in accordance with Section 2.4(a)(i), if Buyer is responsible for providing RA Replacement Capacity for a Shown Unit, then Buyer shall provide Seller with written notice of the amount of RA Replacement Capacity by no later than twenty (20) days prior to the Showing Month.
- (b) Following Buyer's notice for RA Replacement Capacity, but no later than fifteen (15) days prior to the relevant deadline for Buyer's Compliance Showing, Seller shall provide RA Replacement Capacity from one or more Units, such that the total amount of Product provided to Buyer from all Units equals the Contract Quantity. Seller's notice designating a Replacement Unit under this Section 2.5 (b) shall be deemed acceptable to and approved by Buyer upon receipt.
- (c) Notwithstanding anything to the contrary in this Confirmation, following Buyer's written notice pursuant to Section 2.5(a), Seller's failure to provide RA Replacement Capacity may result in the calculation of damages payable to Buyer under Section 2.6 and/or the indemnification of Buyer against any penalties, fines or costs under Section 2.7. In the event that Buyer does not provide written notice or such notice is not timely, to Seller as required under Section 2.5(a), then Seller shall have no liability with respect to any damages, penalties, fines or costs incurred.

2.6 Damages for Failure to Provide Capacity

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller shall pay to Buyer at the time set forth in Article Six of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

- (a) for each applicable day during the Showing Month included in the Delivery Period, the amount equal to (w) the monthly CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM) Price divided by (x) the number of days included in the Showing Month, multiplied by (y) the amount of the Expected Contract

Quantity not delivered by Seller on such day multiplied by (z) 1,000 kw/MW, minus

- (b) for each applicable day during the Showing Month included in the Delivery Period, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kw/MW.

2.7 **Indemnities for Failure to Deliver Contract Quantity**

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO or any Governmental Body having jurisdiction resulting from any of the following:
 - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period.
 - (ii) A Unit's SC's failure to timely or accurately submit Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
 - (iii) Any other failure by Seller to perform its obligations under this Confirmation.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.
- (c) If Seller fails to deliver any portion of the Contract Quantity of Product and such failure results in CAISO Capacity Procurement Mechanism costs imposed on Buyer due to an insufficient monthly Resource Adequacy plan, Seller agrees to indemnify Buyer from these costs less any damages assessed under Section 2.6(a);

2.8 **Buyer's Re-Sale of Product**

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the CSP. If Buyer re-sells Resold Product, Seller agrees, and agrees to cause the Unit's SC, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's SC, to take all commercially reasonable actions and execute any and all documents or

instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.6 and 2.7.

- (b) If Buyer exercises its right to re-sell the Resold Product, Buyer shall notify Seller in writing that such sale has occurred and provide Seller with the information described in Appendix D no later than two (2) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, by providing Seller with written updates to the information in Appendix D in accordance with the deadlines described in this Section 2.8(b).

ARTICLE 3 **PAYMENT**

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment to Seller within five (5) Business Days following the Confirmation Effective Date, as follows:

$$Payment = Q \times P \times CF$$

where:

- Q = The quantity of Product to be delivered by Seller to Buyer pursuant to and consistent with Section 2.4 for the applicable Showing Month
P = The Contract Price for the applicable Showing Month, expressed in dollars per kw-month
CF = The conversion factor equal to 1,000 kw per MW

The payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a purchaser of Resold Product fails to remit those revenues to Seller. If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer pursuant to Article

Six of the Master Agreement. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

- (b) Buyer is entitled to receive and retain all revenues associated with the Contract Quantity for each day during the Delivery Period (including any capacity and availability revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v)). All Buyer revenues described in this Section 3.2(b) and received by Seller, or a Unit's SC, owner, or operator, must be remitted to Buyer, and Seller shall pay such revenues to Buyer if received by Seller or if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may recoup any amounts owing to it for such revenues against any future amounts Buyer may owe to Seller pursuant to Article Six of the Master Agreement.
- (c) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (d) If CAISO develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's SC to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

ARTICLE 4 **CAISO OFFER REQUIREMENTS**

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's SC to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's SC (unless Seller is the SC), owner, or operator for such noncompliance.

ARTICLE 5
INTENTIONALLY OMITTED

ARTICLE 6
OTHER BUYER AND SELLER COVENANTS

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.8. The Parties shall agree upon reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations.

6.2 Representations, Warranties and Covenants

- (a) Each Party hereby represents and warrants to the other Party that throughout the Delivery Period such Party shall comply with Applicable Laws, including the Tariff, relating to the Product;
- (b) Seller represents and warrants to Buyer throughout the Delivery Period that:
 - (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR contract between the CAISO and either Seller or a Unit's owner or operator;
 - (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iii) each Unit's SC, owner and operator is obligated to comply with Applicable Laws, including the Tariff, relating to the Product;
 - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
 - (v) Seller has notified either the SC of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer;

- (c) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit.

- (d) Seller covenants as follows:
 - (i) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 6.2(c) is true and correct;
 - (ii) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer if CAISO designates any portion of the Contract Quantity for any day during the Delivery Period as CPM Capacity and, if CAISO makes such a designation, shall, and shall cause the Unit's SC to not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

ARTICLE 7
CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose the Contract Quantity or any applicable portion of the Contract Quantity for any day during the Delivery Period under this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.

ARTICLE 8
HOLDBACK AND SUBSTITUTE CAPACITY

No later than five (5) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's SC not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Following Buyer's request for Hold-Back Capacity, Buyer may request in writing for

Seller to utilize Hold-Back Capacity for Buyer's use as Substitute Capacity by no later than thirteen (13) Business Days prior to the Showing Month. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.6 or 2.7. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 8.

ARTICLE 9
INTENTIONALLY OMITTED

ARTICLE 10
ADDITIONAL MASTER AGREEMENT AMENDMENTS

10.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement with the following further requirement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority

Pacific Gas and Electric Company

By: 
Name: Girish Balachandran
Title: CEO
Date: 5/14/18

By: 
Name: Stephanie Wojda
Title: PM Analyst, Sr.
Date: 5/15/18

APPENDIX A DEFINED TERMS

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

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility's tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Capacity Procurement Mechanism” has the meaning set forth in the Tariff.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kw-month, specified for such period in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances

introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Hold-Back Capacity” is defined in Article 8.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1.

“MW” means megawatt.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Resold Product” is defined in Section 2.8.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“Replacement Unit” means a Unit providing RA Replacement Capacity.

“Resource Adequacy Availability Incentive Mechanism Price” or “RAAIM Price” is as defined in the CAISO Tariff Section 40.9.6.1 or 60 percent of the Capacity Procurement Mechanism Soft-Cap Price. The Capacity Procurement Mechanism Soft-Cap Price is defined in the CAISO Tariff Section 43A.4.1.1.

“RMR Contract” means a Reliability Must-Run Contract as forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means Capacity that substitutes for a Resource Adequacy Resource.

“Supply Plan” has the meaning set forth in the Tariff.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

**APPENDIX B
PRODUCT AND PRICE INFORMATION**

System RA Product Attributes:

RAR only (default) RAR and FCR

Product Characteristics:

CAISO Zone: North
MCC Bucket: N/A
Flexible Category (if Flexible and System Product): N/A

Contract Quantity and Contract Price

Showing Month and Year	RAR Quantity (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)
JULY 2018			

**APPENDIX C
SUPPLY PLAN INFORMATION**

Resource Capacity Contract Number	Resource ID in CAISO Master File	RA Capacity (MW 00.00 No Rounding)	RA Capacity Effective Start Date (mm/dd/yyyy hh:mm:ss)	RA Capacity Effective End Date (mm/dd/yyyy hh:mm:ss)	SCID of Load Serving Entity
33B230	BURNYF_2_UNIT 1		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	WSENGY_1_UNIT 1		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP

APPENDIX D
SUBSEQUENT SALE INFORMATION

Contract Key ID:
Benefitting LSE SCID:
Generic Volume (in MW):
Local Volume (in MW):
Flexible Volume (in MW):
Term:

APPENDIX E
NOTICE INFORMATION

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

All Notices:

Delivery/Mail Address:

Street: 333 W. El Camino Real, Suite 320
City: Sunnyvale, CA Zip: 94087

Attn: Dennis Dyc-O'Neal
Phone: (408) 721-5301 x1016

E-mail: dennis.dyconeal@svcleanenergy.org
Street: 333 W. El Camino Real, Suite 320

Invoices and Payments:

Attn: SVCE Power Settlements

Phone: (408)721-5301

E-mail:
SVCEpowersettlements@svcleanenergy.org

Scheduling:

Attn: Brian Goldstein

Phone: (916)936-3303
E-mail: brian@pacificea.com

Wire Transfer:

BNK: River City Bank
ACCT Title: SVCE
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: 080462990
Federal Tax ID Number: 81-2158638

Credit and Collections:

Attn: SVCE Power Settlements

Phone: (408)721-5301
E-mail:
SVCEpowersettlements@svcleanenergy.org

Contract Management

Attn: SVCE Power Settlements

Phone: (408)721-5301
E-mail: SVCEpowersettlements@svcleanenergy.org

With additional Notices of an Event of Default to Contract Manager:

Attn: Don Eckert, Interim CEO

Name: Pacific Gas and Electric Company, a California corporation

("Seller" or "PG&E")

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
Facsimile: (415) 972-5507

Invoices and Payments:

Attn: Tom Girlich (TAGG@pge.com)

Manager, Electric Settlements

Phone: (415) 973-9381

Facsimile: (415) 973-9505

Outages:

Attn: Outage Coordinator
(ESMOutageCoordinator@pge.com;
RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:

BNK: The Bank of NY Mellon
ACC Title: PG&E
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: 556650034
Federal Tax ID Number: 94-0742640

Credit and Collections:

Attn: Credit Risk Management

PGERiskCredit@pge.com

Phone: (415) 972-5188

Facsimile: (415) 973-7301

Contract Management

Attn: Elizabeth Motley (EMMG@pge.com)

Contract Management

Phone: (415) 973-2368

Facsimile: (415) 972-5507

With additional Notices of an Event of Default to Contract Manager:

Attn: Ted Yura (THY1@pge.com)

Phone: (408)721-5301x1003
E-mail: don.eckert@svcleanenergy.org

Senior Manager, Contract Management
Phone: (415) 973-8660
Facsimile: (415) 972-5507

Supply Plan and Replacement Request:
EPP-RAFilingsMailbox@pge.com

APPENDIX F

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name and address of
Beneficiary]

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** ("Applicant"), we hereby issue in favor of **[Insert name of Beneficiary]** (the "Beneficiary") our irrevocable standby letter of credit No. **[Insert number of letter of credit]** ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** ("Letter of Credit Amount"). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. "The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the "Draft Amount") is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary's counterparty under the RA Confirmation]** ("Counterparty") under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number];**" or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable, and;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made either by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Insert fax number]**, Attention: **[Insert name of bank's receiving department]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____
[print or type name]

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

**MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY ("PARTY A")
AND
PACIFIC GAS AND ELECTRIC COMPANY ("PARTY B")**

This confirmation letter ("Confirmation") confirms the Transaction between Party A and Party B, which becomes effective once fully executed by both parties (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Appendix B of this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: Party A

Seller: Party B

Product: The Product, including the Capacity Attributes of the Unit(s), Alternate Unit(s) or Shown Unit(s), is as defined in Appendix B. The Product does not include any right to the energy or ancillary services of the Unit(s), as outlined in Section 3.2(a).

Delivery Period: July 1, 2018 through July 31, 2018.

Contract Quantity and Price: The Contract Quantity and Price for each day during the Delivery Period as listed in Appendix B.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Firm RA Product

Seller's obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

2.2 Seller To Identify Shown Unit

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit Information listed in Appendix C no later than the Confirmation Effective Date. The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC. Seller's notice under this Section 2.2(a) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within one Business Day.
- (b) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2, then any such Shown Unit will be automatically deemed a Unit for purposes of this Confirmation for that the affected Showing Month.

2.3 Seller To Provide Alternate Capacity

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is not more or less than the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics specified in Appendix B no later than the Confirmation Effective Date. Seller's notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within one Business Day.
- (c) Once the Buyer provides its approval of any proposed Alternate Unit designated by Seller in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed a Unit for purposes of this Confirmation for that the affected Showing Month.

2.4 Delivery of Product

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:

- (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's SC to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
 - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit
 - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 8, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix C to be completed and included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix C, the Parties agree to communicate such changes to each other promptly.

2.5 RA Replacement Capacity

- (a) Following Seller's submission of a Supply Plan in accordance with Section 2.4(a)(i), if Buyer is responsible for providing RA Replacement Capacity for a Shown Unit, then Buyer shall provide Seller with written notice of the amount of RA Replacement Capacity by no later than twenty (20) days prior to the Showing Month.
- (b) Following Buyer's notice for RA Replacement Capacity, but no later than fifteen (15) days prior to the relevant deadline for Buyer's Compliance Showing, Seller shall provide RA Replacement Capacity from one or more Units, such that the total amount of Product provided to Buyer from all Units equals the Contract Quantity. Seller's notice designating a Replacement Unit under this Section 2.5 (b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one Business Day of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Replacement Unit.
- (c) Once Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that Showing Month.
- (d) Notwithstanding anything to the contrary in this Confirmation, following Buyer's written notice pursuant to Section 2.5(a), Seller's failure to provide RA Replacement Capacity may result in the calculation of damages payable to Buyer

under Section 2.6 and/or the indemnification of Buyer against any penalties, fines or costs under Section 2.7. In the event that Buyer does not provide written notice or such notice is not timely, to Seller as required under Section 2.5(a), then Seller shall have no liability with respect to any damages, penalties, fines or costs incurred.

2.6 Damages for Failure to Provide Capacity

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller shall pay to Buyer at the time set forth in Article Six of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:

- (a) for each applicable day during the Showing Month included in the Delivery Period, the amount equal to (w) the monthly CAISO Resource Adequacy Availability Incentive Mechanism (RAAIM) Price divided by (x) the number of days included in the Showing Month, multiplied by (y) the amount of the Expected Contract Quantity not delivered by Seller on such day multiplied by (z) 1,000 kw/MW, minus
- (b) for each applicable day during the Showing Month included in the Delivery Period, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kw/MW.

2.7 Indemnities for Failure to Deliver Contract Quantity

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO or any Governmental Body having jurisdiction resulting from any of the following:
 - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period.
 - (ii) A Unit's SC's failure to timely or accurately submit Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
 - (iii) Any other failure by Seller to perform its obligations under this Confirmation.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

- (c) If Seller fails to deliver any portion of the Contract Quantity of Product and such failure results in CAISO Capacity Procurement Mechanism costs imposed on Buyer due to an insufficient monthly Resource Adequacy plan, Seller agrees to indemnify Buyer from these costs less any damages assessed under Section 2.6(a);

2.8 Buyer's Re-Sale of Product

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the CSP. If Buyer re-sells Resold Product, Seller agrees, and agrees to cause the Unit's SC, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.6 and 2.7.
- (b) If Buyer exercises its right to re-sell the Resold Product, Buyer shall notify Seller in writing that such sale has occurred and provide Seller with the information described in Appendix D no later than two (2) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, by providing Seller with written updates to the information in Appendix D in accordance with the deadlines described in this Section 2.8(b).

ARTICLE 3 PAYMENT

3.1 Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment to Seller within five (5) Business Days following the Confirmation Effective Date, as follows:

$$\text{Payment} = Q \times P \times CF$$

where:

- Q = The quantity of Product to be delivered by Seller to Buyer pursuant to and consistent with Section 2.4 for the applicable Showing Month
- P = The Contract Price for the applicable Showing Month, expressed in dollars per kw-month

CF = The conversion factor equal to 1,000 kw per MW

The payment calculation shall be rounded to two decimal places.

3.2 Allocation of Other Payments and Costs

- (a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a purchaser of Resold Product fails to remit those revenues to Seller. If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer pursuant to Article Six of the Master Agreement. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer is entitled to receive and retain all revenues associated with the Contract Quantity for each day during the Delivery Period (including any capacity and availability revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v)). All Buyer revenues described in this Section 3.2(b) and received by Seller, or a Unit's SC, owner, or operator, must be remitted to Buyer, and Seller shall pay such revenues to Buyer if received by Seller or if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may recoup any amounts owing to it for such revenues against any future amounts Buyer may owe to Seller pursuant to Article Six of the Master Agreement.
- (c) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.
- (d) If CAISO develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit's SC to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

- (e) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

ARTICLE 4
CAISO OFFER REQUIREMENTS

Seller is responsible for, as applicable, scheduling or causing the applicable Unit's SC to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit's SC (unless Seller is the SC), owner, or operator for such noncompliance.

ARTICLE 5
INTENTIONALLY OMITTED

ARTICLE 6
OTHER BUYER AND SELLER COVENANTS

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.8. The Parties shall agree upon reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations.

6.2 Representations, Warranties and Covenants

- (a) Each Party hereby represents and warrants to the other Party that throughout the Delivery Period such Party shall comply with Applicable Laws, including the Tariff, relating to the Product;
- (b) Seller represents and warrants to Buyer throughout the Delivery Period that:
 - (i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-

- CAISO markets, other than pursuant to an RMR contract between the CAISO and either Seller or a Unit's owner or operator;
- (ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
 - (iii) each Unit's SC, owner and operator is obligated to comply with Applicable Laws, including the Tariff, relating to the Product;
 - (iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
 - (v) Seller has notified either the SC of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer;
- (c) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit.
- (d) Seller covenants as follows:
- (i) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 6.2(c) is true and correct;
 - (ii) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Buyer if CAISO designates any portion of the Contract Quantity for any day during the Delivery Period as CPM Capacity and, if CAISO makes such a designation, shall, and shall cause the Unit's SC to not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

ARTICLE 7 **CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose the Contract Quantity or any applicable portion of the Contract Quantity for any day during the Delivery Period under this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement

Review Group in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.

ARTICLE 8
HOLDBACK AND SUBSTITUTE CAPACITY

No later than five (5) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit's SC not to list, in the Unit's Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period ("Hold-Back Capacity"). Following Buyer's request for Hold-Back Capacity, Buyer may request in writing for Seller to utilize Hold-Back Capacity for Buyer's use as Substitute Capacity by no later than thirteen (13) Business Days prior to the Showing Month. The amount of Contract Quantity that is the subject of Buyer's request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.6 or 2.7. Seller shall, or shall cause the Unit's SC to, comply with Buyer's request under this Article 8.

ARTICLE 9
INTENTIONALLY OMITTED

ARTICLE 10
ADDITIONAL MASTER AGREEMENT AMENDMENTS

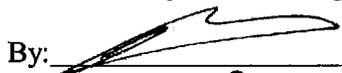
10.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement with the following further requirement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority

By: 
Name: Girish Balachandran
Title: CEO
Date: 5/14/18

Pacific Gas and Electric Company

By: 
Name: Stephanie Wojda
Title: PM Analyst, Sr
Date: 5/15/18

APPENDIX A DEFINED TERMS

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

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility's tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

- (a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;
- (b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and
- (c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.

“Capacity Procurement Mechanism” has the meaning set forth in the Tariff.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kw-month, specified for such period in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances

introduced to the site; and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

“FCR Contract Quantity” means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Hold-Back Capacity” is defined in Article 8.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1.

“MW” means megawatt.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Resold Product” is defined in Section 2.8.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“Replacement Unit” means a Unit providing RA Replacement Capacity.

“Resource Adequacy Availability Incentive Mechanism Price” or “RAAIM Price” is as defined in the CAISO Tariff Section 40.9.6.1 or 60 percent of the Capacity Procurement Mechanism Soft-Cap Price. The Capacity Procurement Mechanism Soft-Cap Price is defined in the CAISO Tariff Section 43A.4.1.1.

“RMR Contract” means a Reliability Must-Run Contract as forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Effective Date.

“Substitute Capacity” means Capacity that substitutes for a Resource Adequacy Resource.

“Supply Plan” has the meaning set forth in the Tariff.

“Tariff” means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Alternate Unit or Shown Unit.

“Unit EFC” means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

“Unit NQC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

**APPENDIX B
PRODUCT AND PRICE INFORMATION**

System RA Product Attributes:

RAR only (default) RAR and FCR

Product Characteristics:

CAISO Zone: North

MCC Bucket: N/A

Flexible Category (if Flexible and System Product): N/A

Contract Quantity and Contract Price

Showing Month and Year	RAR Quantity (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)
JULY 2018			

Local RAR Product Attributes:

Local RAR and RAR Local RAR, RAR, and FCR

Product Characteristics:

CAISO Zone: _____ North _____

MCC Bucket: _____ 4 _____

CPUC Local Area: _____ Other PG&E Area _____

Flexible Category (if Flexible and Local Product): _____ 1 _____

Contract Quantity and Contract Price

Showing Month and Year	Local RAR Quantity (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)
July 2018			

**APPENDIX C
SUPPLY PLAN INFORMATION**

Resource Capacity Contract Number	Resource ID in CAISO Master File	RA Capacity (MW 00.00 No Rounding)	RA Capacity Effective Start Date (mm/dd/yyyy hh:mm:ss)	RA Capacity Effective End Date (mm/dd/yyyy hh:mm:ss)	SCID of Load Serving Entity
33B230	COGNAT_1_UNIT		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	KINGCO_1_KINGBR		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	MNDOTA_1_SOLAR1		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	YUBACT_1_SUNSWT		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	WAUKNA_1_SOLAR		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	LEPRFD_1_KANSAS		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	HELMPG_7_UNIT 1		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP
33B230	DIABLO_7_UNIT 1		07/01/2018 00:00:00	07/31/2018 23:59:59	LMBCP

APPENDIX D
SUBSEQUENT SALE INFORMATION

Contract Key ID:
Benefitting LSE SCID:
Generic Volume (in MW):
Local Volume (in MW):
Flexible Volume (in MW):
Term:

APPENDIX E
NOTICE INFORMATION

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

All Notices:

Delivery/Mail Address:

Street: 333 W. El Camino Real, Suite 320
City: Sunnyvale, CA Zip: 94087

Attn: Dennis Dyc-O'Neal
Phone: (408) 721-5301 x1016

E-mail: dennis.dyconeal@svcleanenergy.org
Street: 333 W. El Camino Real, Suite 320

Invoices and Payments:

Attn: SVCE Power Settlements

Phone: (408)721-5301

E-mail:
SVCEpowersettlements@svcleanenergy.org

Scheduling:

Attn: Brian Goldstein

Phone: (916)936-3303
E-mail: brian@pacificea.com

Wire Transfer:

BNK: River City Bank
ACCT Title: SVCE
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: 080462990
Federal Tax ID Number: 81-2158638

Credit and Collections:

Attn: SVCE Power Settlements

Phone: (408)721-5301
E-mail:
SVCEpowersettlements@svcleanenergy.org

Contract Management

Attn: SVCE Power Settlements

Phone: (408)721-5301
E-mail: SVCEpowersettlements@svcleanenergy.org

**With additional Notices of an Event of Default to
Contract Manager:**

Attn: Don Eckert, Interim CEO

Name: Pacific Gas and Electric Company, a California
corporation

("Seller" or "PG&E")

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
Facsimile: (415) 972-5507

Invoices and Payments:

Attn: Tom Girlich (TAGG@pge.com)

Manager, Electric Settlements

Phone: (415) 973-9381

Facsimile: (415) 973-9505

Outages:

Attn: Outage Coordinator
(ESMOutageCoordinator@pge.com;
RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:

BNK: The Bank of NY Mellon
ACC Title: PG&E
ABA: [REDACTED]
ACCT: [REDACTED]
DUNS: 556650034
Federal Tax ID Number: 94-0742640

Credit and Collections:

Attn: Credit Risk Management

PGERiskCredit@pge.com)

Phone: (415) 972-5188

Facsimile: (415) 973-7301

Contract Management

Attn: Elizabeth Motley (EMMG@pge.com)

Contract Management

Phone: (415) 973-2368

Facsimile: (415) 972-5507

**With additional Notices of an Event of Default to
Contract Manager:**

Attn: Ted Yura (THY1@pge.com)

Phone: (408)721-5301x1003
E-mail: don.eckert@svcleanenergy.org

Senior Manager, Contract Management
Phone: (415) 973-8660
Facsimile: (415) 972-5507

Supply Plan and Replacement Request:
EPP-RAFilingsMailbox@pge.com

APPENDIX F

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name and address of
Beneficiary]

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** ("Applicant"), we hereby issue in favor of **[Insert name of Beneficiary]** (the "Beneficiary") our irrevocable standby letter of credit No. **[Insert number of letter of credit]** ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** ("Letter of Credit Amount"). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. "The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the "Draft Amount") is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary's counterparty under the RA Confirmation]** ("Counterparty") under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert date of the Confirmation]** between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**," or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable, and;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made either by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Insert fax number]**, Attention: **[Insert name of bank's receiving department]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[Insert name of issuing bank]

By: _____
Authorized Signature

Name: _____
[print or type name]

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MONTEREY BAY COMMUNITY POWER AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller") and **Monterey Bay Community Power Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of May 14, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 20, 2017, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05- 10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO- approved, planned or scheduled disconnection, separation or reduction in

capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.

- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Burney Forest Power
Location	Burney, CA
CAISO Resource ID	BURNYF_2_UNIT 1
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	GEN
Resource Category (1, 2, 3 or 4)	N/A
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

Name	Wheelabrator Shasta
Location	Anderson, CA
CAISO Resource ID	WSENGY_1_UNIT 1
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	GEN
Resource Category (1, 2, 3 or 4)	N/A
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[] FCR Attributes with LAR Attributes

[] FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[X] RAR Attributes

[] LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: July 1, 2018, through July 31, 2018, inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity.

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	RAR Contract Quantity (MWs) Burney Forest	RAR Contract Quantity (MWs) Wheelabrator Shasta
July	■	■

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will

be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs,

then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement with respect to each Showing Month, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) of the month following the Monthly Delivery Period, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)
July	\$ [REDACTED]

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or

otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for resale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS

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

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT POWERS
AUTHORITY**

**MONTEREY BAY COMMUNITY POWER,
A CALIFORNIA JOINT POWERS
AUTHORITY**

By: 
Name: Girish Balachandran
Title: Chief Executive Officer

By: 
Name: TOM HABASHI
Title: CEO

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MONTEREY BAY COMMUNITY POWER AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Seller") and **Monterey Bay Community Power Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of May 14, 2018 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 20, 2017, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05- 10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Service Schedule B Commitment Service" in the WSP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO- approved, planned or scheduled disconnection, separation or reduction in

capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.

- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	Diablo Canyon Power Plant
Location	Avila Beach, CA
CAISO Resource ID	DIABLO_7_UNIT 1
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	GEN
Resource Category (1, 2, 3 or 4)	N/A
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

Name	Varies
Location	Varies
CAISO Resource ID	Varies
Unit SCID	PCG2
Unit NQC	Varies
Unit EFC	N/A
Resource Type	GEN
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Path 26 (North or South)	North

Local Capacity Area (if any, as of Confirmation Effective Date)	PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

FCR Attributes with LAR Attributes

FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

RAR Attributes

LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: July 1, 2018, through July 31, 2018, inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity.

The Contract Quantity for each Monthly Delivery Period shall be:

July System RAR Contract Quantity (MWs)

Unit	RAR Contract Quantity (MWs)
DIABLO_7_UNIT 1	

July Local RAR Contract Quantity (MWs)

Unit	Local RAR Contract Quantity (MWs)	FCR Quantity, if any (MWs)
COGNAT_1_UNIT		
KINGCO_1_KINGBR		
MNDOTA_1_SOLAR1		
YUBACT_1_SUNSWT		
WAUKNA_1_SOLAR		
LEPRFD_1_KANSAS		
HELM PG_7_UNIT 1		

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages**: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment**: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC**: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "**Notification Deadline**" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall

be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract

Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement with respect to each Showing Month, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) of the month following the Monthly Delivery Period, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)	Local RAR Capacity Price (\$/kW-month)
July	\$ [REDACTED]	\$ [REDACTED]

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other

third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for resale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the

Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric

Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller

shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS

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

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT POWERS
AUTHORITY**

By: 
Name: Girish Balachandran
Title: Chief Executive Officer

**MONTEREY BAY COMMUNITY POWER,
A CALIFORNIA JOINT POWERS
AUTHORITY**

By: 
Name: TOM HARASHI
Title: CEO

TRANSACTION CONFIRMATION RESOURCE ADEQUACY

This Confirmation Letter (“Confirmation”) confirms the Transaction between **High Desert Power Project, LLC**, a California limited liability company (“Seller”) and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of May 24, 2018 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. Unless otherwise noted below, This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” is defined in the Tariff.
- 1.4 “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 “Buyer” is defined in the introductory paragraph hereof.
- 1.6 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Master Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.8 “Confirmation” is defined in the introductory paragraph hereof.
- 1.9 “Confirmation Effective Date” is defined in the introductory paragraph hereof.
- 1.10 “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.

1.11 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.12 “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.13 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

1.14 “Delivery Period” is defined in Section 4.1 hereof.

1.15 “Delivery Point” is defined in Section 4.2 hereof.

1.16 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month, and (ii) any reductions resulting from any Excusable Event.

1.17 “Excusable Event” means: (a) any event caused by a Planned Outage that is noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation, or (b) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or by Buyer’s failure to perform.

1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the Flexible RA Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Confirmation.

1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or any other Governmental Body of competent jurisdiction.

1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.

1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.28 “Master Agreement” is defined in the introductory paragraph hereof.

1.29 “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.

1.30 “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.

1.31 “Net Qualifying Capacity” is defined in the Tariff.

1.32 “Notification Deadline” is defined in Section 4.5 hereof.

- 1.33** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35** “Product” is defined in Article 3 hereof.
- 1.36** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.38** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40** “Replacement Capacity” is defined in Section 4.7 hereof.
- 1.41** “Replacement Unit” is defined in Section 4.5.
- 1.42** “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43** “Scheduling Coordinator” is defined in the Tariff.
- 1.44** “Seller” is defined in the introductory paragraph hereof.
- 1.45** “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable

Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.47 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.48 “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the Master Agreement) that is evidenced by this Confirmation.

1.49 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.50 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.51 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name:	High Desert Power Project
Location:	Victorville, CA
CAISO Resource ID:	HIDSRT_2_UNITS
Unit SCID:	EDF8
Unit NQC:	830
Unit EFC:	630
Resource Type:	Natural Gas
Resource Category (1, 2, 3 or 4):	4
Flexible RAR Category (1, 2 or 3):	1
Path 26 (North or South):	South
Local Capacity Area (if any, as of Confirmation Effective Date):	N/A

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	N/A
Run Hour Restrictions:	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the “Product”), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Attributes

- RA Attributes
- RA Attributes with Flexible RA Attributes
- LAR Attributes
- LAR Attributes with Flexible RA Attributes
- Flexible RA Attributes

3.3 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of

the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to (a) not provide the full Contract Quantity during the period of such non-availability, or (b) supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2019 through December 31, 2020.

4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	RAR	
	Contract Quantity (MWs)	
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (ii) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A)

a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the Master Agreement.

- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity as a result of an event other than an Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Designated RA Capacity for the prior Showing Month to reflect the prorated amount that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for such Showing Month.

RA Capacity Price Table

Contract Month	RAR Capacity Price (\$/kW-month)
January	\$ [REDACTED]
February	\$ [REDACTED]
March	\$ [REDACTED]
April	\$ [REDACTED]
May	\$ [REDACTED]
June	\$ [REDACTED]
July	\$ [REDACTED]
August	\$ [REDACTED]
September	\$ [REDACTED]
October	\$ [REDACTED]
November	\$ [REDACTED]
December	\$ [REDACTED]

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. OTHER BUYER AND SELLER COVENANTS

6.1 Further Assurances

- (a) Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such commercially reasonable actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by Parties on the Confirmation Effective Date. The Parties acknowledge that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings which may necessitate such amendments.

- (c) As used herein, “commercially reasonable actions” or “good faith” shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit’s Scheduling Coordinator to provide to the Buyer, by the

Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and

- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 7. CONFIDENTIALITY

Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In addition to the rights and obligations in Section 30 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Notwithstanding anything to the contrary contained herein or the Master Agreement, Section 30 of the Master Agreement shall not prohibit Seller from disclosing the terms of this Transaction to any existing or prospective investor, lender or prospective purchaser, and their representatives, so long as such receiving party is subject to a confidentiality agreement or non-disclosure agreement with Seller, or is otherwise subject to a professional duty to maintain the confidentiality of such information.

ARTICLE 8. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 9. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 10. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 11. GENERAL PROVISIONS

11.1 Governing Law

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

11.2 No Recourse to Members of Buyer

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

11.3 Credit Requirements

Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.

11.4 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

11.5 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

**High Desert Power Project LLC, a
California limited liability company**

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

By: Mark Kubow

By: Girish Balachandran

Name: Mark Kubow

Name: Girish Balachandran

Title: President

Title: CEO



SVCE Regulatory and Legislative Update

June 2018

Hilary Staver, Manager of Regulatory and Legislative Effectiveness

Regulatory Summary

The Commission released major statements in a number of our key proceedings this month. A Proposed Decision in the Resource Adequacy proceeding (R.17-09-020) creates a multi-year RA compliance requirement and a centralized RA buyer for the first time in the program’s history. The CCA Bond Methodology proceeding (R.03-10-003) has ended with the approval of the Proposed Decision on 5/31, and the Tree Mortality Non-Bypassable Charge proceeding (A.16-11-005) finally got a Scoping Memo with an official proceeding schedule more than a year into the proceeding. The CPUC also confirmed its selection of a GHG accounting methodology for the IRP process (R.16-02-007). Meanwhile, the PCIA proceeding is still in the stakeholder input phase, with a Proposed Decision expected late summer 2018.

Regulatory Update

<p>PCIA Reform Rulemaking (R. 17-06-026)</p>	<ul style="list-style-type: none"> ➤ Recall: <i>[On 7/10/17 the California Public Utilities Commission (CPUC) released an Order Instituting Rulemaking (OIR) “to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment.” The OIR dismisses the investor owned utilities’ (IOUs’) PAM application, and opens a new proceeding to consider reforms to the PCIA more broadly. On 4/2/18, CalCCA submitted Opening Testimony that lays out a portfolio of suggested improvements to the PCIA. These range from incremental improvements to the market price benchmark to longer-term structural changes, such as securitization of utility-owned generation and an auction of IOU RPS and GHG-free resources to more accurately assess their market value.]</i> ➤ Following evidentiary hearings in May, CalCCA submitted an opening brief 6/1. Reply briefs are due on 6/15. Briefing is typically the last phase of a proceeding before the release of a Proposed Decision (“PD”), and provides an opportunity for each party to summarize the ideas it put forth in testimony and respond to those of other parties. ➤ An additional stage called final oral arguments is sometimes added, typically in high-profile proceedings. Final oral arguments provide an opportunity for parties to present their case orally to a quorum of the five CPUC commissioners (as opposed to the Administrative Law Judge [“ALJ”] and single Assigned Commissioner who oversee the rest of the proceeding) prior to the release of a PD. Final oral arguments have been scheduled for this proceeding on 6/25.
<p>Integrated Resource Planning (IRP) (R. 16-02-007)</p>	<ul style="list-style-type: none"> ➤ Recall: <i>[This rulemaking was opened for the purpose of implementing the electricity sector’s share of CA’s GHG emissions mitigation goals as put forth in SB 350. The IRP process requires load serving entities (LSEs) to develop long-term procurement roadmaps and share them with the CPUC to facilitate sector-wide planning. On 9/19/17, the CPUC released the Proposed Reference System Plan (RSP). The RSP is a statewide study that serves as a benchmark for what the Integrated Resource Plans (IRPs) of all the LSEs need to achieve in aggregate in order to meet CA’s GHG emission reduction goals. On December 28th, the CPUC released a Proposed Decision (PD) containing further requirements for IRP content and compliance protocol. This PD significantly expanded CPUC authority over CCA IRPs, allowing the CPUC to review and approve them despite the language in SB 350 specifying certification only. Despite strong advocacy from the CCA community, the PD was passed unanimously at the 2/28/18 Commission meeting. On 4/3/18, the CPUC released a</i>



	<p><i>Ruling on the GHG accounting methodology to be used in the IRP process. The ruling proposes adopting the Clean Net Short (“CNS”) methodology, which was originally proposed by PG&E and struck from the 2/8 IRP Decision after opposition from CalCCA and other stakeholders. CNS is based on hourly comparison between supply and demand curves for each load serving entity. On 4/20 and 4/30 respectively, CalCCA submitted opening and reply comments on the 4/3 Ruling.]</i></p> <ul style="list-style-type: none"> ➤ On 5/25, the CPUC issued another Ruling confirming its selection of a modified Clean Net Short methodology for GHG accounting in the IRP process. Updated versions of the IRP compliance templates and GHG calculator were released with the Ruling. ➤ Preparation of SVCE’s first Integrated Resource Plan is under way. IRPs are due at the CPUC on 8/1/18, and SVCE’s IRP will be presented to the Board before submission. Since this is the first time that both CPUC and CCA staff are going through this process, there is an ongoing conversation to clarify compliance ambiguities and fine-tune the compliance requirements. See the attached memo for further details.
<p>CCA Rulemaking (R. 03-10-003)</p>	<ul style="list-style-type: none"> ➤ Recall: <i>[On July 7th, SVCE and other CCAs filed testimony through CalCCA proposing an updated methodology for calculating the Financial Security Requirement (FSR, aka bond) that new CCAs must pay as insurance against failure and dissolution. In contrast to the IOUs’ argument for including an estimated cost of emergency procurement for involuntarily returning customers, CalCCA proposes that the FSR should cover only the administrative costs of re-incorporation. CalCCA was represented in the October 2017 evidentiary hearings by Mark Fulmer of MRW & Associates, LLC. Hearings were followed by opening and reply briefs, in which CalCCA continued to defend its proposal. On 4/6/18, the Commission released a Proposed Decision (“PD”) in this proceeding with a methodology for the new CCA bond requirement. The Financial Security Requirement (“FSR, aka “CCA bond”) was to include both the administrative costs of customer transition back to the IOU as well as an estimate of six months of incremental procurement costs. Incremental procurement costs were be estimated as the difference between market energy rate and the IOU generation retail rate, so in low-price market conditions the net incremental procurement cost could be negative. Negative procurement costs were allowed to offset administrative costs down to a total FSR of \$0.]</i> ➤ On 5/29 the CPUC released an updated Proposed Decision that, among other small changes, raised the minimum FSR to \$147k. This is the same minimum used in the bond methodology for Energy Service Providers (“ESPs,” aka direct access energy providers). ➤ The updated PD was approved by the Commission on 5/31. Implementation of the new FSR should begin before the end of the year.
<p>Resource Adequacy (R. 17-09-020)</p>	<ul style="list-style-type: none"> ➤ Recall: <i>[On 9/28/17, the CPUC issued an Order Instituting Rulemaking (OIR) opening a new Resource Adequacy (RA) proceeding. This proceeding will oversee the RA program for RA compliance years 2019 and 2020. It is the successor to R.14-10-010, a three-year proceeding that covered RA compliance years 2016, 2017, and 2018 and which was closed in June 2017. The OIR for R.17-09-020 indicates that CPUC staff are open to making structural improvements to the RA program, and asks for suggestions from stakeholders on how the program should be modified. SVCE and four other CCAs are participating jointly in this proceeding as the CCA Parties, and submitted comments on the OIR on 10/30/17 suggesting several structural improvements to the program. A prehearing conference was held on 12/4/17. On 12/21/17, the CCA Parties filed a Motion to expand the scope of this proceeding to include the RA-related issues cited in Draft</i>



	<p><i>Resolution E-4907. The CPUC released a Scoping Memo on 1/18/18. The Scoping Memo divides the proceeding into three tracks in order of decreasing urgency. The most urgent issues, including questions about compliance and cost allocation related to load migration (ie CCA launches and expansions) are included in Track 1. Track 1 is scheduled for a decision by June 2018, and will provide an avenue for CCAs to resolve outstanding issues related to Resolution E-4907. In February and March 2018, the CCA Parties submitted Track 1 Proposals with changes to the RA program, followed by comments and reply comments on the proposals of other parties.]</i></p> <ul style="list-style-type: none"> ➤ On 5/22, the CPUC released a Proposed Decision (“PD”) in Track 1 of this proceeding. The PD addresses system, local, and flexible RA obligations for 2019 (ie, how much RA is needed system-wide in each of these three categories). The PD then delves into the structure of the RA program itself. The PD finds that for local RA, which is used to prevent capacity shortages in transmission-constrained areas, the status quo of an annual compliance requirement is insufficient. The PD determines that there should be a multi-year local RA requirement, extending the length of local RA contracts to three to five years. The PD also find that local RA procurement should be done by a central buyer, but does not specify who that buyer should be. ➤ In Track 2, stakeholders have the opportunity to propose program structures that meet the requirements of a three- to five-year local RA obligation procured by a central buyer. CalCCA has assembled an RA working group to develop a proposal on behalf of the CCA community. Proposals are due in the form of testimony on 7/10.
<p>AB 1110 Implementation</p>	<ul style="list-style-type: none"> ➤ Recall: [AB 1110 (Ting, Chapter 656, Statutes of 2016) was passed in 2016 for the purpose of augmenting the information available to electricity consumers in the annually-distributed Power Content Label (PCL). AB 1110 requires that starting in 2020, in addition to displaying power mix the PCL will include the greenhouse gas emissions intensity (in lbs CO₂e/MWh) of each LSE’s portfolio (or, if it offers multiple electricity products, of each individual product). AB 1110 also directs the California Energy Commission (CEC) to develop guidelines on how to treat unbundled RECs when calculating the power mix and GHG intensity metrics. On June 27th, the CEC released its proposed implementation plan for AB 1110. The proposal contains several provisions that could threaten SVCE’s claim of being carbon-free. Most importantly, the CEC proposes that for the purposes of calculating carbon intensity, PCC2 (aka “bucket 2”) RECs would have the emissions profile of the substitute energy that firms and shapes the energy product (usually gas) rather than that of the zero-carbon resource that generates the RECs. Secondly, PCC3 (unbundled) RECs would be reported in a footnote but not included in power mix or GHG intensity calculations. MWh for which SVCE has purchased unbundled RECs would thus no longer be carbon-free. On 1/17/18, the CEC issued an updated version of the AB 1110 Implementation Proposal. However, the updates to not change the treatment of PCC2 (ie “bucket 2”) renewables.] ➤ No New Updates: Parties are still awaiting an updated version of the Staff Proposal on AB 1110 implementation.
<p>Tree Mortality NBC (A. 16-11-005)</p>	<ul style="list-style-type: none"> ➤ Recall: [In 2016, an emergency proclamation by Governor Brown and a bill passed by the legislature (SB 692) separately ordered the IOUs to procure extra energy from biomass in order to dispose of trees killed by the drought. SB 692 explicitly authorizes the IOUs to recover the above-market cost of this procurement through a new non-bypassable charge (NBC), while Governor Brown’s proclamation does not. The IOUs would like to combine the procurement costs of these two mandates and recover both through a single new NBC. On July 14th, CalCCA submitted a Motion challenging a pre-hearing conference ruling in which the Administrative Law Judge (ALJ) erroneously determined the IOUs’ proposed combined NBC



	<p><i>to be legal and acceptable. A workshop was held on 12/12/17, in which CCA and IOU representatives discussed the methodology for valuing the biomass resources authorized for cost recovery that would form the basis of the new tree mortality NBC. The conversation revealed some common ground, particularly regarding the importance of consistency with the outcome of the ongoing PCIA reform proceeding. However, the workshop agenda explicitly excluded discussion of whether procurement mandated by Governor Brown’s emergency proclamation, which was not explicitly authorized for cost recovery via NBC, could be lumped in with the SB 692 procurement in the new NBC. On 3/14/18, the Commission responded to and denied CalCCA’s July 2017 Motion on the treatment of procurement costs associated with Governor Brown’s 2016 emergency proclamation. On 4/17/18, the CPUC released a ruling laying out the methodology for calculating the tree mortality NBC. The methodology is straightforward, and calculates above-market costs of the biomass procurement by subtracting energy and ancillary services revenue plus the average 2016 per-MWh RPS contract cost from the biomass per-MWh biomass contract costs.¶</i></p> <p>➤ On 5/30 the CPUC released a Scoping Memo for this proceeding, including a proceeding schedule that adds testimony, hearings, and briefing. Planning for CalCCA’s and SVCE’s further participation in this proceeding is underway.</p>
<p>Low Carbon Fuel Standard</p>	<p>➤ Recall: <i>[On December 4, SVCE submitted a second set of comments advocating for CCAs to become eligible for all or a portion of the Low Carbon Fuel Standard credits currently allocated to Electric Distribution Utilities (ie, IOUs).¶</i></p> <p>➤ No New Updates: Parties are now awaiting release of final updated LCFS guidelines, which are expected to be released in winter 2018.</p>
<p>California Customer Choice Project (CCCP)</p>	<p>➤ Recall: <i>[Over the past year, the California Public Utilities Commission (CPUC) has hosted a series of stakeholder engagement events devoted to re-opening broader retail competition in the electricity sector. This started with an En Banc Hearing on consumer and retail choice in May 2017. On 10/31/17, the CPUC held an all-day workshop in Sacramento featuring presentations from several state and countries (Texas, the UK, New York, Illinois, etc) that have at least partial competition in their retail electricity markets. On 5/3/18, the CPUC released a white paper (the “Green Book”) on the future of customer choice in California. The paper reviews several case studies from other states and countries that have implemented versions of retail choice in their electricity markets, and characterizes California’s situation as a precarious one at risk for another energy crisis.¶</i></p> <p>➤ CalCCA is preparing comments on the Green Book to be submitted on 6/11. The CPUC will release an updated final version of the Green Book this summer after taking stakeholder comments into account.</p>
<p>Petition for Modification of D. 12-12-036</p>	<p>➤ Recall: <i>[On January 30, the three investor-owned utilities (IOUs: PG&E, SCE, and SDG&E) filed a Petition for Modification of D.12-12-036. This Decision, passed in 2012, established a Code of Conduct and accompanying enforcement mechanisms related to IOU interactions with CCAs. D 12-12-036 was passed as part of the implementation process for SB 790, a 2011 law requiring limitations on IOU activities that was motivated by PG&E’s misuse of ratepayer resources and information while attempting to stymie the formation of MCE in 2010. The Petition for Modification (Pfm) argues for removal of the limitations on both public marketing and lobbying of elected officials about CCAs, grounding the request in 1st Amendment arguments about free speech combined with the increasing popularity of the CCA model across the state. The IOUs can already do both of these things if they establish Independent Marketing Divisions (IMDs) that meet certain criteria for independence set by the CPUC (SDG&E is the only one of the three that has done this so far). However, this</i></p>



	<p><i>PfM would abolish the IMD requirement and allow the IOUs to engage directly in marketing and lobbying activities with no firewall. CalCCA submitted a response to the Petition for Modification (PfM) on 3/1/18.</i></p> <p>➤ No new updates: Parties are now awaiting the Commission’s response to the PfM. The rules governing PfMs allow the Commission to respond at its leisure with no timeline restrictions, up to and including never responding at all. We therefore do not know how soon to expect Commission action.</p>
--	--

Legislative Update

On May 16th, SVCE completed the planned day of meetings in Sacramento with elected officials. Participants were Directors Smith and Sinks, Girish Balachandran, Hilary Staver, and a contingent from Monterey Bay Community Power that included CEO Tom Habashi and Board members Bruce McPherson and Trina Coffman-Gomez. The team met with the offices of all ten of SVCE’s elected officials, delivering the Board’s signed Green Book letter and discussing the Green Book and CCA issues more generally. The letter was very well received, so thank you again for helping us get that together in time! The conversations yielded some ideas for further collaboration, so follow-up is ongoing.



Communications & Outreach Update June 2018

1. Events and Presentations

Staff continues to attend community events and provide presentations about SVCE to community groups as requested. In May, we hosted a community meeting for Milpitas which was publicized by direct mail and drew roughly 120 attendees. We also gave presentations at two MidPen Housing developments for seniors and at Cupertino's May BayREN workshop. We are sponsoring community festivals and events throughout the summer allowing for prominent advertising space as well as opportunities to engage with the community at booths. We hosted booths at two City of Sunnyvale Energy Clinics in May and early June to answer questions residents had about their energy bills and will attend two more this month. We presented on a CCA panel at ABAG's General Assembly Business Meeting in San Francisco.

Completed and Upcoming Events:

Date	Time	Event Description	Location
May 9	2 – 4 PM	MidPen Housing Community Meeting – <i>presentation and Q&A</i>	Sunnyvale
May 14	6:30 – 7:30 PM	Milpitas Community Meeting – <i>presentation</i>	Barbara Lee Senior Center, Milpitas
May 17	2 – 4 PM	MidPen Housing Community Meeting – <i>presentation and Q&A</i>	Milpitas
May 19 – 20	Sat 10 AM – 6 PM, Sun 10 AM – 5 PM	Boogie: Campbell's Music Festival – <i>sponsor</i>	Downtown Campbell
May 23	2:30 – 5 PM	Sunnyvale Drop-In Energy Clinic – <i>tabling</i>	Sunnyvale Senior Center
May 24	8 AM – 5 PM	SVLG Energy and Sustainability Summit – <i>tabling</i>	Oracle, Redwood City
May 24	6 – 8 PM	BayREN Workshop – <i>presentation and Q&A</i>	Quinlan Community Center, Cupertino
May 26 and 27	Sat 10 AM – 7 PM, Sun 10 AM – 6 PM	Morgan Hill Mushroom Mardi Gras – <i>tabling and sponsor</i>	Downtown Morgan Hill
May 31	8 AM – 5 PM	Innovation and Impact Symposium – <i>tabling</i>	San Jose City Hall
June 2	9:30 AM – 12 PM	Sunnyvale Drop-In Energy Clinic – <i>tabling</i>	Columbia Neighborhood Center, Sunnyvale
June 2 – 3	10 AM – 6 PM	Sunnyvale Art & Wine Festival – <i>sponsor</i>	Downtown Sunnyvale
June 16	2:30 – 5:30 PM	Sunnyvale Drop-In Energy Clinic – <i>tabling</i>	Sunnyvale Public Library
June 19	2:30 – 5 PM	Sunnyvale Drop-In Energy Clinic – <i>tabling</i>	Sunnyvale Senior Center

June 22	8 AM – 5 PM	Silicon Valley Energy Summit	Stanford University, Palo Alto
June 23	10 AM – 4 PM	Saratoga Blossom Festival – <i>tabling</i>	Saratoga Heritage Orchard and Civic Center Area
July 3 – 4	Tues 6 – 11 PM, Wed 6:30 AM – 10 PM	Morgan Hill Freedom Fest – <i>sponsor</i>	Downtown Morgan Hill
July 14 – 15	10 AM – 6 PM	Los Altos Art and Wine Festival – <i>sponsor and tabling</i>	Downtown Los Altos

2. Upgrade and Opt Out Update

Below is the number of GreenPrime Upgrades and Opt Outs as of June 1, as well as the total opt out percentage in overall accounts, and opt out percentage by load. The percentages are now calculated including Milpitas accounts.

	Upgrade	Opt Out	Opt Out by Account Type	Total Opt Out, All Accounts
Residential	924	7,940	3.19%	3.12%
Commercial	1,526	728	2.51%	

3. Member Agency Working Group Update

The Member Agency Working Group (MAWG) met on May 24 and discussed the following topics:

1. **SVCE Activity/Communications Update**
2. **MAWG Program Priorities**
 - SVCE is requesting program priorities for July MAWG meeting.
3. **Small Community Outreach Grants**
 - SVCE is issuing grants to local nonprofits to increase awareness of SVCE in hard to reach demographics
 - SVCE is reaching out to MAWG for suggestions on potential partners for this
4. **BAAQMD Grant Opportunity**
 - The grant application was submitted.

4. Media

Articles:

- [Local high schools face off in Bike to the Future competition](#), Los Altos Town Crier, 5-30-2018

SVCE Agenda Planning- June - November 2018

	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER
MILESTONES	Milpitas Launch					
ADMINISTRATION, POLICIES, ETC.	<p>Board of Directors, June 13</p>	<p>Board of Directors, July 11: <u>Consent:</u> Minutes CPAG Report May 2018 Treasurer Report Line of Credit <u>Regular Calendar:</u> Strategic Plan Update Final Review and Approval of IRP FY 18-19 Budget Review - Draft 1 GHG Inventory Presentation Solar Contract 1 of 2</p>	<p>Board of Directors, August 8: Cancelled</p>	<p>Board of Directors, Sept. 12: <u>Consent:</u> Minutes CPAG Report June/July 2018 Treasurer Report <u>Regular Calendar:</u> FY 18-19 Budget Adoption Solar Contract 2 of 2 Programs Road map <u>Closed Session</u> - Performance Eval</p>	<p>Board of Directors, Oct. 10: <u>Consent:</u> Minutes August 2018 Treasurer Report <u>Regular Calendar:</u></p>	<p>Board of Directors, Nov. 14: <u>Consent:</u> Minutes September 2018 Treasurer Report <u>Regular Calendar:</u></p>
	<p>Executive Committee, June 26: Strategic Plan Review</p>	<p>Executive Committee, July 24:</p>	<p>Executive Committee, Aug. 28: Cancelled</p>	<p>Executive Committee, Sept. 25:</p>	<p>Executive Committee, Oct. 23:</p>	<p>Executive Committee, Dec. 4: Chair/Vice Chair/Committee Selection Process Discussion</p>
	<p>Customer Program Advisory Group, June 20:</p>	<p>Customer Program Advisory Group, July 18:</p>	<p>Customer Program Advisory Group, Aug. 15:</p>	<p>Customer Program Advisory Group, Sept. 19:</p>		
	<p>Finance & Admin Committee Special, June 19: Benefits Discussion</p>			<p>Finance & Admin Committee, Sept. 5: FY 18-19 Budget Third Quarter Financial Review</p>		



Staff Report – Item 7

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 7: Executive Committee Report

Date: 6/13/2018

No report as the May 22, 2018 Executive Committee Meeting was cancelled. The next regularly scheduled meeting will be June 26, 2018, 11:30 a.m., at the SVCE Office.



Staff Report – Item 8

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 8: Finance and Administration Committee Report

Date: 6/13/2018

This item will be addressed in the form of an oral report to the Board.



Staff Report – Item 9

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 9: Legislative Ad Hoc Committee Report

Date: 6/13/2018

No report as the Legislative Ad Hoc Committee has not met since their May 7, 2018 meeting.