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 October 9, 2019, Board of Directors Special Meeting

1b) Approve Minutes of the October 9, 2019 Board of Directors Meeting

1c) Receive SVCE Rates Corresponding with PG&E’s New Commercial ‘B’ Rate Schedules, Effective November 1, 2019

1d) Review Proposed Amendments to SVCE Operating Rules and Regulations

1e) Adopt Reaffirmation Resolution Certifying Representatives on River City Bank Loans

1f) Authorize the Chief Executive Officer to Execute an Amendment to the Agreement with Aaron Read & Associates, LLC for Lobbyist Services

1g) Adopt Resolution Amending the Authority’s Conflict of Interest Code to Add Rates Manager and Senior Rates Analyst Positions to the List of Designated Positions for Filing

1h) Finance and Administration Committee Report

1i) Audit Committee Report
Regular Calendar

2) CEO Report (Discussion)

3) SVCE Information Related to 2020 SVCE Board Elections (Discussion)

4) Utility Restructuring in Northern California – Discussion and Direction (Discussion)

5) Approve Update to SVCE’s Legislative Platform (Action)

6) Customer Resource Center Program Update (Discussion)

7) Executive Committee Report (Discussion)

8) Legislative Ad Hoc Committee Report (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Public Comment on Closed Session

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

Convene to Closed Session (Community Hall Kitchen)

Conference with Real Property Negotiators
Property: 333 W. El Camino Real, Sunnyvale, CA
910 Hamilton Avenue, Campbell, CA
1919 Bascom Avenue, Campbell, CA
2105 South Bascom Avenue, Campbell, CA
100 Mathilda Avenue, Sunnyvale, CA

Agency Negotiator: Girish Balachandran, CEO
Negotiating Parties: Newmark Knight Frank
Under Negotiation: Price and Terms of Payment

Report from Closed Session

Adjourn
Call to Order
Chair Abe-Koga called the meeting to order at 4:38 p.m.

Roll Call

Present:

Directors
Chair Margaret Abe-Koga, City of Mountain View  
Vice Chair Howard Miller, City of Saratoga  
Director Liz Gibbons, City of Campbell  
Director Rod Sinks, City of Cupertino  
Director Courtenay Corrigan, Town of Los Altos Hills (arrived at 4:47 p.m.)  
Director Marico Sayoc, Town of Los Gatos  
Director Carmen Montano, City of Milpitas  
Director Javed Ellahie, City of Monte Sereno  
Director Yvonne Martinez Beltran, City of Morgan Hill  
Director Nancy Smith, City of Sunnyvale

Alternate Directors
Alternate Director George Tyson, Town of Los Altos Hills  
Alternate Director Rob Rennie, Town of Los Gatos  
Alternate Director Elaine Marshall, City of Milpitas (arrived at 4:41 p.m.)  
Alternate Director Liz Lawler, City of Monte Sereno  
Alternate Director Gustav Larsson, City of Sunnyvale

Absent:

Directors
Director Fred Tovar, City of Gilroy  
Director Jeannie Bruins, City of Los Altos  
Director Susan Ellenberg, County of Santa Clara

Alternate Directors
Alternate Director Susan M. Landry, City of Campbell  
Alternate Director Darcy Paul, City of Cupertino  
Alternate Director Carol Marques, City of Gilroy  
Alternate Director Neysa Fligor, City of Los Altos  
Alternate Director Tony Eulo, City of Morgan Hill  
Alternate Director Lisa Matichak, City of Mountain View  
Alternate Director Manny Cappello, City of Saratoga
Alternate Director Dave Cortese, County of Santa Clara

**Public Comment on Matters Not Listed on the Agenda**
No speakers.

**Regular Calendar**

1) SVCE Workshop Part Two – Outlining Policy Options and Providing Background Related to Carbon-free Power and SVCE Integrated Resource Plan Continued (Discussion)

CEO Girish Balachandran introduced the workshop and the integrated resources plan (IRP) team made up of SVCE staff. CEO Balachandran addressed the cheat sheet and copy of the presentation at board member’s seats, and began a PowerPoint presentation. Director of Power Resources Monica Padilla continued the PowerPoint presentation; staff responded to Board member questions.

Chair Abe-Koga opened public comment.

Bruce Karney, Mountain View resident, Chair of Carbon Free Mountain View, and Board member of Carbon Free Silicon Valley, complimented staff on their analysis and presentation of the power alternatives. Karney noted and described an additional alternative of concentrating solar thermal power which was proposed by Professor Mark Jacobson. Karney commented he has no problem with the use of nuclear resources.

Mark Bowers, Legislative Chair of the Santa Clara County Solid Waste Technical Advisory Committee, commented the state is issuing regulations to implement an organics diversion mandate (SB1383), which will require each jurisdiction to divert 75% of the organics generated in each jurisdiction from landfill disposal by 2025. Bowers encouraged directors to work with SVCE staff to look at options for biomass and biogas to help jurisdictions meet the procurement requirement.

Melody Tovar, staff member from the City of Sunnyvale, thanked SVCE staff for the workshop and provided the following questions and comments:

- She hopes specific scenarios would show clearly the projected comparative power content label (PCL) for the scenarios being addressed, and the PG&E projected PCL for the same scenario, to show how it affects the ultimate PCL and the ultimate emission factor;
- Clarification on when the change in emission accounting is required;
- Shared that in the early stages of outreach for the pre-partnership of SVCE, there was no nuclear supply available but there was feedback from community members that there were some concerns; and
- Questioned if there is an advantage to upping investment in longer-term large hydro projects now to secure before the retirement and availability of the offsets available for nuclear.

Staff responded to the comments and questions from Ms. Tovar.

Chair Abe-Koga closed public comment.

Director Gibbons requested staff consider other projects that may have opportunities for SVCE; CEO Balachandran noted innovative programs are a part of the programs budget.

Director Smith requested the PCL info requested by Ms. Tovar be included in the analysis scenarios, requested staff explore the possibility of accepting nuclear, but selling it so it does not show up on SVCE’s label, and requested SVCE staff and Recycling and Waste Reduction Commission staff meet and discuss energy production using biomass and biogas.

Director Martinez Beltran left the meeting at 6:02 p.m.

Chair Abe-Koga addressed the three workshop goals and requests outlined by staff.
1 -- *Direct staff to evaluate alternative portfolios to achieve carbon-free between 2020-2030 and assume 50% RPS through 2025 subsequently increasing to 60% in 2030*

Chair Abe-Koga requested consensus of the staff recommendation by show of hands; there was consensus from the group to accept staff’s recommendation.

2 -- *Direct staff to include baseload geothermal renewable resources and options for neutralizing emissions to meet RPS and in IRP modeling*

CEO Balachandran clarified if using geothermal power is acceptable to the Board, staff would bring a long-term PPA with binary geothermal in December 2019 for approval, and would also be modeling geothermal in SVCE’s long-term portfolio.

Director of Power Resources Padilla noted if the Board approves the use of conventional geothermal, staff will bring a strategy on how staff will neutralize the emissions associated with the resource. Director of Power Resources Padilla clarified that the Board’s direction would include both binary and conventional geothermal.

Chair Abe-Koga requested consensus of the staff recommendation by show of hands; there was consensus from the group to accept staff’s recommendation.

3 -- *Direct staff to evaluate optional portfolios as part of IRP modeling which include free allocations from carbon-free resources including form short-term nuclear energy*

Vice Chair Miller provided the following comments:
Staff should include the modeling of free hydro in all of the resource portfolios where appropriate;
Model what it would be to accept nuclear and then sell it; and,
Add a model in one place, maybe more than one, referred to as “BioX” (for example: biogas), which would add two or three more modeling resource portfolios.

Vice Chair Miller summarized his comments that the practical portfolios to model would be everything staff presented, plus the free hydro, plus the nuclear, plus the option of selling the nuclear, and as appropriate where the BioX fits into the matrix.

The group was in consensus with Vice Chair Miller’s comments by show of hands.

Director Smith requested the board address Vice Chair Miller’s comment in a formal motion at the regularly scheduled Board of Directors meeting at 7:00 p.m.

**Board Announcements and Direction on Future Agenda Items**

Director Smith requested a future agenda item to consider SVCE’s response to SB1383 per Mr. Bowers’ recommendation.

CEO Balachandran noted the Legislative Ad Hoc committee would be meeting October 22, 2019 and the topic could be addressed.

**Adjourn**
Chair Abe-Koga adjourned the meeting at 6:15 p.m.
Silicon Valley Clean Energy Authority  
Board of Directors Meeting  
Wednesday, October 9, 2019  
7:00 pm  
Cupertino Community Hall  
10350 Torre Avenue  
Cupertino, CA  

DRAFT MINUTES  

Call to Order  
Chair Abe-Koga called the meeting to order at 7:00 p.m.

Roll Call  
Present:  
Chair Margaret Abe-Koga, City of Mountain View  
Vice Chair Howard Miller, City of Saratoga  
Director Carmen Montano, City of Milpitas  
Director Javed Ellahie, City of Monte Sereno  
Director Marico Sayoc, Town of Los Gatos  
Director Nancy Smith, City of Sunnyvale  
Director Rod Sinks, City of Cupertino  
Director Courtenay Corrigan, Town of Los Altos Hills  
Director Liz Gibbons, City of Campbell  
Alternate Director Neysa Fligor, City of Los Altos  

Absent:  
Director Yvonne Martinez Beltran, City of Morgan Hill  
Director Fred Tovar, City of Gilroy  
Director Susan Ellenberg, County of Santa Clara  

Public Comment on Matters Not Listed on the Agenda  
No speakers.  

Consent Calendar  
Chair Abe-Koga opened public comment for those wishing to pull an item from the consent calendar.  
No speakers.  
Chair Abe-Koga closed public comment for those wishing to pull an item from the consent calendar.  

MOTION: Director Gibbons moved and Director Smith seconded the motion to approve the Consent Calendar.  
The motion carried unanimously with Directors Ellenberg, Martinez Beltran and Tovar absent.

1a) Approve Minutes of the September 11, 2019, Board of Directors Special Meeting  
1b) Approve Minutes of the September 11, 2019 Board of Directors Meeting  
1c) Receive August 2019 Treasurer Report  
1d) Approve Scholarship Funds for 2020 Bike to the Future Competition  
1e) Receive Q3 Update of the Decarbonization Strategy and Programs Roadmap
1f) Receive Innovation Programs Update and Approve Cash Prizes for 2020 Hackathon
1g) Adopt Resolution Approving Addition of New SVCE Rate Schedules and Rates, to Correspond with New PG&E Commercial and Industrial “B” Rates
1h) Adopt Resolution Certifying Representatives on River City Bank Loans
1i) Audit Committee Report
1j) Legislative Ad Hoc Committee Report
1k) Executive Committee Report
1l) Finance and Administration Committee Report

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran provided a CEO report noting the Legislative Ad Hoc Committee would be discussing SVCE’s legislative platform at their meeting on October 22, 2019. CEO Balachandran introduced Communications Specialist Michaela Pippin who provided brief comments, and noted Director of Power Resources Monica Padilla would be providing updates on contract negotiations in the coming months.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

3) SVCE Workshop – Outlining Policy Options and Providing Background Related to Carbon-free Power and SVCE Integrated Resource Plan Debrief (Discussion)

CEO Balachandran introduced the item and thanked the board for their feedback at the workshop.

Following were the staff requests as part of the October 9, 2019 workshop:

- Direct staff to evaluate alternative portfolios to achieve carbon-free between 2020-2030 and assume 50% renewable portfolio standard (RPS) through 2025 subsequently increasing to 60% in 2030;
- Direct staff to include baseload geothermal renewable resources and options for neutralizing emissions to meet RPS and in integrated resource plan (IRP) modeling; and,
- Direct staff to evaluate optional portfolios as part of IRP modeling which include free allocations from carbon-free resources including from short-term nuclear energy.

MOTION: Vice Chair Miller moved and Director Smith seconded the motion for the following:

- Accept the staff recommendation on RPS,
- Accept the staff recommendation regarding geothermal, with direction to move forward with the binary geothermal project which the Board would like to see potentially in December. Regarding geothermal in general, the Board would like it to be part of the plan that staff models including offsets, and
- The board would like all of the shopping carts (portfolio of resources) presented by staff modeled, and would also like to include free hydro in Cart 1, and in Cart 2. The Board would like nuclear modeled with the option of selling nuclear so it would be out of SVCE’s portfolio, and add BioX (biogas and biomass) as appropriate to model.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
Director Sinks clarified with the maker of the motion that the motion would be to study nuclear as either putting it on our power content label (PCL) or selling it; Vice Chair Miller confirmed it would be both.

Director Corrigan commented the Board would also like to see the net effects of removing nuclear from the PG&E PCL and what affect it will have on SVCE’s PCL and PG&E’s PCL.

Vice Chair Miller added the Board would like to see the approximation of what SVCE thinks their PCL will look like, in addition to the prices, for all of the shopping carts.

The motion carried unanimously with Directors Ellenberg, Martinez Beltran and Tovar absent.

**Board Member Announcements and Direction on Future Agenda Items**

Director Elllahie commended SVCE staff on their presentation at the Los Gatos Rotary Club on October 2, 2019, and noted as a result there seems to be interest from people to consider reach codes.

Director Corrigan commended John Supp on his presentation at the Town of Los Altos Hills which had their meeting on reach codes, and commented they are moving forward.

Director Montano requested SVCE present to the Kiwanis Club.

Director Gibbons thanked staff on the Reach Code panel event last week, and noted there were phenomenal guest speakers, excellent discussions, and it was very informative; Director Gibbons noted she appreciated the effort and energy it took to put the event together and it spoke very well of our staff to have the connections to get the kind of people who attended.

Vice Chair Miller thanked staff for all presentations, including school events, city events, and meetings with staff, and thanked staff in advance for the reach code discussion at the City of Saratoga.

Director Sinks requested staff consider cooking demonstrations with induction stovetops; CEO Balachandran noted SVCE is cosponsoring the Bay Area Home Electrification Expo at the San Jose Tech Interactive on Saturday, October 12, and October 10 in Palo Alto where there will be cooking demos. Director Sinks suggested anything that SVCE can put out on social media helps the conversation.

Director Sinks announced he attended a class taught by Professor Severin Borenstein of the Haas School of Business and Economics and Professor James Bushnell of UC Davis titled ‘Economics of Energy and the Environment’ and commended the class to anyone who is interested in how SVCE is viewed and how the energy markets are playing out in California. Director Sinks announced another class would occur January 8 and 9, 2020, and recommended the class to the Board. Vice Chair Miller requested staff send the information to the Board Directors, Alternate Directors, and city staff members.

CEO Balachandran confirmed staff would send the information to Board members once released.

Chair Abe-Koga announced the City of Mountain View would be deciding on reach codes October 22, and would be considering mandating all-electric building with the exception of single-family homes. Chair Abe-Koga thanked staff for the workshop earlier in the afternoon on the IRP and noted she is looking forward to SVCE’s initiatives.

Director Sayoc requested Board members share when they have been successful in reach code adoption to begin compiling the information to show at other member agency meetings; CEO Balachandran noted SVCE staff can send updates to the Board as the codes are adopted.

**Adjourn**

Chair Abe-Koga adjourned the meeting at 7:15 p.m.
**Item 1c:** Receive SVCE Rates Corresponding with PG&E’s New Commercial ‘B’ Rate Schedules, Effective November 1, 2019

To:  
Silicon Valley Clean Energy Board of Directors

Prepared by: Don Bray, Director of Account Services and Community Relations  
Peyton Parks, Energy Consultant

Date: 11/13/2019

**RECOMMENDATION**  
Receive new SVCE ‘B’ rate schedules and rates effective November 1, 2019, established as directed by the SVCE Board via adoption of Resolution 2019-16 in October 2019.

**BACKGROUND**  
At the SVCE Board Meeting on October 9, 2019, the SVCE Board approved establishment of new ‘B’ rate schedules and rates, to correspond with new PG&E B rates to become effective on November 1, 2019.

Per Resolution 2019-16, SVCE’s B rates will be set at the currently-approved 4% discount level to PG&E’s corresponding B generation rates. SVCE rates will be calculated and published by SVCE after PG&E’s actual B rates are released, and will be effective as of November 1, 2019.

On October 25th, 2019, PG&E published its new B rates, with B rate schedules corresponding to each of the current A and E rate schedules that serve most commercial and industrial customers (B-1, B-6, B-10, B-19, B-20, and B-Standby). These new rates were created to shift the peak pricing period of A and E rates, currently 12 p.m. to 6 p.m., to a later time period of 4 p.m. to 9 p.m. that better corresponds with California’s ‘duck curve’. By setting a peak period for the new B rates that aligns with the ramping of natural gas-fired power plants within the state, PG&E intends to send pricing signals to reduce overall commercial load at these critical times.

**ANALYSIS & DISCUSSION**  
New commercial accounts that begin electric service after November 1st, 2019 will be required to take service under B rates. This includes physical addresses with prior accounts that end service after November 1st and begin service again under a new account identification number, such as when building tenants change. Between November of 2019 and October of 2020, current CCA customers will have the option to switch from their current rate plan to the new corresponding B rate. B rates will become mandatory for all commercial customers in November of 2020.

In order to bill and collect from new B-rate customers, SVCE must have corresponding generation rates to PG&E’s B class. Resolution No. 2019-16 allows for the creation of these rates. Per the resolution, the rates were created following the discount framework approved by the Board on June 12, 2019. SVCE’s new B rates (attached) have been set at a 4% discount relative to PG&E B generation rates (inclusive of 2017 PCIA and FFS). These rates were provided to Calpine Solutions on October 31st, 2019 for implementation and testing.

**STRATEGIC PLAN**  
Rate setting is directly supported by SVCE Strategic Plan Goal 2 – maintain competitive rates to acquire and retain customers.
**FISCAL IMPACT**

There will be very limited immediate impact from new B rates. Only new commercial accounts will be enrolled in B rates, or commercial accounts electing to switch from their current rate schedules. Longer-term, broader (and eventually mandatory) adoption of B rates is expected to be revenue neutral to SVCE, increasing revenue and reducing demand during peak hours of 4-9pm, and reducing revenues and increasing demand during other times of the day.

**ATTACHMENT**

1. Non-Residential Rate Schedule effective November 1, 2019
## Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B-1</strong> Summer (Jun-Sep)</td>
<td></td>
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<tr>
<td>PEAK</td>
<td>$0.14245</td>
<td>$0.17010</td>
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<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td><strong>Winter (Oct-May)</strong></td>
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## Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

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<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates $^1$</th>
<th>SVCE Generation Service $^2$</th>
<th>PG&amp;E Generation Service $^3$</th>
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| **Winter (Oct-May)** | | | | | |
| PEAK | $0.10793$ | $0.13672$ | $0.14242$ | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK | $0.07387$ | $0.10266$ | $0.10694$ | All other hours |
| SUPER OFF-PEAK | $0.03899$ | $0.06778$ | $0.07060$ | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only |

| **B-10-P** Summer (Jun-Sep) | | | | | |
| SUMMER PEAK | $0.15142$ | $0.18021$ | $0.18772$ | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| SUMMER PART-PEAK | $0.09544$ | $0.12423$ | $0.12941$ | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m. Every day, including weekends and holidays |
| SUMMER OFF-PEAK | $0.06585$ | $0.09464$ | $0.09858$ | All other hours |

<p>| <strong>Winter (Oct-May)</strong> | | | | | |
| WINTER PEAK | $0.09897$ | $0.12776$ | $0.13308$ | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| WINTER OFF-PEAK | $0.06668$ | $0.09547$ | $0.09945$ | All other hours |
| SUPER OFF-PEAK | $0.03180$ | $0.06059$ | $0.06311$ | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only |</p>
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<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
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<td><strong>Summer (Jun-Sep)</strong></td>
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<td></td>
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</tr>
<tr>
<td>PEAK</td>
<td></td>
<td>$0.10702</td>
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<td>$0.07822</td>
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<td>SVCE Generation Service²</td>
<td>PG&amp;E Generation Service³</td>
<td>Notes</td>
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<tr>
<td><strong>B-19-P</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
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<tr>
<td>PEAK</td>
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<thead>
<tr>
<th><strong>Winter (Oct-May)</strong></th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td>OFF-PEAK</td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
</tr>
<tr>
<td>PEAK (kW)</td>
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| **B-19-T**          | **Summer (Jun-Sep)** |                        |                          |                          |       |
| PEAK               | $ 0.07734          | $ 0.10452              | $ 0.10888                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| PART-PEAK          | $ 0.06855          | $ 0.09573              | $ 0.09972                | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m. Every day, including weekends and holidays |
| OFF-PEAK           | $ 0.04984          | $ 0.07702              | $ 0.08023                | All other hours          |
| PEAK               | $ 9.28             | $ 9.28                 | $ 9.67                   |                           |
| PART-PEAK          | $ 2.32             | $ 2.32                 | $ 2.42                   |                           |

<table>
<thead>
<tr>
<th><strong>Winter (Oct-May)</strong></th>
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</thead>
<tbody>
<tr>
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<tr>
<td>OFF-PEAK</td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
</tr>
<tr>
<td>PEAK</td>
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<tr>
<td>SVCE Rate Schedule</td>
</tr>
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<tr>
<td><strong>B-19-R-S</strong></td>
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<tr>
<td>PEAK</td>
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<tr>
<td>PART-PEAK</td>
</tr>
<tr>
<td>OFF-PEAK</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
</tr>
<tr>
<td>PEAK</td>
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<tr>
<td>PART-PEAK</td>
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<tr>
<td>OFF-PEAK</td>
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<td><strong>B-19-R-P</strong></td>
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<td>OFF-PEAK</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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<tr>
<td>PEAK</td>
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<tr>
<td>PART-PEAK</td>
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<tr>
<td>SUPER OFF-PEAK</td>
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## Silicon Valley Clean Energy

Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>B-19-R-T</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
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<tr>
<td>PEAK</td>
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<td>$ 0.17229</td>
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<td>$ 0.09405</td>
<td>$ 0.12123</td>
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<tr>
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<td>$ 0.05358</td>
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<td>$ 0.08413</td>
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<tr>
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<td>PEAK</td>
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<td>$ 0.01940</td>
<td>$ 0.04658</td>
<td>$ 0.04852</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<tr>
<td><strong>B-20-S</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
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<td>$ 0.10300</td>
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<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>SVCE Rate Schedule</td>
<td>Time of Use Period</td>
<td>SVCE Generation Rates¹</td>
<td>SVCE Generation Service²</td>
<td>PG&amp;E Generation Service²</td>
<td>Notes</td>
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<tr>
<td><strong>B-20-P</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
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<td><strong>B-20-T</strong></td>
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<td>$ 0.10949</td>
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<td>PEAK (kW)</td>
<td>$ 2.32</td>
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## SVCE Rate Schedule

### Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

<table>
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<tr>
<th>SVCE Rate Schedule</th>
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<th>SVCE Generation Service</th>
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<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B-20-R-S</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
<td></td>
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<td>PEAK</td>
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<td>$ 0.22362</td>
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<td>PART-PEAK</td>
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<td>$ 0.09618</td>
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<td>$ 0.12749</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m. Every day, including weekends and holidays</td>
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<td>$ 0.06022</td>
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<td><strong>Winter (Oct-May)</strong></td>
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<td>PEAK</td>
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<td>$ 0.02576</td>
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<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<td><strong>B-20-R-P</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
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<td></td>
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<td>PEAK</td>
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<td>$ 0.21324</td>
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<td>OFF-PEAK</td>
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<td>$ 0.05618</td>
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<td>$ 0.08416</td>
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<td><strong>Winter (Oct-May)</strong></td>
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<td>PEAK</td>
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<td>$ 0.09469</td>
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<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>$ 0.05623</td>
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<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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</table>
# Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

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<tr>
<th>SVCE Rate Schedule</th>
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<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service²</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>B-20-R-T</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
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<td>PEAK</td>
<td>$ 0.21277</td>
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<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.</td>
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<td>$ 0.07377</td>
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</table>

| **Winter** (Oct-May) |                         |                          |                          |                          |       |
| PEAK               | $ 0.09874          | $ 0.12186               | $ 0.12694                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK           | $ 0.04784          | $ 0.07096               | $ 0.07392                | All other hours |
| SUPER OFF-PEAK     | $ 0.01636          | $ 0.03948               | $ 0.04112                | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only |

| **S-B-S**          | **Summer** (Jun-Sep) |                         |                          |                          |       |
| PEAK               | $ 0.08961          | $ 0.11068               | $ 0.11529                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| PART-PEAK          | $ 0.07801          | $ 0.09908               | $ 0.10321                | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m. |
| OFF-PEAK           | $ 0.06511          | $ 0.08618               | $ 0.08977                | 9:00 a.m. to 2:00 p.m.; Every day, including weekends and holidays |
| Reservation (kW)   | $ 0.30             | $ 0.30                  | $ 0.31                   | All other hours |

| **Winter** (Oct-May) |                         |                          |                          |                          |       |
| PEAK               | $ 0.08497          | $ 0.10604               | $ 0.11046                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK           | $ 0.06620          | $ 0.08727               | $ 0.09091                | All other hours |
| SUPER OFF-PEAK     | $ 0.02456          | $ 0.04563               | $ 0.04753                | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only |
| Reservation (kW)   | $ 0.30             | $ 0.30                  | $ 0.31                   | All other hours |
## Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>S-B-P</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
<td>$0.08961</td>
<td>$0.11068</td>
<td>$0.11529</td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.</td>
<td>$0.07801</td>
<td>$0.09908</td>
<td>$0.10321</td>
<td></td>
</tr>
<tr>
<td>OFF-PEAK</td>
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<td>$0.08618</td>
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</tr>
<tr>
<td>Reservation (kW)</td>
<td>$0.30</td>
<td>$0.30</td>
<td>$0.31</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| **Winter (Oct-May)**|                                                           |                       |                         |                         |       |
| PEAK               | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays | $0.08497 | $0.10604 | $0.11046 |       |
| OFF-PEAK           | All other hours    | $0.06620 | $0.08727 | $0.09091 |       |
| SUPER OFF-PEAK     | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only | $0.02456 | $0.04563 | $0.04753 |       |
| Reservation (kW)   | $0.30              | $0.30     | $0.31     |            |       |

| **S-B-T**          | **Summer (Jun-Sep)**|                       |                         |                         |       |
| PEAK               | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays | $0.07644 | $0.09751 | $0.10157 |       |
| PART-PEAK          | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m. | $0.06528 | $0.08635 | $0.08995 |       |
| OFF-PEAK           | All other hours    | $0.05286 | $0.07393 | $0.07701 |       |
| Reservation (kW)   | $0.16              | $0.16     | $0.17     |            |       |

| **Winter (Oct-May)**|                                                           |                       |                         |                         |       |
| PEAK               | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays | $0.07206 | $0.09313 | $0.09701 |       |
| OFF-PEAK           | All other hours    | $0.05401 | $0.07508 | $0.07821 |       |
| SUPER OFF-PEAK     | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only | $0.01280 | $0.03387 | $0.03528 |       |
| Reservation (kW)   | $0.16              | $0.16     | $0.17     |            |       |
## Silicon Valley Clean Energy
### Non-Residential B-Schedule Generation Rates and Generation Service Cost Comparison

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<thead>
<tr>
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<tr>
<td>GreenPrime</td>
<td></td>
<td>+ $ 0.00800</td>
<td></td>
<td></td>
<td>Same as applicable rate, with $0.008/kWh adder for 100% Renewable energy</td>
</tr>
</tbody>
</table>

1. SVCE Generation Rates, without added PG&E fees, effective 11/1/2019
2. SVCE Generation Service reflects our price for Generation, with added PG&E fees (PCIA and Franchise Fees), effective 11/1/2019. PCLA value based on vintage year 2017.
3. PG&E Generation service rate effective 11/1/2019
RECOMMENDATION
Staff recommends the Board review the proposed amendments to SVCE’s Operating Rules and Regulations (ORR).

EXECUTIVE COMMITTEE RECOMMENDATION
The Executive Committee met October 25, 2019 and were unanimous in recommending the Board approve the proposed amendments to the ORR.

BACKGROUND
SVCE’s ORR were first adopted in June 2016 as the Authority was in its infancy with the intent that they can be expanded as the board further addressed its operations and policies.

The ORR have been previously amended to include/revise:
- Regular meeting location
- Authorization for the Chair of the Board to designate an alternative meeting place within the jurisdiction of the authority after consultation with the Chief Executive Officer on available meeting locations in the event that the Cupertino Community Hall is not available for a regular or adjourned regular meeting
- Changing the Date of the Annual Meeting and the Appointment of Officers and Committee Members and Conforming the Provisions Regarding the Holding of Regular Meetings to Board Resolution Nos. 2016-14 and 2017-11

ANALYSIS & DISCUSSION
At the request of the Executive Committee, staff and SVCE’s general counsel have reviewed the existing ORR for any recommended updates or changes.

Areas identified include:

Defining unexcused absences from board meetings (Article 3, Section 5a)
Unexcused absences were not previously defined. Staff would like to propose defining an unexcused absence as failure to notify the Chair and/or Board Clerk within 24 hours of any regular meeting that they will not be in attendance. This would not include an emergency or unforeseen situation.

Code of Ethics Policy (Article 3, Section 5c)
The Code of Ethics Policy was adopted by SVCE’s Board of Directors in February 2019. A Director may be subject to removal for cause if the Board determines there is a violation of the Code of Ethics Policy.
Committee Membership (Article 4, Section 1)
In the past, there has been confusion regarding the make up of committees. Staff proposes identifying that an alternate Director may not attend a committee meeting on behalf of an absent regular Director. With the exception of the Executive Committee, an Alternate Director of the Board can be appointed to serve on SVCE’s other committees.

Staff would also like to clarify that no more than one committee member shall represent their respective member agency.

Clarification of Executive Committee appointments in January of each year (Article 5, Section 3)
The existing ORR states committee members will be appointed in January of each year; staff would like to clarify that Executive Committee members are appointed in January (all others are appointed in February, as mentioned in Article 4, Section 1, Establishment of Committees).

Following approval of these amendments, staff will bring this item back to the Board on consent for the December meeting following written notice of the amendment at least 10 days prior, per the ORR amendment process (Article VI).

ALTERNATIVE
Staff is open to suggestions from the committee regarding any clarifications or changes that should be made to SVCE’s existing ORR.

FISCAL IMPACT
No fiscal impact as a result of recommending the proposed ORR amendments.

ATTACHMENT
1. SVCE Operating Rules and Regulations Amendments Draft (redline)
2. SVCE Operating Rules and Regulations Amendments (clean)
SILICON VALLEY CLEAN ENERGY AUTHORITY
OPERATING RULES AND REGULATIONS

ARTICLE I
FORMATION

The Silicon Valley Clean Energy Authority (the “Authority”) was established on March 31, 2016 pursuant to the execution of the Silicon Valley Clean Energy Authority Joint Powers Agreement (the “Agreement”) by the County of Santa Clara, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Monte Sereno, Morgan Hill, Mountain View, Saratoga and Sunnyvale and the Towns of Los Altos Hills and Los Gatos. The members of the Authority are referred to as Party or Parties in these Operating Rules and Regulations. As defined by the Agreement, these Operating Rules and Regulations consist of rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

ARTICLE II
PURPOSES

The Authority is formed to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. These programs include but are not limited to the establishment of a Community Choice Aggregation Program known as Silicon Valley Clean Energy in accordance with the terms of the Agreement.

ARTICLE III
BOARD OF DIRECTORS

Section 1. Appointment of Chair and Vice-Chair. The Board shall appoint from among themselves by majority vote a Chair and Vice-Chair. The Chair and Vice-Chair shall be appointed for one-year terms expiring at the annual meeting held in January of each year. As provided by the Agreement, there are no limits on the number of terms that a Board member may serve as Chair or Vice-Chair.

Section 2. Appointment of Secretary and Treasurer. The Secretary and Treasurer shall be appointed by the Board for one-year terms expiring at the annual meeting held in January of each year.

Section 3. Extension of Term of Office. If for any reason, the appointment of a Board officer is not made in January of any year, such officer shall continue to serve in his or her position until an appointment is made at a meeting of the Board.

Section 4. Removal of Officers. An officer of the board shall be subject to removal as an officer of the board at any time for any reason by a majority vote of the entire Board.
Section 5. Removal of Board Members for Cause. A Director may be removed by the Board for cause. Cause shall be defined for the purposes of this section as follows:

a. Unexcused absences from three consecutive Board meetings. Board members shall make every effort to notify the Chair and/or Board Clerk no later than 24 hours prior to any regular meeting of his/her absence. The failure to give such notice shall be deemed an unexcused absence unless the failure to give timely notice was due to emergency circumstances.

b. Unauthorized disclosure of confidential information or documents from a closed session or the unauthorized disclosure of information or documents provided to the Director on a confidential basis and whose public disclosure may be harmful to the interests of the Authority.

c. Failure to comply with SVCE’s Code of Ethics Policy.

Written notice shall be provided to the Director proposed for removal and the governing body that appointed such Director at least thirty days prior to the meeting at which the proposed removal will be considered by the Board. The notice shall state the grounds for removal, a brief summary of the supporting facts, and the date of the scheduled hearing on the removal. The Director proposed for removal shall be given an opportunity to be heard at the removal hearing and to submit any supporting oral or written evidence. A Director shall not be removed for cause from the Board unless two-thirds of all Directors on the Board (excluding the Director subject to removal) vote in favor of the removal.

ARTICLE IV

COMMITTEES

Section 1. Establishment of Committees. The Executive Committee and all other Committees of the Board shall be selected as provided by Sections 4.6 and 4.7 of the Agreement. Each duly established Committee may establish any Standing or Ad Hoc Committees determined to be appropriate or necessary. The duties and authority of all Committees shall be subject to the approval and direction of the Board. The term of office for each Committee established by the Board shall be one year. The Executive Committee members shall be appointed at the annual meeting in January with all other Committee members appointed in February. There are no limits on the number of terms that a Director may serve on a Committee. If for any reason, the appointment of Committee members is not made at either the January or February meeting of the Board in any year as provided above, such Committee members shall continue to serve in their positions until an appointment is made at a meeting of the Board. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Except for the Executive Committee, alternate Directors may be appointed by the Board to Committees. However, for each Committee, not more than one Committee member shall represent a particular member agency.

Section 2. Executive Committee. There shall be an Executive Committee consisting of five Board members. The duties of the Executive Committee shall be to review and provide advice
to the Chief Executive Officer and the entire Board on policy, operational and organizational matters and perform such other responsibilities, tasks or activities as delegated to it by the Board.

ARTICLE V

MEETINGS

Section 1. Regular Meetings. The regular meetings of the Board of Directors of Authority shall be held on the second Wednesday of each month at the hour of 7 p.m. at the Cupertino Community Hall, located at 10350 Torre Avenue, in Cupertino, California. In the event that Cupertino Community Hall is not available for a regular or adjourned regular meeting, the Chair of the Board may designate an alternative meeting place within the jurisdiction of the Authority after consultation with the Chief Executive Officer on available meeting locations.

Section 2. Special Meetings. Special meetings of the Board may be called at any time and may be held in any location within the jurisdiction of the Authority as provided by the notice for the special meeting.

Section 3. Annual Meeting. Commencing in 2017, the Board shall hold an annual meeting in January of each year at which time it will appoint Board officers and Executive Committee members.

Section 4. Open Meeting Requirements. The meetings of the Board, the Executive Committee and all other committees established by the Board shall be governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.).

ARTICLE VI

AMENDMENTS

These Operating Rules and Regulations may be amended by a majority vote of the full membership of the Board but only after such amendment has been proposed at a regular meeting and acted upon at the next or later regular meeting of the Board for final adoption. The proposed amendment shall not be finally acted upon unless each member of the Board has received written notice of the amendment at least 10 days prior to the date of the meeting at which final action on the amendment is to be taken. The notice shall include the full text of the proposed amendment.
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Staff Report – Item 1e

Item 1e: Adopt Reaffirmation Resolution Certifying Representatives on River City Bank Loans

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 11/13/2019

RECOMMENDATION
Staff recommends that the Board approve Resolution 2019-18 reaffirming prior Resolution 2019-17 to account for the receipt of information from River City Bank.

BACKGROUND
The Board of Directors approved the renewal of the $35 million Revolving Line of Credit ("RLOC") with River City Bank ("RCB") at the September 11, 2019 Board meeting. The Board of Directors approved Resolution 2019-17 certifying representatives on RCB loans at the October 12, 2019 Board meeting.

ANALYSIS & DISCUSSION
SVCE commissioned Nixon Peabody, L.P., to provide the legal opinion of the loan documents as a standard operating procedure in the closing of the loan process. Upon review by outside counsel, it was recommended to present a new Resolution and reaffirm Resolution 2019-17 and include language to maintain compliance with Government Code Section 5852.1.

In summary, Government Code Section 5852.1 requires public agencies to disclose total payments, meaning the sum of all payments the borrower will make to pay debt service on bonds or other long-term debt instruments plus the finance charges. It requires the total payment to be calculated to the final maturity and a good faith estimate of the payments to be obtained from the lender or other qualified source. The tables below and on the beginning of the next page show the estimated total payments for the expected and maximum utilization scenarios:

<table>
<thead>
<tr>
<th>Expected Case</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Line of credit commitment</td>
<td>$35,000,000</td>
</tr>
<tr>
<td>Average utilization</td>
<td>0%</td>
</tr>
<tr>
<td>SBLC utilization</td>
<td>$5,660,150</td>
</tr>
<tr>
<td>1-month LIBOR (as of 10/16/2019)</td>
<td>1.94%</td>
</tr>
<tr>
<td>LIBOR spread</td>
<td>1.75%</td>
</tr>
<tr>
<td>Loan origination fee (% of commitment)</td>
<td>0.25%</td>
</tr>
<tr>
<td>Non-utilization fee</td>
<td>0.15%</td>
</tr>
<tr>
<td>SBLC fee</td>
<td>2.00%</td>
</tr>
<tr>
<td>Documents fee</td>
<td>$0</td>
</tr>
<tr>
<td>Loan Fee</td>
<td>$175,000.00</td>
</tr>
<tr>
<td>Non-utilization fee</td>
<td>$44,009.78</td>
</tr>
<tr>
<td>Interest on outstanding balances</td>
<td>$0.00</td>
</tr>
<tr>
<td>SBLC fees</td>
<td>$226,406.00</td>
</tr>
<tr>
<td>Legal fees</td>
<td>$4,500.00</td>
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<tr>
<td><strong>Total Payments</strong></td>
<td><strong>$449,915.78</strong></td>
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Agenda Item: 1e

Agenda Date: 11/13/2019

### Maximum Utilization Case

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Line of credit commitment</td>
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<td>$0</td>
</tr>
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<td>$175,000.00</td>
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<td>Non-utilization fee</td>
<td>$0.00</td>
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<tr>
<td>Interest on outstanding balances</td>
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<tr>
<td>SBLC fees</td>
<td>$226,406.00</td>
</tr>
<tr>
<td>Legal fees</td>
<td>$4,500.00</td>
</tr>
<tr>
<td><strong>Total Payments</strong></td>
<td><strong>$2,601,260.28</strong></td>
</tr>
</tbody>
</table>

### STRATEGIC PLAN

The recommendation supports the strategic goals of Finance and Power Supply.

### ALTERNATIVE

There is no alternative with this report. Adoption of Resolution 2019-18 is required by RCB.

### FISCAL IMPACT

There is no fiscal impact with this report.

### ATTACHMENTS

1. Draft Resolution 2019-18, Reaffirming Resolution 2019-17 Certifying Representatives on River City Bank Loans
2. Resolution 2019-17 Certifying Representatives on River City Bank Loans
3. Credit Agreement with River City Bank
RESOLUTION No. 2019-18

RESOLUTION OF SILICON VALLEY CLEAN ENERGY AUTHORITY

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

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

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

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

PRIOR RESOLUTION ADOPTED. At a meeting of the Silicon Valley Clean Energy Authority’s Board of Directors (“Board”), duly called and held on the 9th day of October 2019 adopted a resolution (the “Prior Resolution”), by a vote affixed thereto, the resolutions set forth in the Prior Resolution were adopted. Pursuant to the Prior Resolution, the Board approved the execution of the Amended and Restated Credit Agreement dated as of October 22, 2019 (the “Credit Agreement”), by and between the Authority and River City Bank (“Lender”) and the transactions contemplated thereby.

The information required to be obtained from Lender and disclosed with respect to the Credit Agreement in accordance with Government Code Section 5852.1 was previously not provided to the Board when it adopted the Prior Resolution. Such information is now set forth in the staff report accompanying this Resolution. Government Code Section 5852.1(d) provides that failure to comply with Government Code Section 5852.1 shall not affect the validity of the debt or the authorization of the debt by the public body. Notwithstanding the provisions of Section 5852.1(d), the Board is reaffirming the Prior Resolution to account for the receipt of the information from Lender set forth in the staff report.

ACTIONS AUTHORIZED. The Board hereby reaffirms the Prior Resolution pursuant to this Resolution. All actions taken pursuant to the Prior Resolution and all documents executed in connection with the Credit Agreement are reaffirmed.

CERTIFICATION CONCERNING RESOLUTIONS. This Resolution now stands of record on the books of the Authority, is in full force and effect, and has not been modified or revoked in any manner whatsoever. The Board also confirms that the Prior Resolution has been and continues to be in full force and effect, and has not been modified or revoked in any manner whatsoever.
CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and the Prior Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution and the Prior Resolution shall be continuing, shall remain in full force and effect and Lender may rely on them until written notice of their revocation shall have been delivered to and received by Lender at Lender’s address set forth in the Credit Agreement (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Authority’s agreements or commitments in effect at the time notice is given.

I have read all the provisions of this Resolution, and I personally and on behalf of the Authority certify that all statements and representations made in this Resolution are true and correct. This Resolution is dated on this 13th day of November 2019.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ______________________________
    Margaret Abe-Koga
    Chair, Silicon Valley Clean Energy Authority

PASSED AND ADOPTED this 13th day of November 2019, by the following vote:

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<th>JURISDICTION</th>
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RESOLUTION No. 2019-17

RESOLUTION OF SILICON VALLEY CLEAN ENERGY AUTHORITY

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

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

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

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

RESOLUTIONS ADOPTED. At a meeting of the Silicon Valley Clean Energy Authority’s Board of Directors (“Board”), duly called and held on the 9th day of October 2019, by a vote affixed hereto, the resolutions set forth in this Resolution were adopted.

AUTHORIZED REPRESENTATIVES. The following named individuals are the authorized representatives of the Authority with titles and genuine signatures provided below:

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<th>NAMES</th>
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<tr>
<td>Margaret Abe-Koga</td>
<td>Chair of the Board</td>
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<td>Girish Balachandran</td>
<td>Chief Executive Officer</td>
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ACTIONS AUTHORIZED. Any one (1) of the authorized representatives listed above may enter into any agreements of any nature with River City Bank (“Lender”), and those agreements will bind the Authority. The Board approves the Amended and Restated Credit Agreement dated as of October 22, 2019 (the “Credit Agreement”), by and between the Authority and Lender and the transactions contemplated thereby. Specifically, but without limitation, each of the authorized representatives is authorized, empowered, and directed to do the following for and on behalf of the Authority with respect to a loan or loans and any other financial accommodations from Lender, including the Credit Agreement:

Borrow Money. To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender, on such terms as may be agreed upon between [2732174.DOCX;]
the Authority and Lender, such sum or sums of money as in its judgment should be borrowed, without limitation.

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

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

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

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

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

**NOTICES TO LENDER.** The Authority will promptly notify Lender in writing at Lender’s address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Authority’s name; (B) change in the Authority’s assumed business name(s); (C) change in the management or in the members of the Authority; (D) change in the authorized signer(s); (E) change in the Authority’s principal office address; (F) change in the Authority’s state of organization; (G) conversion of the Authority to a new or different type of business entity; or (H) change in any other aspect of the Authority that directly or indirectly relates to any agreements between the Authority and Lender. No change in the Authority’s name or state of organization will take effect until after Lender has received notice.
CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS. The authorized representatives named above are duly elected, appointed, or employed by or for the Authority, as the case may be, and each occupies the position set opposite his or her name. This Resolution now stands of record on the books of the Authority, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

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

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

I have read all the provisions of this Resolution, and I personally and on behalf of the Authority certify that all statements and representations made in this Resolution are true and correct. This Resolution is dated on this 9th day of October 2019.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: Margaret Abe-Koga
Chair, Silicon Valley Clean Energy Authority

PASSED AND ADOPTED this 9th day of October 2019, by the following vote:

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AMENDED AND RESTATED
CREDIT AGREEMENT
Dated as of October 22, 2019
by and between
SILICON VALLEY CLEAN ENERGY AUTHORITY,
as Borrower
and
RIVER CITY BANK,
as Lender

Loan No. 5084548931
AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this "Agreement") is entered into as of October 22, 2019, by and between SILICON VALLEY CLEAN ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("Borrower"), and RIVER CITY BANK, a California corporation ("Lender").

WITNESSETH:

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

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

SECTION 1. DEFINITIONS AND INTERPRETATION.

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

Section 1.2. Other Interpretive Provisions.

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

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

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

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including." If any provision of this Agreement refers to any action taken or to be taken by any
Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

   (e) **Contracts.** Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

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

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

**Section 1.3. Accounting Principles.**

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

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

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

**SECTION 2. THE REVOLVING LINE OF CREDIT.**

**Section 2.1. Revolving Credit.** Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “Revolving Credit”) available to Borrower for the sole purpose of providing (a) short-term working capital (“Working Capital Advance”) and (b) to support the issuances of Letters of Credit (each a “Letter of Credit Advance” and, collectively the “Letter of Credit Advances”) in accordance with Section 4, such Revolving Credit to be in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “Advance” and, collectively, the “Advances”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

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

Section 2.3. Promissory Note. The Revolving Credit will be evidenced by a Revolving Credit Promissory Note (the “Promissory Note”) made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as Exhibit B. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as Exhibit C (a “Letter of Credit Note”) in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining the Revolving Credit Commitment. However, each Letter of Credit Note will evidence Borrower’s obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the “Unreimbursed Amount”) of any drawing actually paid by Lender to a beneficiary under a Letter of Credit, in accordance with Section 4.3. All references to “Advances” in Sections 2.4 and 4 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

Section 2.4. Repayment. All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the applicable Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

Section 3.1. Interest Payments.

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

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

(c) Late Fees. If Borrower fails to make any payment of principal or interest under any Note or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

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

Section 3.3. Prepayments.

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

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

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

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

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

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender’s receipt and application of payments or collections shall not constitute a waiver or cure of any Default.
Section 3.5. Notations. All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be prima facie evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of a Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

SECTION 4. LETTERS OF CREDIT.

Section 4.1. Letter of Credit Commitment.

(a) Subject to the terms and conditions of this Agreement, Lender agrees, in reliance upon the agreements of Borrower, (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit would occur more than 11 months after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by cash collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit requires Lender to provide a notice of non-renewal, if any, earlier than 120 days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by it terms purport to enjoin Lender from issuing such Letter of Credit, or any law applicable to Lender or any request or directive (whether or not having the force of law) from

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any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate principal amount of all Advances to exceed the Revolving Credit Commitment at the time of issuance.

Section 4.2. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender’s standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than five (5) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender’s usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

Section 4.3. Drawings and Reimbursements of Letters of Credit. Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify...
Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "Reimbursement Date") that is three (3) Business Days after any payment by Lender under a Letter of Credit (each such date, an "Honor Date"), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower’s failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

Section 4.4. Unexpired Letters of Credit. Borrower agrees that, if (i) any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date or (ii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, Borrower shall immediately provide cash collateral to Lender with a value of not less than 110% of (i) the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit or (ii) the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

Section 4.5. Obligations Absolute.

(a) The obligation of Borrower to reimburse Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by Lender of any requirement that exists for Lender’s protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;

(v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC,
the International Standby Practices ("ISP") or the Uniform Customs and Practice for Documentary Credits ("UCP"), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower’s instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

Section 4.6. Role of Lender as L/C Issuer. Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender’s willful misconduct or gross negligence or Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial
Telecommunications ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

Section 4.7. Applicability of ISP, Limitation of Liability. Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender’s rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Section 4.8. Letter of Credit Fees. Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the ("Issuance Fee") or Four Hundred and 00/100 Dollars ($400.00) (the "Flat Fee"), (ii) a documentation fee in connection with the issuance of each Standby Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars ($250.00), and (iii) fees upon the occurrence of any other activity with respect to any Standby Letter of Credit (including without limitation, the transfer, amendment or cancellation of any Standby Letter of Credit) in an amount equal to the greater of the Issuance Fee or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Standby Letters of Credit issued by Lender’s correspondent banks. All Letter of Credit Fees, other than the Issuance Fee will be due and payable in full upon request by Lender.

Section 4.9. Billing and Payment of the Issuance Fee. The Issuance Fee will be calculated by Lender and due and payable upon issuance. Lender will calculate the Issuance Fee by taking the outstanding face amount of the Letter of Credit, multiplying by .02, and dividing by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee. The Issuance Fee may be subject to change based on increases, decreases, or early termination of the Letter of Credit.

SECTION 5. FEES.

Section 5.1. Borrower shall pay to Lender fees for this Agreement as follows:

(a) **Loan Fee.** An annual Loan Fee in an amount equal to .25% of the Revolving Credit Commitment ($87,500.00) payable upon each of (i) execution of this Agreement and (ii) on or before October 21, 2020.

(b) **Legal Fees.** Lender’s legal fees incurred in connection with this Agreement.
(c) **Non-Utilization Fee.** Borrower agrees to pay to Lender an annual non-utilization fee in an amount equal to 0.15% of the Average Daily Unused Amount of the Revolving Credit Commitment. "Average Daily Unused Amount” means the sum of each calendar day’s Availability during the applicable period, divided by the number of calendar days within the period. "Availability” means the difference between the maximum principal amount of the Revolving Credit Commitment and the actual outstanding principal balance of the Revolving Credit at the close of business each day. The non-utilization fee for the annual periods from (a) October 22, 2018 to October 21, 2019, (b) October 22, 2019 to October 21, 2020, and (c) October 22, 2020 to October 21, 2021, shall be due and payable by no later than (a) November 20, 2019, (b) November 20, 2020 and (c) November 20, 2021, respectively. Notwithstanding the foregoing, upon the termination of the Revolving Credit Commitment (a) at the request of Borrower or (b) following the occurrence of any Event of Default, the non-utilization fee for the period from October 22 to the date of termination shall be due and payable immediately.

(d) **Other Costs and Fees.** Borrower shall be subject to and agrees to pay any and all other fees incurred by Lender associated with the origination and documentation of this Agreement.

**SECTION 6. COLLATERAL – REVOLVING CREDIT COMMITMENT.**

**Section 6.1. Debt Service Reserve Account.** As a condition to Lender’s obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the “Debt Service Reserve Account”) with a balance of not less than $3,500,000.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefrom from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

**Section 6.2. Assignment of Debt Service Reserve Account.** As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in the Debt Service Reserve Account and all other deposit accounts Borrower has with Lender (the “Other RCB Accounts”) and (i) all replacements, substitutions or proceeds thereof, (ii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account and/or the Other RCB Accounts, (iii) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account and/or the Other RCB Accounts, including the right to make withdrawals therefrom, and (iv) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than $3,500,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such
withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and/or, subject to the limitation in Section 11.6, the Other RCB Accounts and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Promissory Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Accounts in the form of Exhibit D attached entered into as of the date hereof between Borrower and Lender shall be cumulative.

Section 6.3. Transfers from Lockbox Account. All revenues from Borrower’s customers shall be deposited into the Lockbox Account. On the 10th day of each month, funds due to Borrower’s energy suppliers shall be wired out after a dual authentication process by Lender. All amounts then remaining in the Lockbox Account (other than reserve amounts determined in accordance with the agreements governing the Lockbox Account) shall be transferred to Borrower’s operating and/or savings account with Lender and shall be subject to the assignment and security interest described in Section 6.2, free and clear of any liens in favor of anyone other than Lender.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

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

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

Section 7.3. Subsidiaries. Borrower has no Subsidiaries.

Section 7.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

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

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

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

Section 7.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.
Section 7.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

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

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

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

SECTION 8. CONDITIONS PRECEDENT.

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

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

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

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

Section 8.2. Initial Advances under the Revolving Credit Commitment. At or prior to the making of the first Advance under the Revolving Credit Commitment, the following conditions precedent must also be satisfied:
(a) Lender shall have received properly completed and executed originals of the following in form and substance approved by Lender:

i. this Agreement;
ii. favorable written legal opinion from Borrower’s counsel;
iii. the Request for Advance in the form of Exhibit E;
iv. the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
v. an incumbency certificate containing the name, title and genuine signatures of each of Borrower’s Authorized Representatives;
vi. evidence of Borrower’s good standing in the state of California;
vii. payment by Borrower of the Loan Fee and all payments and expenses required to be paid by Borrower pursuant to Sections 5.1 and 11.4(a) of this Agreement; and
viii. copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request.

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

(c) The Advance is either a) a Working Capital Advance or b) a Letter of Credit Advance provided in Section 4; and

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

Section 8.3. Permitted Revolving Credit Advances. The following Advances are permitted under the Revolving Credit Commitment: Working Capital Advances, which shall be requested in substantially the form of Exhibit E, and Letter of Credit Advances, which shall be requested in accordance with Section 4.

Section 9. Covenants.

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

Section 9.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.
Section 9.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, shall furnish to Lender:

(a) as soon as available, and in any event within forty-five (45) days after the close of each calendar quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred twenty (120) days after each Fiscal Year End, a copy of the audited balance sheet of Borrower as of the last day of the Fiscal Year End and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower’s independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower’s operations and financial affairs given to it by its independent public accountants;

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

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

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

Section 9.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.
Section 9.4. Exclusive Deposit Relationship with Auto Pay. Borrower shall maintain all of Borrower’s deposit accounts, including the Lockbox Account, exclusively with Lender and authorize all scheduled payments on the Revolving Credit to be automatically debited from a designated account with Lender. If this covenant is not satisfied, as determined by Lender, it shall not constitute an Event of Default, but the interest rate on all outstanding Notes will immediately increase by adding an additional 2.00 percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 9.5. Total Liabilities to Tangible Unrestricted Net Position. Borrower shall maintain a maximum Total Liabilities to Tangible Adjusted Unrestricted Net Position not at any time greater than 2.00:1.00, measured quarterly as of the end of each calendar quarter. As used herein, “Total Liabilities to Tangible Adjusted Unrestricted Net Position” is defined as the total of current liabilities, non-current liabilities and contingent Liabilities, then divided by Tangible Adjusted Unrestricted Net Position. “Tangible Adjusted Unrestricted Net Position” is defined as total Adjusted Unrestricted Net Position less any intangible assets. “Adjusted Unrestricted Net Position” is defined as total net assets (i.e. total assets less total liabilities) less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the Debt Service Reserve Account. “Contingent Liabilities” is defined as a present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities will include the outstanding Letters of Credit issued and will exclude power purchase contingencies and the available Revolving Credit Commitment.

Section 9.6. Unrestricted Tangible Net Assets. Borrower to maintain minimum Unrestricted Tangible Net Assets not at any time less than One Hundred Million and 00/100 Dollars ($100,000,000), measured quarterly as of the end of each calendar quarter.

“Unrestricted Tangible Net Assets” is defined as total assets less temporarily and permanently restricted assets, less any intangible assets, less total liabilities.

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

Section 9.8. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event, no more than six (6) times during any twelve (12) month period so long as no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower each
Section 9.9. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower or any Subsidiary; provided, however, that the foregoing shall not apply to nor operate to prevent:

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

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

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

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

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

The Liens described in clauses (a) through (e) of this Section 9.9 are collectively referred to in this Agreement as the “Permitted Liens.”

Section 9.10. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.
Section 9.11. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 9.12. Burdensome Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 9.13. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 9.14. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 9.15. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 9.16. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower’s chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 9.17. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 9.18. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money. Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.
SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

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

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under a Note, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

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

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

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

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

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

(h) a custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undischarged or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or
(i) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender’s initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

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

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

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

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

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

Section 11. MISCELLANEOUS.

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

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

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

Section 11.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender, if any, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

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

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

No action taken by legal counsel chosen by Lender in defending against any
investigation, litigation or proceeding or requested remedial, removal or response action vitiates
or in any way impairs Borrower’s obligation and duty hereunder to indemnify and hold harmless
Lender unless such action involved gross negligence or willful misconduct. Neither Borrower
nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its
representatives or agents. Lender owes no duty of care to protect Borrower or any other Person
against, or to inform Borrower or any other Person of, any adverse condition affecting any site or
Property. Lender is not obligated to disclose to Borrower or any other Person any report or
findings made as a result of, or in connection with, any inspection, observation or audit by
Lender or its representatives or agents.

The obligations of Borrower in this Section 11.5 shall survive the payment and
performance of all other Obligations. At the election of any Indemnified Person, Borrower shall
defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in
such Indemnified Person’s sole discretion, at the sole cost and expense of Borrower. All
amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

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

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

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

Silicon Valley Clean Energy Authority
girish@svcleanenergy.org
Attention: Chief Executive Officer

With a copy (not constituting notice) to:

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Board Clerk/Executive Assistant

To Lender at:

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

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

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

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

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

Section 11.11. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.
Section 11.12. Assignments, Binding Nature, Governing Law, Etc. This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

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

Section 11.15. Consent to Loan Participation. Borrower agrees and consents to Lender’s sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in a Note and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower’s obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in a Note. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.
Section 11.16. No Recourse Against Constituent Members of Borrower. Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower’s constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

[remainder of page intentionally left blank]
Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth. This Agreement supersedes and replaces that certain Credit Agreement between Borrower and Lender dated October 22, 2018.

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

Silicon Valley Clean Energy Authority

By: Girish Balachandran
Its: Chief Executive Officer

By: Margaret Abe-Koga
Its: Chairperson of the Board

RIVER CITY BANK

By: ________________________
Name: ________________________
Its: ________________________
Staff Report – Item 1f

Item 1f:  Authorize the Chief Executive Officer to Execute an Amendment to the Agreement with Aaron Read & Associates, LLC for Lobbyist Services

To:  Silicon Valley Clean Energy Board of Directors

Prepared by:  Hilary Staver, Manager of Regulatory and Legislative Affairs

Date:  11/13/2019

RECOMMENDATION
Staff recommends the Board authorize the CEO to execute an amendment to the agreement with Aaron Read & Associates, LLC ("ARA") for lobbyist services extending the time through through November 28, 2021 for an amount not to exceed $288,000.

BACKGROUND
In November 2018, the SVCE Board of Directors approved SVCE’s initial contract with Aaron Read & Associates, LLC. ("ARA"). This was the first time that SVCE hired a professional lobbying firm to assist in our legislative advocacy in Sacramento. That contract expires at the end of November 2019.

The current agreement includes a monthly retainer fee of $8,000 per month for a total value of $96,000. The recommended amended agreement maintains the monthly retainer at $8,000 per month.

ANALYSIS & DISCUSSION
Over the past year, our partnership with ARA has made a huge difference in SVCE’s legislative efficacy. In addition to direct lobbying and making appearances for SVCE at legislative hearings and other events, ARA has provided valuable access to real-time information and updates from the legislative process. This allows SVCE to react more quickly and target our advocacy more effectively towards legislators who can make a difference on issues that affect us. Moreover, the ARA team’s strong background in the energy sector has made them highly effective at identifying relevant bills and news items, streamlining our operations further. Steve Baker and Jennifer Tannehill at ARA have become an integral part of our legislative team, and SVCE would be set back significantly by choosing not to extend their contract.

STRATEGIC PLAN
By facilitating SVCE participation in the state legislative process, this contract directly upholds Goal 8 of the Strategic Plan: “Engage regulators and legislators in developing policy that protects CCA rights and facilitates CCA contributions to decarbonization, grid reliability, affordability, and social equity.”

ALTERNATIVE
If the Board does not approve this contract extension, SVCE will either lose access to a professional lobbyist entirely or need to select an alternative lobbying firm. SVCE staff have not identified any other lobbying firm that we feel would be a better fit or deliver better results than ARA.
FISCAL IMPACT
The fiscal impact shall be based on a monthly retainer of $8,000 for a total not to exceed amount of $288,000.

ATTACHMENTS
1. First Amendment to Agreement with Aaron Read & Associates, LLC
2. Agreement with Aaron Read & Associates, LLC
FIRST AMENDMENT TO AGREEMENT WITH AARON READ & ASSOCIATES, LLC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and AARON READ & ASSOCIATES, LLC entered into that certain agreement entitled LOBBYIST SERVICES, effective on November 14, 2018, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and “AARON READ & ASSOCIATES, LLC have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on November 29, 2018 and shall terminate on November 28, 2021, unless terminated earlier as set forth herein.

2. COMPENSATION TO CONSULTANT of Original Agreement shall be amended to read as follows:

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Two Hundred Eighty-Eight Thousand and 00/100 dollars ($288,000.00) based on the rates and terms set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference.

3. This Amendment shall be effective on November 29, 2019.

4. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.

5. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

RECOMMENDED FOR APPROVAL

__________________________________________________
Hilary Staver, Manager of Regulatory and Legislative Affairs
CONSULTANT NAME
AARON READ & ASSOCIATES, LLC

By: __________________________
Name: ________________________
Title: _________________________
Date: __________________________

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: __________________________
Name: Girish Balachandran
Title: Chief Executive Officer
Date: __________________________

APPROVED AS TO FORM:

________________________________
Counsel for Authority

ATTEST:

________________________________
Authority Clerk
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND AARON READ & ASSOCIATES, LLC FOR LOBBYIST SERVICES

THIS AGREEMENT, is entered into this 14th day of November, 2018, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and AARON READ & ASSOCIATES, a California Limited Liability Corporation whose address is 1415 L Street, Suite 1100, Sacramento, CA 95814 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties").

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for lobbyist services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM
   The term of this Agreement shall commence on November 29, 2018, and shall terminate on November 28, 2019, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED
   Consultant shall perform each and every service set forth in Exhibit "A"

3. COMPENSATION TO CONSULTANT
   Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Ninety-Six Thousand and 00/100 dollars ($96,000.00) based on the rates and terms set forth in Exhibit "B," which is attached hereto and incorporated herein by this reference.

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

5. STANDARD OF CARE
   Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of the industry and agrees that all services shall be
performed by qualified and experienced personnel.

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

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

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

9. **HOLD HARMLESS AND INDEMNIFICATION**
   Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liabilities, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of or related to the negligence or willful misconduct of Consultant or Consultant’s employees, officers, officials, agents or independent contractors in the performance of this Agreement, except where caused by the sole or active negligence or willful misconduct of Authority or its members, officers, officials, agents, employees and volunteers. Such costs and expenses shall include reasonable attorneys’ fees of counsel of Authority’s choice, expert fees and all other costs and fees of litigation. The acceptance of the services provided by this Agreement by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the services or termination of this Agreement.
10. **INSURANCE:**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant’s indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

B. **Subrogation Waiver.** Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. **Failure to secure or maintain insurance.** If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. **Additional Insured.** Authority, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. **Sufficiency of Insurance.** The insurance limits required by Authority are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. **Maximum Coverage and Limits.** It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.
11. **CONFLICT OF INTEREST**
Consultant warrants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

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

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

13. **SUBCONTRACTOR APPROVAL**
Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Authority in the same manner and to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**
A. Each and every report, draft, work product, map, record and other document,
hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Authority the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Authority, and all publication rights are reserved to Authority. Consultant may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original Project for which Consultant was hired; (2) Completion of the original Project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status or services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by Authority.

F. Consultant will prepare appropriate registration and lobbyist employer forms required by law. Authority agrees to be responsible for reviewing, signing, and returning such forms to Consultant for timely filing with the Secretary of State.

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

16. PARTY REPRESENTATIVES
The Chief Executive Officer shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Steve Baker, Legislative Advocate shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. CONFIDENTIAL INFORMATION
Consultant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by Authority.

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

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

TO AUTHORITY:
333 W. El Camino Real
Suite 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
Jennifer Tannehill, Legislative Advocate
Steve Baker, Legislative Advocate
AARON READ & ASSOCIATES, LLC
1415 L Street, Suite 1100
Sacramento, CA 95814

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

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

20. **COMPLIANCE**
Consultant shall comply with all applicable local, state and federal laws.

21. **CONFLICT OF LAW**
This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.
22. **ADVERTISEMENT**
   Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

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

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

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

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

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

   IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

Hilary Staver
Manager of Regulatory & Legislative Affairs
CONSULTANT NAME
AARON READ & ASSOCIATES, LLC
By: Aaron Read
Name: Aaron Read
Title: CEO
Date: 11/27/2018 1:05:08 PM PST

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority
By: Girish Balachandran
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 11/27/2018 1:34:16 PM PST

APPROVED AS TO FORM:
Gregory W. Stephanie
Counsel for Authority

ATTEST:
Andrea Pignone
Authority Clerk
Exhibit A
Scope of Services

Consultant will use its best efforts to represent the Authority’s interests with the California State Legislature and the Executive Branch of California State Government. These services will include but are not limited to:

1. **Planning, goal-setting, and strategy development.** Consultant will assist the Authority in identifying and adjusting legislative goals and priorities based on ongoing events in the legislature and the executive branch. Consultant will assist the Authority in developing plans and strategies for how to achieve those goals most effectively with the resources at the Authority’s disposal.

2. **Advocacy in the legislature and executive branch.** Consultant will represent the Authority and advance the Authority’s interests through advocacy activities that include but are not limited to:
   a. Directly lobbying legislators, legislative and executive staff, and the Governor’s office to obtain votes for or against a bill or negotiate amendments to bill language
   b. Testifying in hearings in support of the Authority’s interests
   c. Drafting and distributing committee and floor letters and other written advocacy materials as needed
   d. Building coalitions and conducting negotiations with other stakeholders as needed in order to support the Authority’s legislative goals

3. **Bill monitoring and analysis.** At the beginning of the session, Consultant will provide detailed analysis of the landscape of introduced bills and assist the Authority in identifying and prioritizing bills relevant to the Authority’s interests. Consultant will continue monitoring activities throughout the session and inform the Authority of amendments relevant to the Authority’s interests.

4. **Collaboration with CalCCA.** Where the Authority’s interests align with those of the California Community Choice Association (“CalCCA”), Consultant will collaborate and coordinate with CalCCA lobbyists to maximize the effectiveness of CalCCA’s and the Authority’s collective efforts. This may include direct communication with CalCCA lobbyists, participation in CalCCA planning and strategy discussions, attendance at CalCCA events in Sacramento, and distribution of CalCCA materials if said materials are approved by the Authority.

5. **Supporting sponsored bills.** Should the Authority decide to sponsor a bill, Consultant will provide and support the additional effort and resources this entails by:
   a. Helping to recruit authors/coauthors
   b. Developing a plan for how to obtain the required number of votes
   c. Building coalitions in support of the bill with key stakeholders and allies
d. Negotiating with stakeholders opposed to the bill in order to minimize or neutralize opposition where possible

6. **General coalition development with other stakeholders.** Consultant will help the Authority build its baseline coalition of support in Sacramento by solidifying and maintaining the Authority’s existing alliances with other stakeholders and building new ones through reaching out to stakeholders the Authority has not yet communicated with or overcoming differences with stakeholders who have previously opposed the Authority’s interests.

7. **Monthly reporting.** Though more frequent communication is expected to be taking place on specific issues, Consultant will provide the Authority with a monthly summary of activities undertaken, results, and priorities and next steps for the upcoming month.

Consultant will seek policy guidance from the Authority, and will act in accordance with that policy direction.
Exhibit B
Compensation

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of Ninety-Six Thousand and 00/100 dollars ($96,000.00), in monthly installments of $8,000.00, payable in advance. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Invoices
Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges, including a summary of the work performed during that period and personnel who performed the services.

Reimbursable Expenses
Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel, courier, and other expenses not covered above must be authorized in advance in writing by Authority and shall only be reimbursed to the extent consistent with Authority’s travel policy.

Additional Services
Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority’s Chief Executive Officer prior to commencement of any additional services. Consultant shall submit, at the Chief Executive Officer’s request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.
Exhibit C
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

Consultant shall maintain the following minimum insurance coverage:

A. **Coverage:**

   (1) **Workers’ Compensation:**
       Statutory coverage as required by the State of California.

   (2) **Liability:**
       Commercial general liability coverage with minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.

   (3) **Automotive:**
       Comprehensive automotive liability coverage with minimum limits of $1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

   (4) **Professional Liability**
       Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least $1,000,000.
Staff Report – Item 1g

Item 1g:  Adopt Resolution Amending the Authority’s Conflict of Interest Code to Add Rates Manager and Senior Rates Analyst Positions to the List of Designated Positions for Filing

To:   Silicon Valley Clean Energy Board of Directors

Prepared by:   Andrea Pizano, Board Clerk/Executive Assistant

Date:   11/13/2019

RECOMMENDATION
Adopt Resolution 2019-19 amending the SVCEA conflict of interest code to add Rates Manager and Senior Rates Analyst as designated positions.

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 September 11, 2019 meeting, the Board of Directors approved the Rates Manager and Senior Rates Analyst positions with the FY 2019-20 Operating Budget and Resolution 2019-15 amending the positions chart, job classifications, and salary schedule.

ANALYSIS & DISCUSSION
Following review of the added positions by our Director of Finance and Administration, the Rates Manager and Senior Rates Analyst positions were identified as needing to report financial interests based on the decisions he/she will be making.

In accordance with the requirements of the Political Reform Act and the County of Santa Clara, a new conflict of interest code must be adopted by resolution which includes the newly created or identified positions as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to the Authority’s Code to reflect the addition of “Rates Manager” and “Senior Rates Analyst”.

STRATEGIC PLAN
Not applicable.

ALTERNATIVES
None.

FISCAL IMPACT
There is no fiscal impact as a result of the addition of the position.
ATTACHMENT
1. Resolution 2019-19 Amending the Authority’s Conflict of Interest Code to Add Two Positions
RESOLUTION NO. 2019-19

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN
ENERGY AUTHORITY AMENDING THE AUTHORITY’S CONFLICT OF INTEREST
CODE TO ADD 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 2019-05; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the
Authority rescinds Resolution No. 2019-05 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 November 2019, by the following vote:

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<thead>
<tr>
<th>JURISDICTION</th>
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<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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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”).


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.
### DESIGNATED POSITIONS

<table>
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<tr>
<th>Designated Position</th>
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<tbody>
<tr>
<td>Member of Board of Directors</td>
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<tr>
<td>Alternate Member of Board of Directors</td>
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<td>Chief Executive Officer</td>
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<td>Finance and Administration Committee Member</td>
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<td>General Counsel</td>
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<td>Account Services Manager</td>
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<td>Administrative Services Manager</td>
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<tr>
<td>Communications Manager</td>
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<tr>
<td>Director of Account Services &amp; Community Relations</td>
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<tr>
<td>Director of Decarbonization &amp; Grid Innovation Programs</td>
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<tr>
<td>Director of Finance &amp; Administration</td>
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<td>Director of Power Resources</td>
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<tr>
<td>Management Analyst</td>
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<td>Manager of Decarbonization &amp; Grid Innovation Programs</td>
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<td>Manager of Regulatory &amp; Legislative Affairs</td>
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<td>Senior Regulatory Analyst</td>
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<td>Power Resources Manager</td>
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<td>Power Resources Planner</td>
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<td>Power Settlements &amp; Compliance Analyst</td>
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</tr>
<tr>
<td>Rates Manager</td>
<td>2</td>
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</tbody>
</table>
Senior Rates Analyst 2
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.)
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.
No report as the Finance and Administration Committee has not met since September 3rd, 2019. The next meeting of the group is scheduled for January 17, 2020, noon, at the SVCE Office.
Staff Report – Item 1i

Item 1i: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2019

No report as the Audit Committee has not met since June 5th, 2019. The next meeting of the group is scheduled for December 4th, 2019, 11:30 a.m., at the SVCE Office.
Staff Report – Item 2

Item 2:  
CEO Report

To:  
Silicon Valley Clean Energy Board of Directors

Prepared by:  
Girish Balachandran, CEO

Date:  
11/13/2019

REPORT

SVCE Staff Update
Mike Wardell recently joined SVCE as a contract employee to the Power Resources Group. Mike brings over 28 years of electric utility experience having worked most of those years for the City of Roseville (an electric municipal utility). Mike managed all aspects of Roseville’s energy portfolio including resource planning, portfolio management, contract negotiations, risk management and power plant development. His broad and extensive knowledge will prove valuable to SVCE staff as it works towards implementing better systems, controls and processes to manage the growing complexity of operations related to new and existing supply resources.

Long-term Renewable RFP Update
Monterey Bay Community Power (MBCP) and SVCE continue to negotiate power purchase agreements (PPA) with six renewable energy providers selected through its 2019 Request for Proposal (RFP) for Carbon-free Power Supply, which closed on May 17th, 2019. Four of the projects are for solar plus storage and two are geothermal facilities including a new project utilizing a binary closed-loop system enabling it to be carbon-free. Five projects are located in California and one project is located in Nevada delivering directly to California. All projects will qualify as Power Content Category One (PCC1) under California’s Renewable Portfolio Standard (RPS) and are expected to come online by 2023 in time to meet long-term contracting mandates for Compliance Period Four (2021 through 2024).

Staff anticipates bringing two of the PPAs to the Board for consideration and approval hopefully in December 2019 and the other four in March 2020.

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

1) E-Mobility Group: Amendment; expires January 31, 2020
2) Energy and Environmental Economics: Task #2 of SVCE’s DER/Electrification Assessment; not to exceed $95,000
3) Derek May Photography: Photography and Videography Services; not to exceed $40,000
4) Greenbank Associates: CA Zero Carbon School and Community College Districts: A Programmatic Approach, not to exceed $75,000
5) Wilson Sonsini Goodrich & Rosati: Advising and Consulting Services regarding renewable energy supply agreements, not to exceed $50,000
6) Duncan Weinberg Genzer & Pembroke: Monitoring Services, not to exceed $5,600
7) Municipal Resource Group: Human Resources Services, not to exceed $33,750
8) Bruce Karney: Program Design Services, not to exceed $20,000
9) Marsh & Mclennan Agency, LLC (MMA): Health Benefits Consulting Services, not to exceed $30,000
10) Creative F5: Graphic and web design services, not to exceed $40,000
Agenda Item: 2

11) SMUD, Task Order #5: Priority Zone Direct Current Fast Charge Program Support, not to exceed $15,000

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

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<thead>
<tr>
<th>Counter Party Name</th>
<th>Execution Date</th>
<th>Transaction Type</th>
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<td>11/30/2021</td>
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<td>Bonneville Power Authority</td>
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<td>Calpine</td>
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<td>4/1/2020</td>
<td>11/30/2020</td>
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<td>Monterey Bay Community Power</td>
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<td>Resource Adequacy</td>
<td>1/1/2020</td>
<td>12/31/2020</td>
<td>$94,500.00</td>
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</table>

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

Presentations & Relevant Meetings Attended by CEO
- Participated in research briefing hosted by Berkeley’s Haas School of Business
- Spoke at the Building Decarbonization Summit
- Attended the Renewable Energy Grid Forum

ATTACHMENTS
1. Decarb & Grid Innovation Programs Update, November 2019
2. Account Services & Community Relations Update, November 2019
3. Regulatory and Legislative Update, November 2019
Decarb & Grid Innovation Programs Update

November 2019
1. Reach Code Initiative

- 12 Letters of Intent signed and received
- All member agencies have scheduled a Council Briefing or 1st Reading
- **Buildings**
  - Mountain View and Morgan Hill approved all-electric new construction codes (slight variations between the two)
  - All others are evaluating a combination of pre-wiring for future electric appliances, encouraging electric appliances, requiring electric appliances except for cooking
  - Gilroy has declined including a reach code
- **EVs**
  - Mountain View approved a code in excess of our model
  - Others are still evaluating appropriate quantity, speed and/or readiness of EV charging above code
2. FutureFit Home Program

- Program launched in June, to provide rebates to replace 100 natural gas water heaters with electric heat pump water heaters
- Received 106 applications to date
  - 27 Completed. Currently on a waitlist system.
  - 5 rebate slots available for CARE/FERA customers
- Co-funded by BAAQMD

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<tr>
<td>Heat Pump Water Heater Only</td>
<td>$2,000</td>
</tr>
<tr>
<td>Data Monitor</td>
<td>$300</td>
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</table>

<table>
<thead>
<tr>
<th>Optional Additional Rebates</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Smart Performance Package</td>
<td>$1,500</td>
</tr>
<tr>
<td>Service Panel, upgrade to 200A</td>
<td>$2,500</td>
</tr>
<tr>
<td>CARE/FERA eligible customer</td>
<td>$1,500</td>
</tr>
</tbody>
</table>
3. EV Programs

- **CALeVIP** scoping is ongoing
- The first meeting of the **Silicon Valley Transportation Electrification Clearinghouse** will be in December
- Consultants are on board for the **Regional EV Leadership Recognition** final development and launch
- Member agency staff are supporting the ongoing **Priority Zone DC Fast Charging** zone identification work
4. Innovation Programs (1 of 2)

- **Innovation Onramp** provides small grants to fund innovative pilots with external partners
- Second application round focused on mobility closed Nov 1\(^{st}\) - **29 applications received**
- Application review through December
4. Innovation Programs (2 of 2)

- Working with Powerhouse (cleantech incubator & venture fund) on an **SVCE-organized hackathon** to spur innovation to achieve deep decarbonization
- Tentatively scheduled for Jan 31-Feb 1
- Confirmed sponsors include Peninsula Clean Energy, East Bay Community Energy, City of Palo Alto Utilities, and San Jose Clean Energy
5. Resilience RFP & VPP Update

- SVCE will join EBCE, PCE and City of Santa Clara/Silicon Valley Power to release an RFP on Nov 5 to support community resilience.

- The joint solicitation will spur over 30MW of battery installations at homes and businesses to support community resilience.

- The batteries will form a “virtual power plant” to provide grid services to SVCE when not in use by the community for back-up power.
6. Programs Roadmap Update

- Programs Roadmap scheduled for an annual update and review starting in Jan 2020
- Staff will provide comprehensive report of progress to date, outline of 2020 plans & proposal to transition to 2-year update cycle
- Tentative schedule for gathering stakeholder input:
  - MAWG & community, December 2019
  - Executive Committee, January 2020
  - BOD, February 2020
7. Other Updates

- **Customer resource center** update included in regular calendar
- SVCE provided **letter of support to Electric Power Research Institute** (EPRI) for a grant proposal to the California Energy Commission to develop the CA State Energy Storage Permitting Guidebook
# 1. Outreach Events & Sponsorships

Staff continues to present and meet with various key customers and stakeholders. Tabling at community and corporate events informs customers about where their electricity comes from and how to make the most out of receiving carbon-free electricity from SVCE.

Past and upcoming events:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
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</thead>
<tbody>
<tr>
<td>Nov. 4</td>
<td>12 – 1:30 PM</td>
<td>BayREN Educating Multifamily Property Owners – presenting &amp; tabling</td>
<td>Morgan Hill Community Center</td>
</tr>
<tr>
<td>Nov. 5</td>
<td>10 AM – 1 PM</td>
<td>SVCE Presentation at SCC Association of Realtors Solar PV – presenting &amp; sponsoring</td>
<td>SCCAOR Office, San Jose</td>
</tr>
<tr>
<td>Nov. 5</td>
<td>4 – 6 PM</td>
<td>Crochet Coral Reef Reception (climate fair) – tabling</td>
<td>West Valley College, Saratoga</td>
</tr>
<tr>
<td>Nov. 6</td>
<td>6 – 8 PM</td>
<td>BayREN Home Energy Workshop – presenting &amp; tabling</td>
<td>Cupertino Community Center</td>
</tr>
<tr>
<td>Nov. 13</td>
<td>12 – 1:30 PM</td>
<td>SCC Association of Realtors – Making Homes More Comfortable, Healthy &amp; Safe - presenting</td>
<td>SCCAOR Office, San Jose</td>
</tr>
<tr>
<td>Nov. 14</td>
<td>10 AM – 2 PM</td>
<td>Lockheed Martin Employee Resource Expo – tabling</td>
<td>Lockheed Martin, Sunnyvale</td>
</tr>
<tr>
<td>Nov. 15</td>
<td>9 – 10 AM</td>
<td>SVCE Presentation at the Barbara Lee Senior Center – presenting</td>
<td>Milpitas</td>
</tr>
<tr>
<td>Nov. 15</td>
<td>6 – 9 PM</td>
<td>Morgan Hill Community Foundation Philanthropy Night - sponsorship</td>
<td>Morgan Hill Community Center</td>
</tr>
<tr>
<td>Nov. 19</td>
<td>6 – 8 PM</td>
<td>BayREN Home Energy Workshop – presenting</td>
<td>Sunnyvale Community Center</td>
</tr>
<tr>
<td>Nov. 23</td>
<td>6 – 9 PM</td>
<td>IASC’s Silver Diwali Show – tabling and sponsorship</td>
<td>Ann Sobrato High School, Morgan Hill</td>
</tr>
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</table>
## 2. Customer Participation

<table>
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<tr>
<th></th>
<th>Upgrade</th>
<th>Opt Out</th>
<th>Opt Outs by Account Type</th>
<th>Total Opt Out, All Accounts</th>
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<td>Residential</td>
<td>1,253</td>
<td>9,365</td>
<td>3.69%</td>
<td>3.66%</td>
</tr>
<tr>
<td>Commercial</td>
<td>2,000</td>
<td>898</td>
<td>3.08%</td>
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</table>
3. Community Outreach Grants

- Grant Cycle ended on October 31, 2019
  - Wrapping up final reporting and evaluation in Nov.
- Some final metrics to date:
  - Acterra
    - 764 customer engagements
    - 3,626 outreach impressions
  - California Interfaith Power & Light –
    - 520 customer engagements
    - 500 outreach impressions
  - Sunnyvale Community Services
    - 862 customer engagements
    - 1,000 outreach impressions
- Final metrics coming Dec. 2019
4. Member Agency Working Group Update

The following items were presented and discussed at the October meeting:

- SVCE Updates
- Energy Atlas
  - UCLA project for energy data access coming in 2020
- SVCE Program Updates
  - Reach Codes
  - HPWH
  - EV - Priorities Zone DC Fast Charging
  - Virtual Power Plant
  - East Bay Community Energy Resiliency RFP
  - Customer Resource Center
- Local Regulatory Opportunities
5. Community Engagement Programs

DIY Toolkits
• Adopted from City of San Jose & Silicon Valley Energy Watch for libraries in our service area
• Toolkits placed in libraries where community members can check them out for free
• Includes a handbook on how to make your home more energy efficient as well as energy efficient tools and equipment (LED light bulbs, water aerator, weather stripping) to install

Bike to the Future 2020
• Third annual scholarship competition scheduled for May 2, 2020 at the Santa Clara County Fairgrounds
• Registration increased to 26 teams this year
• Addition of two new scholarship awards for best team spirit and sportsmanship
• Competition to now include equal weight in presentation and design with challenges, for higher inclusion of non-STEM students.
6. Media

Latest SVCE News

• City of Mountain View Takes Major Step Toward a Better Building Code, Press Release, 10-23-19
• City of Morgan Hill Takes Bold Climate Action with New 2020 Building Code, Press Release, 10-24-19
• Silicon Valley Clean Energy Launches Flagship Pilot with Utility API, Press Release, 10-16-19
• Silicon Valley Clean Energy and UtilityAPI Want to Free Your Meter Data, Greentech Media, 10-16-19
• Residents and Businesses Awarded for Local Climate Leadership with All-Electric Homes and Buildings, Press Release, 10-03-19

News Mentions

• Powering up at Home, Palo Alto Online, 10-25-19
• California needs a fast and furious 4 GW built out of new clean energy capacity, PV Magazine, 10-25-19
• San Jose Gets $14M for Electric Vehicle Charging Stations, NBC Bay Area, 10-23-19
• San Jose Gets $14M For New Electric Vehicle Charging Stations, CBS San Francisco, 10-22-19
• Electric vs Gas Heat: Which wins?, Palo Alto Online, 10-06-19
• Home front: Home electrification expo, tree planting, fall bulbs, Mountain View Voice, 10-04-19
SVCE Regulatory and Legislative Update
November, 2019
Hilary Staver, Manager of Regulatory and Legislative Affairs

Regulatory

Integrated Resource Planning (“IRP”; R.16-02-007)

SVCE’s work in this sprawling proceeding can be separated into three different subject matter areas that are all moving forward simultaneously:

1) Procurement Track in response to 2018 IRPs. Back in September, the Commission issued a Proposed Decision ("PD") calling for 2,500 MW of extra system Resource Adequacy procurement in order to avert a potential reliability threat in 2021-2023 associated with the planned retirement of Once Through Cooling gas plants. Significant stakeholder feedback from a broad coalition including CalCCA resulted in the Commission revising the PD twice, with the second revised version voted out by the Commission as the final Decision on 11/7. The total amount of incremental capacity procurement is now set at 3,300 MW (after being increased from 2,500 MW to 4,000 MW in the first revision), and responsibility for procuring these resources has been expanded from only load-serving entities ("LSEs") in Southern California Edison’s service territory to LSEs statewide. SVCE’s portion is 67.2 MW by 2023, of which 50% must be procured by 2021 and 75% by 2022. We have until February 15, 2020 to declare whether we will procure this amount ourselves or elect to have PG&E procure it on our behalf and recover the costs. One of the directions we are evaluating is a joint procurement process in coordination with several other CCAs.

2) 2020 Reference System Plan. On 10/8, the Commission provided a first look at its preliminary modeling results for the Draft 2020 Reference System Plan ("RSP"). The RSP is a statewide modeling exercise that the Commission uses to determine the optimal way to meet CA’s GHG reduction goals for the electricity industry. LSEs are expected to use the RSP as a model and reference when developing their own IRPs. The Commission followed this first look with a formal Ruling on 11/6 seeking stakeholder comment on the Draft 2020 RSP. SVCE staff are evaluating this Ruling, and will provide comment to the CPUC by 11/27 in addition to incorporating it into our 2020 IRP development efforts.

3) Internal development of SVCE’s 2020 IRP. Work this month focused on preparing for the second Board workshop on October 10, identifying and contracting with external consultants, and reviewing the preliminary RSP results discussed above.

Resource Adequacy (“RA”; R.17-09-020)

Again here, there are two areas of focus:

1) The Settlement Proposal. As we discussed last month, on 8/30/19 CalCCA, San Diego Gas & Electric, and six other parties submitted a settlement proposal to the CPUC for a central buyer structure encompassing system, local, and flexible RA. The Commission has not yet responded to the settlement proposal, but held a workshop to discuss it publicly on 11/1. We expect the Commission to issue a Proposed Decision accepting or rejecting the settlement and setting the structure of the central buyer more broadly by the end of the end of the year.

2) Restrictions on Imported Resource Adequacy. On 10/10, the Commission voted to approve the Proposed Decision that would place significant new restrictions on imported RA. SVCE, CalCCA, and other stakeholders maintain that this was not an optimal way to address the findings of a potential reliability threat released in June in the IRP proceeding. CalCCA has filed an Application...
for Rehearing, but for the moment the Decision stands. We have taken the new restrictions into account in our preparation of the year-ahead RA compliance filings due 10/31.

3) **October 31st Year-Ahead Compliance Filing and Waivers.** On 10/31, SVCE completed our annual year-ahead RA compliance filing. This filing demonstrates purchase of system and flexible RA for 2020 and local RA for 2020-2022, reflecting the new three-year requirement created for local RA earlier this year. Despite tremendous SVCE staff and contractor efforts, a uniquely challenging set of market and regulatory conditions around RA this year made full compliance ultimately infeasible for both SVCE and many other LSEs of all kinds. SVCE has filed for a waiver on about 7% of our total RA obligation, and we were one of 19 LSEs to file for such waivers. That group includes eight other CCAs, eight Energy Service Providers (ie direct access providers), PG&E, and San Diego Gas & Electric. SVCE staff will provide further updates on this situation as they become available.

**Power Charge Indifference Adjustment (“PCIA”; R.17-06-026)**
The PCIA proceeding continues to unfold via three Commission-ordered stakeholder-led working groups, whose discussions as designed to inform Commission Decisions on each bucket of issues:

1) **Benchmarking, True-Ups, and Load Forecasting, Billing Determinants, and Bill Presentation.** On 10/10/19 the Commission issued a final Decision articulating how the updated Market Price Benchmark components for RPS and RA/capacity resources should be calculated going forward. These new methodologies are expected to be applied in calculating the 2020 PCIA over the next couple months. Working Group 1 is now on a brief hiatus before returning to work on several remaining issues.

2) **PCIA Prepayment.** After months of inactivity, the CPUC held a workshop on this issue for 11/4. This working group will now move forward with exploring options for CCA to prepay their portion of the PCIA.

3) **Portfolio Optimization.** This is the working group that has developed proposals for allocating GHG-free resources, RPS resources, and system and local RA resources from the IOUs’ excess portfolios to CCAs on either a voluntary or mandatory basis (depending on which of the four categories you’re considering), including the hydro and nuclear we discussed at the September and October Board IRP workshops. We are expecting an Advice Letter from PG&E imminently that will spell out in greater detail the terms of the carbon-free resources that should be made available to SVCE in 2020. This allocation could have a significant impact on SVCE’s future procurement plans.

Both PG&E’s 2020-2022 General Rate Case (A.18-12-009) and 2020 ERA Forecast proceeding (A.19-06-001) have moved into the legal brief portion of the proceeding schedule, which is generally the last before issuing a Proposed Decision. The Commission maintains its position that 2020 rates will be ready by the end of December. This seems likely to be pushed back given the challenges of implementing the new Market Price Benchmark components articulated in the PCIA Working Group 1 Proposed Decision (see above), but we have no official acknowledgement of that scenario yet.

**Direct Access (“DA”; R.19-03-009)**
We await further movement from the Commission detailing the process by which they will conduct and draft the required study on the implications of fully re-opening nonresidential direct access. The study is currently due to the legislature in June 2020, and SVCE intends to participate in the development process as actively as possible. We expect a workshop on the topic to be scheduled in mid-November.
**Legislative**

The Legislative Ad Hoc Committee of the Board met on 10/22 to debrief the 2019 legislative session and begin preparations for the 2020 session. The ad hoc committee reviewed SVCE’s legislative platform and provided input on suggested updates, resulting in the document presented to you for approval tonight. In other news, the PSPS events and fires are likely to have a significant impact on legislative activity in the 2020 session. SVCE is monitoring the airwaves and preparing for a very active session with CalCCA and our lobbying team at Aaron Read & Associates.
<table>
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<tr>
<th><strong>MILESTONES</strong></th>
<th><strong>NOVEMBER 2019</strong></th>
<th><strong>DECEMBER 2019</strong></th>
<th><strong>JANUARY 2020</strong></th>
<th><strong>FEBRUARY 2020</strong></th>
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<td>Board of Directors, Jan 8:</td>
<td>Board of Directors, Feb. 12:</td>
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<td>Consent</td>
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<td>Minutes</td>
<td>Minutes</td>
<td>Minutes</td>
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<td>Approval of Amendments to Operating Rules and Regulations</td>
<td>Western Contract (might be December)</td>
<td>Approval Workforce Development Program</td>
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<tr>
<td>Benefits Package Update</td>
<td>Benefits Package Update, Part 2</td>
<td>Regular Calendar</td>
<td>Regular Calendar</td>
<td></td>
</tr>
<tr>
<td>Recognition of Board Members</td>
<td>Chair and Vice Chair Selection</td>
<td>Committee Selection</td>
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<tr>
<td>Regular Calendar</td>
<td>Executive Committee Selection</td>
<td>Power Prepay Discussion</td>
<td>Power Prepay Discussion</td>
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<td>Non-Standard Pricing Policy Performance Update</td>
<td>Lobbyist Update</td>
<td>Annual Decarbonization Roadmap Update</td>
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<td>Ad Hoc Committee</td>
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<td>SVCE 19/20 Review</td>
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<td>Rates Update</td>
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<td>Closed Session</td>
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<tr>
<td>Office Expansion</td>
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| **Executive Committee, Nov. 22:** | Executive Committee, Dec. 27: CANCELLED | Executive Committee, TBD: |
| Benefits Package Update | | |
| Reach Code Update | | |

| **Finance and Administration Committee, Nov. 1:** CANCELLED | Audit Committee Meeting, Dec. 4: | Finance and Administration Committee, TBD: |
| Benefits Package Update | Audit Kick-off | Power Prepay Discussion |
| AMI Data Privacy and Security Policy | | Credit Rating Update |
| | | AMI Data Privacy and Security Policy |
Staff Report – Item 3

Item 3: SVCE Information Related to 2020 SVCE Board Elections

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2019

RECOMMENDATION
Staff recommends the Board appoint SVCE’s Chair, Vice Chair, and Executive Committee members at the annual meeting in January, with remaining committees assigned at the February Board of Directors meeting per SVCE’s Operating Rules and Regulations, with a selection process similar to 2019.

EXECUTIVE COMMITTEE RECOMMENDATION
The Executive Committee met October 25, 2019 and were in consensus to recommend the timing/selection process for Chair, Vice Chair, and committees similar to previous years. Committee members suggested adding additional details within the committee matrix on membership of each committee, which staff has included.

BACKGROUND
At the October 24, 2018 meeting, the Board approved a timeline to appoint SVCE’s Chair, Vice Chair and Executive Committee members in January, with remaining committees assigned at the February Board of Directors meeting. SVCE’s Operating Rules and Regulations were then amended in November 2018 to reflect the timing of selections.

SVCE has been using a selection process for the positions of Chair, Vice Chair, and committees which includes the Board Clerk requesting letters of interest for the positions of Chair and Vice Chair prior to the board meeting to be included in the agenda packet, and requesting board members complete a committee matrix which indicates interest in either continuing their membership in a committee, dropping their membership in a committee, or joining a committee.

The roles of Chair, Vice Chair, and the Executive Committee are scheduled to be selected at the January 8, 2020 meeting, with remaining committee assignments made at the February 12, 2020 meeting.

ANALYSIS & DISCUSSION
Using a similar process followed in previous years, the Board Clerk will send information to the Board of Directors three weeks prior to the January board meeting with a call for letters of interest for the positions of Chair and Vice Chair; letters of interest received for these positions will be included in the January Board of Directors meeting agenda packet. Directors interested in serving on the Executive Committee will also be asked to notify the Board Clerk during this time and names will be included in the staff report for the January board meeting. Nominations will also be accepted from the floor for Chair, Vice Chair and Executive Committee membership.

Following the January board meeting, the Board Clerk will distribute a matrix to board members to indicate interest in SVCE’s other committees (Finance and Administration Committee, Audit Committee, and any
additional committees formed by the Board between now and January). These spreadsheets will be collected a week and a half prior to the February board meeting, and staff will include the names of interested directors for each committee in the February board meeting staff report. Requests to join committees will be accepted from the floor.

**STRATEGIC PLAN**
Appointing SVCE’s representatives supports our mission and goals of the Strategic Plan.

**ALTERNATIVE**
Staff is open to suggestions from the committee on the process for Chair/Vice Chair and committee selections.

**FISCAL IMPACT**
There would be no fiscal impact as a result of making appointments.

**ATTACHMENTS**
1. 2020 Proposed Deadline Spreadsheet
2. Draft Committee Matrix for 2020
3. 2019 Board of Directors Committee Assignments
2020 SVCE Board Elections Timeline

November 13, 2019: Discussion of process and timeline with SVCE Board as part of the Regular Agenda

December 11, 2019: SVCE Board Chair reminds Board of the process and timeline at the December 11 Board meeting. Board Clerk also sends reminder to Board on process for appointments

December 13, 2019: Board Clerk will send a request for letters/indications of interest for the Chair/Vice Chair positions as well as indications of interest from members interested in serving on the Executive Committee for 2020

December 19, 2019: Letters of interest for Chair/Vice Chair and expression of interest for Executive Committee membership responses due to Board Clerk

January 8, 2020: Chair, Vice Chair, and Executive Committee selections made at the Board of Directors meeting

January 10, 2020: Board Clerk will distribute Committee Matrix worksheet to Directors to indicate interest in serving/continuing to serve on remaining committees

January 31, 2020: Committee Matrix worksheets due to Board Clerk

February 12, 2020: SVCE Committee assignments will be made
<table>
<thead>
<tr>
<th>Committee</th>
<th>Description</th>
<th>Meeting Details</th>
<th>Current Roster</th>
<th>Interest in serving for 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Committee</td>
<td>The Executive Committee is a subset of the Board of Directors; they provide input and support to SVCE on operational and policy matters. <strong>Makeup:</strong> The Executive Committee is made up of five Directors of the Board (no Alternate Directors of the Board). An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Not more than one Committee member shall represent a particular member agency.</td>
<td>Time: 9am-11am, Frequency: Monthly, Location: SVCE Office</td>
<td>• Margaret Abe-Koga (Chair), • Howard Miller (Vice Chair), • Liz Gibbons, • Rod Sinks, • Nancy Smith</td>
<td>Yes</td>
</tr>
<tr>
<td>Finance &amp; Administration Committee</td>
<td>The Finance and Administration Committee works with SVCE staff on items related to financial and administrative issues that impact the agency. <strong>Makeup:</strong> The Finance &amp; Administration Committee consists of no fewer than three members and no greater than six members, and can be Board members, Alternate Board members, or a Board appointed Agency staff member. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Not more than one Committee member shall represent a particular member agency.</td>
<td>Time: 12pm-2pm, Frequency: Quarterly &amp; as needed, Location: SVCE Office</td>
<td>• Howard Miller (Chair), • Rob Rennie (Vice Chair), • Javed Ellahie, • Liz Gibbons, • Maria Öberg</td>
<td>Yes</td>
</tr>
<tr>
<td>Audit Committee</td>
<td>The Audit Committee works with SVCE staff on the initiation and receiving of the annual audit. <strong>Makeup:</strong> The Audit Committee consists of no fewer than three members and no greater than six members, and can be Board members, Alternate Board members, or a Board appointed Agency staff member. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Not more than one Committee member shall represent a particular member agency.</td>
<td>Time: TBD, Frequency: Twice yearly &amp; as needed, Location: SVCE Office</td>
<td>• Courtenay Corrigan, • Jeannie Bruins, • Nancy Smith</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Not on committee, but interested for 2020
<table>
<thead>
<tr>
<th>Director</th>
<th>Agency</th>
<th>Executive Committee Monthly</th>
<th>Finance &amp; Admin Comm. Quarterly &amp; as needed</th>
<th>Ad Hoc Comm. Based on member availability</th>
<th>Audit Committee Twice yearly and as needed</th>
<th>*Risk Oversight Committee Monthly</th>
<th>*Selected by the CEO</th>
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</thead>
<tbody>
<tr>
<td>Margaret Abe-Koga, Chair</td>
<td>City of Mountain View</td>
<td>●</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Howard Miller, Vice Chair</td>
<td>City of Saratoga</td>
<td>●</td>
<td>●</td>
<td></td>
<td></td>
<td></td>
<td>●</td>
</tr>
<tr>
<td>Liz Gibbons</td>
<td>City of Campbell</td>
<td>●</td>
<td>●</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Rod Sinks</td>
<td>City of Cupertino</td>
<td>●</td>
<td></td>
<td>●</td>
<td></td>
<td></td>
<td>●</td>
</tr>
<tr>
<td>Fred Tovar</td>
<td>City of Gilroy</td>
<td></td>
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<tr>
<td>Jeannie Bruins</td>
<td>City of Los Altos</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Courtenay Corrigan</td>
<td>Town of Los Altos Hills</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Marico Sayoc</td>
<td>Town of Los Gatos</td>
<td></td>
<td></td>
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<tr>
<td>Rob Rennie (Alternate Director)</td>
<td>Town of Los Gatos</td>
<td>●</td>
<td></td>
<td></td>
<td>●</td>
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<td></td>
</tr>
<tr>
<td>Carmen Montano</td>
<td>City of Milpitas</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Javed Ellahie</td>
<td>City of Monte Sereno</td>
<td>●</td>
<td></td>
<td>●</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yvonne Martinez Beltran</td>
<td>City of Morgan Hill</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Susan Ellenberg</td>
<td>County of Santa Clara</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Maria Öberg (County Staff member)</td>
<td>County of Santa Clara</td>
<td></td>
<td></td>
<td>●</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nancy Smith</td>
<td>City of Sunnyvale</td>
<td>●</td>
<td></td>
<td>●</td>
<td>●</td>
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</tbody>
</table>
Staff will provide a presentation at the Board meeting on recent developments related to PG&E, including Governor Newsom’s public statements and Mayor Liccardo’s letter to the CPUC that was cosigned by many Mayors across Northern California. The CEO will brief the Board on actions being undertaken by SVCE staff and other stakeholders, and also request general direction.
**Staff Report – Item 5**

**Item 5: Approve Update to SVCE’s Legislative Platform**

**To:** Silicon Valley Clean Energy Board of Directors

**Prepared by:** Hilary Staver, Manager of Regulatory and Legislative Affairs

**Date:** 11/13/2019

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**RECOMMENDATION**

Staff recommends that the Board approve the updated version of SVCE’s legislative platform.

**BACKGROUND**

In March 2018, the Board approved the most recent version of SVCE’s legislative platform. Through approval of this platform, the Board gives SVCE staff the ability to take positions on bills for SVCE without having the Board vote on every single bill. The platform is an important component of SVCE’s legislative advocacy process, because having the Board vote on every position is not compatible with the pace of events in Sacramento. In the nearly two years since the last version of the platform was approved, enough new issues have arisen that an update was in order. The version you see today was developed by SVCE staff with input from the Legislative Ad Hoc Committee of the Board at their 10/22/19 meeting.

**ANALYSIS & DISCUSSION**

Since the last update, both SVCE and California’s legislative energy scene have changed. PG&E’s bankruptcy, the grid-caused wildfires, planned retirement of once-through cooling gas plants, and other factors have raised fundamental questions about the structure of California’s energy landscape. In order to contribute meaningfully to this conversation and reflect our nearly two-year maturation as an institution, the updated platform has been expanded significantly. Section I still focuses on familiar CCA fundamentals such as non-bypassable charges and procurement autonomy. Section II, devoted to CA’s broader energy policy framework, now includes alternatives to the historic role of the investor-owned utilities. PG&E’s safety violations and bankruptcy have caused both the CPUC and legislature to begin exploring these, and we’re expecting relevant bills in the 2020 session. Section II also now addresses direct access in light of the passage of SB 237. Finally, Section III has been expanded to reflect SVCE’s increasingly robust program portfolio and the increasing need for local grid resilience, which CCAs can be a critical partner in providing.

**STRATEGIC PLAN**

By facilitating SVCE participation in the state legislative process, this contract directly upholds Goal 8 of the Strategic Plan: “Engage regulators and legislators in developing policy that protects CCA rights and facilitates CCA contributions to decarbonization, grid reliability, affordability, and social equity.”

**ALTERNATIVE**

If the Board does not approve this update, the March 2018 version will continue to be SVCE’s official legislative platform. The March 2018 version is out of date and will not allow for full participation in the 2020 legislative session, so SVCE staff would request input from the Board on how we could improve the update such that the Board would accept it.
**FISCAL IMPACT**
N/A

**ATTACHMENTS**
1. Updated SVCE Legislative Platform, November 2019
2. SVCE Legislative Platform, March 2018
Silicon Valley Clean Energy Legislative Platform
November 2019

Purpose
Active participation in California’s legislative process is an important tool for ensuring that SVCE can continue to serve our customers and uphold our commitment to decarbonization. When the California legislature is in session, it is crucial that SVCE staff be able to quickly and efficiently determine SVCE’s positions on bills or amendments, communicate those positions to legislators, and apply pressure where needed. This platform is therefore designed to:

• Articulate SVCE’s legislative priorities for the 2020 legislative session and beyond
• Allow SVCE staff to take positions on bills for SVCE without explicit Board approval as long as they are consistent with this platform
• Guide optimal use of SVCE advocacy time and resources

Process
SVCE will review the legislative platform every October at the conclusion of the legislative session. The purpose of the review will be to discuss the outcomes of that year’s legislative session, develop goals and priorities for the upcoming session, and identify any desired updates to this legislative platform. Updates to the platform will be drafted by SVCE staff and formally presented for a vote at the November Board meeting.

Platform
*Note that “oppose” and “support” as used below do not exclusively refer to taking those positions on bills publicly. As per existing legislative norms, SVCE staff may contact bill authors directly to amend or remove problematic language before going public with a position on a bill. This approach minimizes misunderstandings and avoids wasting advocacy resources opposing bills whose authors are open to feedback and collaboration.

I. SVCE Customer Welfare and the CCA Model
Bills that directly threaten SVCE’s ability to provide its customers with reliable, affordable, carbon-free energy, or those that penalize CCA customers for leaving bundled service with the investor-owned utilities (IOUs). These include but are not limited to bills that affect:

1. **Right to Form and Maintain a CCA** – SVCE opposes bills that infringe on the right of communities to form and maintain a CCA as codified in AB 117 (Midgen, 2002), either by preventing communities from forming new CCAs or by freezing or restricting the operations of existing CCAs.

2. **Right to Set Retail Generation Rates** – SVCE opposes bills that infringe on CCAs’ right to set their own retail electric generation rates, including rates with structures different from those of the IOU serving as the billing agent for the CCA in question. SVCE supports bills that help reduce technical, institutional, and operational barriers to CCAs exercising this right. This includes bills that facilitate time-varying rates by allowing generation-side non-bypassable charges to be collected through structures other than a flat volumetric charge.

3. **CCA Procurement Autonomy** – SVCE opposes bills that compromise CCAs’ ability to procure energy on behalf of their customers or seek to diminish the role of the Board of Directors as the
primary governing body of a CCA. Exceptions will be made only if there is a compelling case for the unique value of increased external regulatory oversight as determined by SVCE staff.

4. **Cost Shifts and Customer Indifference** – SVCE opposes bills that violate the principle of customer indifference; penalize CCA customers financially for taking generation service from a CCA over any other kind of Load-Serving Entity; and/or shift costs from bundled IOU customers onto CCA customers (or vice versa).

5. **Non-Bypassable Charges** – SVCE opposes bills that would create a new non-bypassable charge (NBC) unless such bills a) provide CCAs an opportunity to self-procure rather than paying cost recovery if the charge is related to new generation resources or contracts, and b) place the new NBC on the generation side of the bill only if it is recovering costs incurred for generation resources. Charges associated with cost recovery of other investments and assessed on the delivery side of the bill still allow for meaningful comparison of generation rates between LSEs, and will not necessarily trigger opposition.

6. **Ability to Invest in Grid-Edge Resources** – SVCE supports bills that foster and opposes bills that restrict equal opportunity for CCAs to encourage, invest in, and benefit from grid-edge resources, including distributed energy resources, microgrids, and fuel-switching technologies. This includes access to state funding resources and jurisdiction over dispatch.

Bills in this category often seek to achieve their goals by increasing Public Utilities Commission oversight, a technique that can infringe on CCA rights even if the broader goal of the bill is not in conflict with SVCE’s values. In such cases, SVCE staff will work with the authors to craft amendments that preserve the bill’s broader intent while respecting CCA autonomy and customer welfare.

II. **California’s Energy Regulatory and Market Structures**

Bills that seek to modify or reshape California’s broader energy regulatory and market structures. By engaging on bills in this category, SVCE will help California develop a regulatory paradigm for a world of urgent climate mitigation and grid resiliency needs, diversifying distributed energy resources, and increasing consumer interest in active management of their energy use and procurement. SVCE’s top priorities in this category include:

1. **Residual Central Procurement Where It Improves System Function** – SVCE supports central procurement of any resource type only if it is conducted in a residual manner, preserving LSEs’ financial incentives to build new resources and preventing the creation of stranded assets.

2. **IOU Departure from Generation Service** – SVCE is not opposed to investor-owned utility (IOU) departure from retail generation service, but will support it only under the right conditions. Foremost among these conditions is that CCAs be given a meaningful role in determining what such a transition would look like and how its impacts on the energy system would be managed.

3. **CCAs as Providers of Last Resort and Sole Providers** – SVCE supports giving CCAs the opportunity to serve as provider of last resort (POLR) or, in the event of IOU departure from retail generation service, sole providers in their service territories.

4. **Restructuring of Investor Owned Utilities**: Along with the departure of the IOUs from retail generation service, SVCE supports bills and regulatory initiatives that restructure investor-owned utility incentives such that their business interests are more closely aligned with customer interests.

5. **Fair and Responsible Expansion of Direct Access** – SVCE opposes further expansion of direct access unless its implementation includes establishing a) an exit fee or some other mechanism to prevent cost shifts onto CCA customers the same way the PCIA prevents such shifts onto bundled IOU customers, and b) a mechanism to ensure that direct access providers adopt the
same or greater renewable power and carbon free power commitment of the CCA that serves the customer.

6. Creation of a Distribution System Operator (DSO) – SVCE supports increasing visibility into the distribution grid so that distributed energy resources (DERs), non-wires alternatives to traditional grid infrastructure, and other grid-edge technologies can be fully and optimally incorporated into decarbonization and reliability planning. SVCE would support the creation of an independent DSO to manage the distribution grid in the same manner that the California Independent System Operator (CAISO) manages the transmission grid. SVCE supports defining the DSO role as including providing clear information and signals about where DER buildout is optimal for replacing expansions of the traditional grid infrastructure.

III. Climate Mitigation and Clean Energy Technologies

Bills that may not affect SVCE directly but are relevant to our values of promoting climate mitigation, electrification, and carbon-free energy. This is a broad category, and SVCE involvement will depend on bill specifics and require more staff discretion than the previous two. Can include but is not limited to:

1. Distributed Energy Resources (DERs) – Depending on the content of the individual bills, SVCE may support, oppose, or go neutral on bills affecting where and how DERs are governed, built, funded, and operated, and how associated costs are recovered.

2. Grid Resilience and Fire Prevention and Mitigation – SVCE supports including CCAs as a full partner in grid resilience and fire prevention and mitigation planning to the extent that each individual CCA Board of Directors would like to participate. SVCE similarly supports bills that give CCAs the chance to direct their own investments in these areas where applicable rather than automatically paying cost recovery for IOU investments.

3. Fuel-Switching and Electrification – SVCE supports bills that facilitate electrification and fuel-switching in the transportation and built environment spaces. This includes exempting load growth due to fuel-switching from the Power Charge Indifference Adjustment (PCIA). Conversely, SVCE will oppose bills that interfere with implementation of SVCE’s own programs in these areas.

4. GHG Accounting – SVCE supports GHG accounting methods that reflect grid, emissions, and energy technology realities and minimize differing treatment of similar products based on political boundaries and concerns.
Silicon Valley Clean Energy Legislative Platform
March 2018

Purpose
Legislative action by the California state government shapes SVCE’s regulatory and economic environments, and affects its operations in fundamental ways. Depending on content, legislation can further empower CCAs or threaten their very existence. Monitoring legislative activity and engaging in advocacy to support helpful bills and amend threatening ones is thus a key part of SVCE’s commitment to serving its customers.

Due to the number of bills introduced every legislative session and the rapid pace at which bills are negotiated, amended, and voted on, it is impractical for the Board of Directors to directly review and approve every position SVCE takes on a bill. This platform is therefore designed to guide SVCE’s legislative advocacy by documenting a set of priorities agreed upon by SVCE’s Board of Directors in conversation with staff and representatives of the public. Staff may use this platform to gauge whether a bill falls within the limits of SVCE’s legislative interests, and also to determine how to prioritize bills when time and resources for advocacy are limited. By allowing for a degree of staff autonomy, SVCE’s legislative advocacy will be more efficient and effective.

Customer welfare will always be SVCE’s top legislative priority. However, this platform is also designed to guide an evolving advocacy portfolio that can grow with SVCE. Over time, increasing institutional capacity will allow us to expand into other areas that align with SVCE’s values. SVCE staff will maximize the effectiveness of our advocacy through collaboration with other stakeholders, including the California Community Choice Association (CalCCA), individual CCAs across the state, and other institutions as appropriate.

Process
The Legislative Ad Hoc Committee of the Board (“Committee”) covers a topical jurisdiction that includes discussing bills and taking positions on them. SVCE staff will work with the Committee to develop overarching legislative strategy as well as SVCE’s initial stances on major bills. However, as mentioned above, the rapid pace of the legislative process means that SVCE staff will sometimes need to make decisions on bills or amendments without first consulting the Committee or Board. These decisions will be guided by both the priorities in this platform and past discussions with the Committee and Board.

SVCE will also hold a legislative review workshop every October at the conclusion of the legislative session. The purpose of the workshop will be to discuss the outcomes of that year’s legislative session, develop goals and priorities for the upcoming session, and identify any desired updates to this legislative platform. Updates to the platform will be incorporated by SVCE staff and formally presented for a vote at the November Board meeting.

Platform

SVCE Customer Welfare
Bills that directly threaten SVCE’s ability to provide its customers with reliable, affordable, carbon-free energy, or those that penalize CCA customers for leaving bundled service with the investor-owned utilities (IOUs), will always be SVCE’s top priority. These include but are not limited to bill that:

➢ Create new non-bypassable charges on the generation side
➢ Erode CCA procurement authority and local autonomy

SVCE Legislative Platform, March 2018
➢ Distribute costs inequitably between bundled and unbundled customers.

Such bills often seek to achieve their goals by increasing Public Utilities Commission oversight, a technique that can infringe on CCA rights even if the broader goal of the bill is not in conflict with SVCE’s values. In such cases, SVCE staff will work with the authors to craft amendments that preserve the bill’s broader intent while respecting CCA autonomy and customer welfare.

**Regulatory Structure**

The next tier of SVCE’s advocacy covers bills that seek to modify or reshape California’s fundamental energy regulatory and market structures. SVCE supports the development of frameworks that encourage competition and customer choice in energy technologies and services, while continuing to provide for reliability and universal access. By engaging on bills in this category, SVCE will help California develop a regulatory paradigm for a world of urgent climate mitigation needs, diversifying distributed energy resources, and increasing consumer interest in active management of their energy use and procurement. SVCE’s top priorities in this category include:

➢ Protecting the rights of all communities to form new CCAs or join existing ones
➢ Regionalizing California’s electricity grid in order to reduce global GHG emissions by
  o Increasing regional capacity to integrate variable renewable resources
  o Encouraging competition and cost reduction in the renewable energy sector, ultimately making renewable energy more cost-competitive with fossil resources

**Climate Mitigation and Clean Energy Technologies**

If SVCE has resources available after covering the above two categories, the final tier includes bills that do not affect SVCE directly but are relevant to our values of promoting climate mitigation and carbon-free energy. This is a broad category that could include but is not limited to:

➢ Incentives for or policies governing distributed energy resources such as rooftop solar, electric vehicle, and home storage systems
➢ Innovation-focused bills that nourish or threaten California’s status as a leader on climate mitigation policy and technology
➢ Bills that affect how carbon-free energy resources are operated and integrated into the grid

Together, these three tiers will guide SVCE staff to an optimal use of advocacy resources that safeguards SVCE customer welfare, furthers statewide climate mitigation efforts, and helps make affordable, reliable, carbon-free energy available to more people than ever before.
Staff Report – Item 6

Item 6: Customer Resource Center Program Update

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Bray, Director of Account Services and Community Relations
Pamela Leonard, Communications Manager

Date: 11/13/2019

RECOMMENDATION
Receive update on Customer Resource Center.

BACKGROUND
The Customer Resource Center (CRC) program was approved in December 2018 as part of the Decarbonization Programs Roadmap. The CRC was one of several key recommendations from the 2018 Customer Program Advisory Group (CPAG). As the ad hoc residential customer group providing input on the Decarbonization Programs Roadmap, the CPAG encouraged development of an online platform to engage and educate residential customers about their energy use and enable action to electrify their homes and vehicles.

In summer 2019, SVCE released a Request for Information (RFI) to assess the market for what kinds of technologies and software exist today to help customers increase their energy literacy and enable actions such as evaluating electric vehicles and shopping for clean energy products. The RFI received eight responses and helped shape the Request for Proposals (RFP) for the Customer Resource Center. The RFP was released on Sept. 9, 2019 and closed Oct. 11, 2019. SVCE received 14 proposals and initiated interviews with potential vendors the week of Oct. 21. Selections and contract negotiations will be taking place throughout November.

ANALYSIS & DISCUSSION
Building an online Customer Resource Center will require contracting with multiple vendors that offer various solutions related to the scope of the project. Staff anticipates bringing 3-5 contracts to the board for approval beginning in December.

SVCE is at a point where the agency’s community engagement efforts are transitioning from a focus on the operational aspects of being a Community Choice Aggregator to inspiring, educating and enabling action for customers to participate in programs and help achieve the agency’s decarbonization goals. Significant education is needed to help familiarize customers with electrification, and the benefits of technologies such as induction cooking, heat pump water heating, heat pump heating and cooling, electric vehicles, solar and storage, and connected devices. The development and launch of the Customer Resource Center can be broken down into three aspects – Inspire, Educate, Act.

Inspire
Currently, the SVCE website is focused on the operational details of participating in a CCA with information about energy choices, rates and agency governance. The website does not currently offer customers educational information or tools to help them electrify and decarbonize. Building an online Customer Resource Center will require restructuring the SVCE website, updating the messaging and changing the ways customers
navigate the site to lead them to pages that will inspire customers to want to learn more and take actions to lower their carbon footprint.

The marketing efforts to drive customers to the new SVCE website and Customer Resource Center will also be tailored to reach all residential customer segments; from those with advanced energy knowledge looking for storage to pair with their existing solar systems, to customers with little knowledge about their energy use. Depending on customers knowledge level and interest, the Customer Resource Center and SVCE website will be able to serve each of their needs. Considerations are also being made to include education and training materials for contractors and small and medium businesses through the SVCE website.

This stage of the Customer Resource Center program coincides with the development of a statewide marketing effort by the Building Decarbonization Coalition to create mass awareness about the need to move away from fossil fuels for home energy needs targeted to both residents and the contractor and building communities. This campaign will be complementary to the launch of the Customer Resource Center, and the SVCE campaign may be able to leverage some of the marketing around this campaign locally.

**Educate**

The Customer Resource Center will host educational content for customers to learn more about the following technology areas:

- **Energy and Emissions**
  - *Energy Use*: fundamental energy concepts, managing consumption and bills
  - *Emissions and Carbon Footprint*: customer-focused and SVCE territory-wide emissions, impacts, goals, and key steps for reducing carbon impacts
  - *Energy-Efficiency*: key products/measures, comfort and cost savings
  - *Grid Integration*: demand response and intelligent controls

- **Mobility**
  - *Electric Vehicles*: transition from gasoline and diesel to clean electricity for all vehicle use
  - *Electric Vehicle Charging*: public and private charging options and technologies

- **Built-Environment**
  - *Space Heating/Cooling*: electric heat pump technologies and cost impacts
  - *Water Heating*: electric heat pump technologies and cost impacts
  - *Smart Thermostats and Smart Controls*: technologies, comfort and cost impacts
  - *Induction Cooking and Appliances*: technologies, functionality and cost impacts

- **Self-Generation & Resilience**
  - *Solar PV*: technologies and ongoing cost impacts
  - *Battery Storage*: resiliency, cost impacts, and technologies

Educational content will be provided by the selected vendors with tools in the technology areas listed above. It will be up to the vendors to maintain and keep this content updated. SVCE will be able to curate available content to match the final Customer Resource Center messaging and make sure it aligns with the SVCE mission.

**Act**

The same vendors selected for the Educate component of the Customer Resource Center also provide tools for customers to experience and purchase the technologies they are interested in adopting. This may include EV test drives, connections to dealerships, quotes from solar installers, and connections to contractors to install equipment, such as smart thermostats, EV chargers and heat pump water heaters.
Timeline
Final vendor selections are taking place in November with contract negotiations expected to conclude in November and December. Contracts will be brought to the board in December and/or January for approval with work beginning shortly after. The anticipated initial launch of the Customer Resource Center is tentatively scheduled to coincide with the 50th anniversary of Earth Day in April 2020.

STRATEGIC PLAN
There are several goals in the SVCE Board-adopted Strategic Plan that the Customer Resource Center will touch upon, including:

- Goal 3: Promote customer awareness
  - Strategy 3.1 - Build awareness and trust through continuous interaction with the SVCE community
- Goal 4: Maintain customer service satisfaction
  - Strategy 4.2 - Create a customer-centric culture
- Goal 5: Work with the community to achieve energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030
  - Strategy 5.2 - Execute and maintain SVCE’s Decarbonization Strategy & Programs Roadmap

FISCAL IMPACT
$350,000 allocated to program in budget for Fiscal Years 18-19 and 19-20. This is the funding expected to build the Customer Resource Center. Additional funding for marketing the platform and rebuilding the SVCE website has been allocated in the FY 19-20 marketing budget. Future funding needs will be addressed in the FY 20-21 budget to reflect ongoing maintenance and software subscription costs.
Item 7: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2019

The Executive Committee met on October 25, 2019 and this item will be addressed as an oral report to the Board.
Staff Report – Item 8

Item 8: Legislative Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 11/13/2019

The Legislative Ad Hoc Committee met on October 22, 2019 and this item will be addressed as an oral report to the Board.
Silicon Valley Clean Energy
Board of Directors Meeting

November 13, 2019

Appendix A

Power Resource Contracts Executed by CEO
TRANSACTION CONFIRMATION
(California Category 1 REC\s
RPS Bundled Electric Energy)

This confirmation ("Confirmation") confirms the transaction ("Transaction") between NextEra Energy Marketing, LLC and Silicon Valley Clean Energy Authority, a California joint powers authority, each individually a "Party" and together the "Parties", entered into as of October 2, 2019 (the "Effective Date").

This Transaction is governed by that certain Edison Electric Institute ("EEI") Master Purchase and Sale Agreement between the Parties, effective as of March 14, 2019, along with the Cover Sheet, any amendments and annexes thereto, and the EEI Collateral Annex along with the Paragraph 10 to the Collateral Annex (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff. If any defined term in this Confirmation conflicts with the same defined term in the Tariff or Master Agreement, the definition set forth in this Confirmation shall supersede.

The Parties agree as follows:

Buyer: Silicon Valley Clean Energy Authority
Seller: NextEra Energy Marketing, LLC

Effective Date:

Term:

This Transaction shall be effective on and as of the Effective Date and shall terminate upon satisfaction by Buyer and Seller of their respective obligations under this Transaction.

Product:

The Product is bundled electric energy produced by the Project during the Delivery Period which is (i) California Energy Commission-certified RPS Bundled Electric Energy ("Energy") delivered to the Delivery Point inclusive of (ii) the Green Attributes and associated Renewable Energy Credits ("REC\s")", where (i) and (ii) herein as bundled satisfy the criteria under Section 399.16(b)(1) of the Public Utilities Code for a Category 1 Transaction.

Delivery Period:

The Delivery Period for the Product shall begin on the Effective Date and go through December 31, 2019; except that, the REC component of the Product shall be delivered on or before May 15, 2020.

Contract Quantity:

Seller shall deliver 100\% of the Firm Quantity and As-Available Quantity of the Product generated by the Project to Buyer in the applicable volumes set forth in Exhibit A, provided that any failure to deliver or receive only the applicable Firm Quantity volumes shall be subject to liquidated damages as set forth in Article Four of the Master Agreement.
Delivery Point:

The Delivery Point shall be the Project’s interconnection with the California Independent System Operator ("CAISO") as further described in Exhibit B.

Project:

The term “Project” shall mean the renewable generation facility or facilities specified in Exhibit B and any facilities added to Exhibit B, excluding biomass and biogas, in accordance with this Confirmation (collectively, the “Facilities”), in each case, (a) which has been certified by the California Energy Commission (“CEC”) as an ERR, and (b) which has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area.

The Parties acknowledge and agree that the Project consists of the Facilities and that Seller will, in its sole discretion, utilize one or more of the Facilities in order to satisfy its obligations hereunder. For the avoidance of doubt, Seller shall only deliver Product to Buyer from a facility added to Exhibit B to satisfy its Firm Quantity obligations hereunder. Following the Effective Date, Seller may add facilities to Exhibit B, provided that (a) each facility added is certified by the CEC as an ERR, (b) each facility added is identified in a written notice provided by Seller to Buyer at least two Business Days prior to such addition to Exhibit B and generation of the Product, and (c) for the purposes of this Transaction, Seller shall only deliver Product to Buyer from an added facility that is generated on a date after the date that such facility is added to Exhibit B.

Seller Collateral: Credit terms shall be governed by the Master Agreement. No additional collateral is required for this Transaction.

Buyer Collateral: Credit terms shall be governed by the Master Agreement. No additional collateral is required for this Transaction.

WREGIS Certificate Delivery:

Seller shall transfer the WREGIS Certificates corresponding to the RECs sold hereunder from Seller’s WREGIS Account to Buyer’s WREGIS Account as described in the WREGIS Operating Rules, and Buyer shall receive such WREGIS Certificates, within fifteen (15) Business Days of availability in WREGIS, but in no event shall WREGIS Certificates be transferred that do not contain the California RPS Certification Number nor is designated as eligible for the California RPS Program ("RECs Delivery"). The transfer of the WREGIS Certificates to Buyer shall be deemed to transfer title to all of the Green Attributes associated with the Product hereunder. 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.

Seller agrees that it is solely responsible for payment directly to WREGIS of any and all WREGIS fees billed to Seller by WREGIS related to the transfer of WREGIS Certificates, including costs that are required to register Seller’s generating unit and WREGIS fees incident to the reporting of generator data to WREGIS. Buyer agrees that it is solely responsible for payment directly to WREGIS of any and all WREGIS fees billed to Buyer by WREGIS related to the transfer and receipt of WREGIS Certificates.

Without limiting Seller’s obligations herein, 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.
Contract Price:

The Contract Price shall be the Energy Price plus the applicable REC Price for each MWh of the Product delivered to Buyer.

Energy Price:

The CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the CAISO Tariff) for the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

REC Price:

The REC Price shall be as set forth for the applicable year as set forth on Exhibit A.

Scheduling:

At its sole expense, Seller shall be responsible for providing, or arranging for a third party to provide, Scheduling Coordinator services for the Project during the Delivery Period. Buyer will take title to the Product and Seller, as the Scheduling Coordinator, shall deliver, or cause to be delivered, all Energy to CAISO.

Settlements & Payments:

For the Energy component of the Product, Seller (as the Scheduling Coordinator for the Project) will receive revenue from CAISO for the Energy delivered by Seller to Buyer. The Parties agree that Seller shall be entitled to retain the CAISO revenues received in respect of the Energy delivered by Seller to Buyer in lieu of receiving payment from Buyer for such Energy. The Parties acknowledge that such CAISO revenues retained by Seller may be greater than or less than the revenues that would have resulted based on the Energy Price. For greater certainty, the CAISO revenues for the Energy are the sole payment for the Energy portion of the Product; no payment for Energy will be due and payable by the Buyer to the Seller, or true up owed by the Seller to the Buyer.

For purposes of RECs, “delivery” means the transfer from Seller to Buyer of the quantity of the RECs in accordance with the WREGIS Operating Rules. The Parties acknowledge that the creation and delivery of the RECs associated with the Product may occur after the Energy has been delivered, therefore the invoice may contain charges for Energy and RECs which were not generated in the same month(s).

For the RECs component of the Product, the invoice shall include the following information:

(i) Vintage month, quantity, price and monthly charge for the RECs delivered to Buyer in the prior month(s) pursuant to the “WREGIS Certificate Delivery” section of this Confirmation;

(ii) Cumulative total RECs delivered to Buyer under this Transaction.

Neither Party shall be responsible to the other Party for any carbon related costs.

Regulatory Determination or Change in Law Provision:

If a Party believes there has been a Regulatory Determination or Change in Law that directly prevents or impedes this Transaction as being an eligible Category 1 Transaction, the Party shall notify the other Party and the Parties shall commence good faith discussions to determine that a Regulatory Determination or Change in Law has occurred. If Parties agree that a Regulatory Determination or Change in Law has
occurred, the Parties shall use commercially reasonable efforts to enable the Product and this Transaction to satisfy the Eligibility Requirements pursuant to such Regulatory Determination or Change in Law. If within 60 days of the Regulatory Determination or Change in Law (or such lesser amount of time if required by governmental or regulatory authority), the Parties are unable to agree how the Product and this Transaction will satisfy the Eligibility Requirements using commercially reasonably efforts, then:

(a) Neither Party will have caused an Event of Default for the purposes of the Master Agreement; and

(b) either Party may, by written notice to the other Party, suspend delivery or receipt of any portion of the Product that has been determined not to satisfy the Eligibility Requirements and that has not then been delivered; and

(c) either Party may, by written notice to the other Party, immediately terminate the Transaction, without penalty, termination payment or liability of either Party to the other Party for Product delivered or to be delivered, except as provided under this Transaction (including Paragraph 11, Additional Terms below) with respect to any previously delivered Product determined not to meet or satisfy the Eligibility Requirements.

ADDITIONAL TERMS:

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

2. Seller, and, if applicable, its successors, represents and warrants that it owns the Product under a long term contract of at least 10-years duration with the Project for the entire duration of the Delivery Period of this Agreement.

3. Seller shall provide any documentation reasonably requested by Buyer to assist with Buyer’s California RPS Program compliance filings.

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

5. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]
6. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2]

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

8. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. [STC 16]

9. Return and Refund of RECs:

   (a) If a Regulatory Determination or a Change in Law results in any Product previously delivered under this Confirmation not satisfying the Eligibility Requirements, then provided Buyer has complied with its obligations under “Eligibility Requirements” or “Change in Law”, as the case may be, then in addition to any other rights and remedies the Parties may have pursuant to this Confirmation (but otherwise as Buyer’s sole and exclusive remedy), Seller shall refund to Buyer 100% of the REC Price previously paid for such Green Attributes, without interest.

   (b) Buyer’s right to a refund for Green Attributes that do not satisfy the Eligibility Requirements as a result of a Regulatory Determination shall be conditional on Buyer first establishing to Seller’s reasonable satisfaction, that Buyer has used commercially reasonable efforts (to the extent within Buyer’s control) to agree to amendments or take other actions so that the Product will satisfy the Eligibility Requirements.

   (c) If a Regulatory Determination or a Change in Law results in any Product previously delivered under this Confirmation not satisfying the Eligibility Requirements, then neither Party shall be liable for any payment of damages pursuant to the Master Agreement (except as set forth herein), as amended by this Confirmation, or for any failure to deliver or receive the Green Attributes component of the Product.

ADDITIONAL DEFINITIONS:

“Buyer’s WREGIS Account” means the WREGIS account in the name of Silicon Valley Clean Energy Authority.

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

“CAISO Balancing Authority” means the CAISO Balancing Authority as identified in Section 3.5.1.1.1. of CPUC Decision 11-12-052.
“CAISO Tariff” or “Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

“California Energy Commission-certified RPS Bundled Electric Energy” means electric energy from an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 and 399.16.

“CPUC” means the California Public Utilities Commission or any successor entity performing similar functions.

“California Renewables Portfolio Standard” or “California RPS Program” means the California renewable portfolio standard as set forth in Cal. Pub. Util. Code §§ 399.11 et seq., and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-026, D.11-12-020, D.11-12-052, D.12-06-038, D.14-12-023, D.16-12-040, and D.17-06-026 and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Category 1 Transaction” means renewable energy that satisfies the portfolio content category requirements under Public Utilities Code Section 399.16(b)(1) and CPUC Decision 11-12-052.

“Change in Law” means any addition, amendment, decision, ruling, order, or binding interpretation by or of a governmental authority or other third party having jurisdiction or authority, to or regarding any laws, rules, regulations, orders, or judicial precedent, that applies to the California RPS Program, that is enacted, issued or becomes legally effective after the Effective Date and materially affects the California RPS Program or compliance of the Product with the California RPS Program.

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

“Eligibility Requirements” means and includes any applicable criteria or requirements of the California RPS Program and Section 399.13(b) of the Public Utilities Code in force and effect respecting the eligibility or qualification of the Product, this Agreement or the Transaction confirmed hereby as a Category 1 Transaction.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, however entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those

\[1\text{ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.}\]
Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Regulatory Determination" means a determination by a governmental or regulatory authority having authority or jurisdiction that the Product delivered or to be delivered under and in accordance with the terms of this Confirmation does not or will not satisfy the Eligibility Requirements.

"Renewable Energy Credit" or “REC” means a renewable energy credit as defined by and in accordance with Section 399.12(h) of the California Public Utilities Code and CPUC Decision D.08-08-028.

"Scheduling Coordinator" has the meaning set forth in the CAISO Tariff.

"Seller’s WREGIS Account" means the WREGIS account in the name of NextEra Energy Marketing, LLC.

"WECC" means the Western Electricity Coordinating Council or successor agency.

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

"WREGIS Certificate" means “Certificate” as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California Renewables Portfolio Standard and for evidencing the Green Attributes associated with the Product.

"WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

NextEra Energy Marketing, LLC
By: [Signature]
Name: Alfred Bartley
Title: Supervisor Trading Risk Management
October 24, 2019

Silicon Valley Clean Energy Authority, a California joint powers authority
By: [Signature]
Name: Girish Balachandran
Title: 10/24/2019

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NextEra PCC1 Confirm
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Exhibit A

NEM Ref No.: 2665349

Exhibit A-1

NextEra PCC1 Confirm
EXHIBIT B
(PROJECT)

Facilities Comprising the Project as of the Effective Date

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EXECUTION VERSION

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser" or "SVCE") and Elk Hills Power, LLC ("EHP" or "Seller") dated as of October 11, 2019 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Purchaser: Silicon Valley Clean Energy Authority

Seller: EHP

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B and C are incorporated into this Confirmation.

ARTICLE 2
DELCIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s).

(b) Seller will deliver the Contract Quantity of Product by submitting to CAISO in its Supply Plan the Shown Unit for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the Tariff. Seller will submit, or cause the Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Contract Quantity, less any excused deductions to the Contract Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Contract Quantity by providing Purchaser with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
EXECUTION VERSION

(f) The Product is delivered by Seller and received by Purchaser when either (i) the CIRA Tool shows the Supply Plan accepted for the Contract Quantity of Product from the Shown Unit by CAISO or (ii) Seller complies with Purchaser’s written instruction to withhold all or part of the Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or, (ii) Seller fails to submit the volume of Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Purchaser will have received the Contract Quantity if (i) Seller’s Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Purchaser’s instruction to withhold all or part of the Contract Quantity from Seller’s Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.1

(h) Excused Reductions in Unit EFC: Unless the Parties have designated this Section 2.1(h) as “Not applicable”, if the Product includes FCR Attributes, then Seller’s failure to deliver any of the Contract Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Effective Date as determined by CAISO and Seller has provided notice of such reduction to Purchaser by the Notification Deadline for the applicable Showing Month. The extent to which Seller’s failure is excused will equal (i) the Contract Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Effective Date, divided by (iii) the Unit EFC as of the Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Contract Quantity of FCR Attributes for such day from the Shown Unit.

2.2 Purchaser’s Remedies for Seller’s Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

1 For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
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2.3 **Purchaser’s Re-Sale of Product**

(a) Purchaser may re-sell all or part of the Contract Quantity of Product; provided that any such re-sale must not increase or modify Seller’s obligations hereunder other than as set forth in this Section 2.3(a). For any such resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

ARTICLE 3
PAYMENTS

3.1 **Payment**

After Seller has delivered the Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser must pay for the Product as provided in Article 9 of the WSPP Agreement. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

3.2 **Allocation of Other Payments and Costs**

(a) Product does not confer to Purchaser any right to dispatch or receive the energy or ancillary services from a Shown Unit. Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from...
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the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser any such amounts received by Seller, or a Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit’s SC to, within one Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit’s SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Nothing herein will prevent Seller from exercising any rights under the Tariff with respect to use of RA Substitute Capacity during the Delivery Period. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit’s SC, owner, or operator for noncompliance.

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Purchaser’s rights to the Contract Quantity of Product for the sole benefit of Purchaser or any Subsequent Purchaser. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller’s Representations and WARRANTIES

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) the Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;
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(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;

(d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Collateral Requirements

(a) Notwithstanding anything to the contrary contained in the WSPP Agreement, neither Purchaser nor Seller shall be required to provide Performance Assurance to the other Party during the Delivery Period.

(b) Sections 22.1(d) of the WSPP Agreement shall not apply to either Party with respect to this Transaction.

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser's estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser. Seller acknowledges that Purchaser is a public agency subject
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to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.)

5.3 Dodd-Frank Act


5.4 Joint Powers Authority

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Purchaser shall solely be responsible for all of such Party’s debts, obligations and liabilities accruing and arising out of this Confirmation. Seller shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the Purchaser’s members, any cities or counties participating in Purchaser’s community choice aggregation program, or any of Purchaser’s retail customers in connection with this Confirmation.

5.5 Additional WSPP Agreement Amendments

For purposes of this Transaction only, the WSPP Agreement shall be amended as follows:

(a) Section 4 of the WSPP Agreement is amended by:

1. Adding “or the Friday after the United States Thanksgiving holiday” before the period at the end of the first sentence under the definition of “Business Day(s)”.

2. Adding the following new definitions:

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.”

(b) The first sentence of the second paragraph of Section 10 of the WSPP Agreement is amended by deleting the “or” before “(ii)” and adding to the end of such sentence “or (iii) if the Party claiming inability to perform is a Governmental Entity or Public Power System, any action taken by the Governmental Entity or Public Power System in its governmental capacity.”

(c) Section 13.1 of the WSPP Agreement is amended to change “FERC” to “FERC or the CPUC”.

(d) Section 21.2 of the WSPP Agreement is deleted and replaced with the following:

“Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to
seek payment of such monies in court in accordance with Section 34.1 and (ii) shall possess the right to seek relief directly from such court without first exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in court in accordance with Section 34.1. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.”

(e) Section 21.3(d) of the WSPP Agreement is modified by replacing the words “After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement” with “Unless otherwise resolved informally, any dispute involving the calculation of the damages shall be resolved in accordance with Section 34.1 of this Agreement”.

(f) Section 21 of the WSPP Agreement is modified by adding the following Section 21.4:

“No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (provided such court is consistent with the venue provisions in Section 31.4), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.”

(g) Section 22.3(c) of the WSPP Agreement is amended by deleting the third sentence thereof and replacing it with the following:

“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(h) Section 22.3(e) of the WSPP Agreement is modified by deleting the entire provision (including subsections) and replacing it with the following: “[Intentionally omitted]”

(i) Section 22.3(e)(i) of the WSPP Agreement is modified by replacing the words “Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful” with “Unless otherwise resolved informally, any disputes as to the methodology shall be resolved in accordance with Section 34.1 of this Agreement”.

(j) Section 22.3(f) of the WSPP Agreement is modified by deleting the entire provision and replacing it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as
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provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then such dispute will be resolved in accordance with Section 34.”

(k) Section 24 of the WSPP Agreement is deleted in its entirety and replaced with the following:

“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.”

(l) Subsections 34.1 and 34.2 of the WSPP Agreement are deleted and replaced with the following:

“34.1 Consent to Jurisdiction. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN FRANCISCO. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (a) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS; (b) WAIVES ANY OBJECTION WHICH IT MAY NOW OR HENCEAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM; (c) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 12; AND (d) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (c) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

34.2 Reserved.”

(m) Subsection 34.3 of the WSPP Agreement is modified by deleting “The Parties shall equally divide the costs of the arbitrator or mediator and the hearing.”

(n) Subsection 34.4 of the WSPP Agreement is deleted and replaced with:

“34.4 Reserved.”

(o) Subsections 34.5 and 34.6 are hereby added to Section 34 of the WSPP Agreement:
"34.5 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

34.6 LIMITATION OF DAMAGES. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT AND ANY CONFIRMATION SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT OR ANY CONFIRMATION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A CONFIRMATION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS."

(p) Section 35 of the WSPP Agreement is modified by inserting the following paragraph between the first and second sentences: "The Parties agree that each Party's business consists in whole or in part of entering into forward contracts as or with merchants in capacity or energy, which is presently the subject of dealing in the forward contract trade. The Parties further agree that the transactions entered into pursuant to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are forward contracts involving the sale of capacity and/or energy, which are presently the subject of dealing in the forward contract trade. No Party shall assert before any court or other governmental authority either that another Party is not, or shall not be treated as, a forward contract merchant or that the transaction entered into pursuant, to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are not, or shall not be treated as, forward contracts under the United States Bankruptcy Code."

(q) The following phrase is inserted at the beginning of Section 37 of the WSPP Agreement: "On the date of entering into this Confirmation and throughout the Delivery Period,"
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(r) Section 37 of the WSPP Agreement is further modified by adding the following new paragraph at the end:

"Seller represents and warrants that it (and in the case of Party B, if Party B is a cooperative, each member) is not:

(i) a federal agency;

(ii) a state, state agency, city, county, municipality, or other political subdivision of a state;

(iii) an employee benefit plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;

(iv) a governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;

(v) an endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;

(vi) or a "special entity" as defined in Section 4s(h)(2)(C) of the U.S. Commodity Exchange Act and 17 C.F.R. § 23.401(c)."

"Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Agreement, with respect to this Agreement and each Confirmation, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Agreement and each Confirmation, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures, has or will be taken and performed as required under Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.) (the "Act") and the Governmental Entity or Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by Governmental Entity or Public Power System are for a proper public purpose (iv) the term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) prior to the commencement of each fiscal year, which fiscal year ends June 30, the Governmental Entity or Public Power System shall have obtained all necessary budgetary approval to perform all of its obligations to make payments hereunder for such fiscal year, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets."
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(s) Section 41 "Witness" of the WSPP Agreement shall become Section 42 and the following "Mobile Sierra" Section shall be inserted as Section 41:

"The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

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

(t) Exhibit D of the WSPP Agreement is deleted and replaced with:

"Exhibit D - RESERVED".

5.6 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.7 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.
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AGREED AS OF THE EFFECTIVE DATE:

ELK HILLS POWER, LLC

By: [Signature]
Name: [Name]
Title: [Title]

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: CEO

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APPENDIX A
DEFINED TERMS

"CAISO" means the California ISO and any successor entity.

"Capacity Attributes" means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"FCR" means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"FCR Attributes" means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Notification Deadline" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"Product" means RAR, Local RAR and FCR that is specified and marked applicable in Appendix B.

"Prorated Percentage of Unit Factor" means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.
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"Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

"RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

"Subsequent Purchaser" means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

"Tariff" means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

"Unit" means the generation unit described in Appendix B and any other generating unit that is capable of supply the Contract Quantity of Product during the Delivery Period.

"Unit EFC" means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

"Unit NOC" means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ System RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: North
MCC Bucket: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A


Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

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<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/W-month)</th>
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<td></td>
<td></td>
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### Unit 1

#### Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Elk Hills Power</th>
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<tbody>
<tr>
<td>Physical Location</td>
<td>4026 Skyline Road, Tupman, CA</td>
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<tr>
<td>CAISO Resource ID</td>
<td>ELKHIL_2_PL1X 3</td>
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<tr>
<td>SCID of Resource</td>
<td>EMM2</td>
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<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
<td>380 MWs</td>
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<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
<td>171 MWs</td>
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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>PG&amp;E</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td>CAISO North System</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td></td>
</tr>
<tr>
<td>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
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</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>4</td>
</tr>
</tbody>
</table>
# Appendix C
## Notice Information

<table>
<thead>
<tr>
<th><strong>Seller:</strong> Elk Hills Power, LLC</th>
<th><strong>Purchaser:</strong> Silicon Valley Clean Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>4026 Skyline Rd P.O. Box 460</td>
<td>333 West El Camino Real, Suite 290</td>
</tr>
<tr>
<td>Tupman, CA 93276</td>
<td>Sunnyvale, CA 94087</td>
</tr>
<tr>
<td>Attn: Tony Ziobro</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Anthony.Ziobro@crc.com">Anthony.Ziobro@crc.com</a></td>
<td>Phone: 408-721-5301</td>
</tr>
<tr>
<td>Duns: [redacted]</td>
<td>Duns: [redacted]</td>
</tr>
<tr>
<td>Federal Tax ID Number: [redacted]</td>
<td>Federal Tax ID Number: [redacted]</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: Tony Ziobro</td>
<td>Attn: SVCE Power Settlements</td>
</tr>
<tr>
<td>Phone: 661-763-2726</td>
<td>Phone: 408-721-5301</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Anthony.Ziobro@crc.com">Anthony.Ziobro@crc.com</a></td>
<td>E-mail: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Boston Energy Trading &amp; Marketing, LLC</td>
<td>Attn: ZGlobal</td>
</tr>
<tr>
<td>Attn: Tom Green</td>
<td>Phone: (916) 221-4327</td>
</tr>
<tr>
<td>Phone: 617-912-5932</td>
<td>E-mail: <a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Tom.Green@betm.com">Tom.Green@betm.com</a></td>
<td></td>
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<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
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<tr>
<td>BNK: JPMorgan Chase</td>
<td>BNK: River City Bank</td>
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<td>ACCT: [redacted]</td>
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<td>ABA: [redacted]</td>
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<td><strong>Credit and Collections:</strong></td>
<td><strong>Credit and Collections:</strong></td>
</tr>
<tr>
<td>CRC Marketing, Inc.</td>
<td>Attn: SVCE Power Settlements</td>
</tr>
<tr>
<td>Attn: Credit Manager</td>
<td>Phone: 408-721-5301</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Credit@crc.com">Credit@crc.com</a></td>
<td>E-mail: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
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<tr>
<td><strong>Defaults:</strong></td>
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</tr>
<tr>
<td>CRC Marketing, Inc.</td>
<td>Notices of an Event of Default or Potential</td>
</tr>
<tr>
<td>Attn: Legal</td>
<td>Event of Default to:</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Zabi.Nowaid@crc.com">Zabi.Nowaid@crc.com</a></td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td></td>
<td>Phone: 408-721-5301</td>
</tr>
<tr>
<td></td>
<td><strong>With an additional copy to:</strong></td>
</tr>
<tr>
<td></td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td></td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td></td>
<td>Phone: (503) 313-0755</td>
</tr>
<tr>
<td></td>
<td>E-mail: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
</tr>
</tbody>
</table>
MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority
(“PARTY A”)
AND
Pacific Gas and Electric Company, a California corporation, limited for all purposes
dereinunder to its Electric Procurement and Electric Fuels Functions (“PARTY B”)

This confirmation letter (“Confirmation”) confirms the Transaction between Party A and Party B,
which becomes effective on the date fully executed by both Parties (the “Confirmation Effective
Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined
in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale
Agreement between the Parties, effective as of October 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 is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided
 that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller
may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product
does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: March 2020 through June 2020, inclusive and November 2020 and December
2020, and January 2021 through November 2021, inclusive.

Contract Quantity and Contract Price: The Contract Quantity and Contract Price for each day
of each Showing Month during the Delivery Period shall be set forth in Appendix B.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Firm RA Product

Seller’s obligation to deliver the Contract Quantity of Product for each day included in the
Delivery Period is firm and will not be excused for any reason.
2.2 Seller To Identify Shown Unit

(a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:

(i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or

(ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.

(b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.

(c) Seller’s notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller’s notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.

(d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.3 Seller To Provide Alternate Capacity

(a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit 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 (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.

(b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics specified
in Appendix B no later than five (5) calendar days before the relevant deadlines for the submission of Compliance Showings related to the applicable Showing Month. Seller’s notice under this Section 2.3(b) shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within one (1) Business Day of receipt of Seller’s notice and in writing, notifies Seller of any objections Buyer has to the proposed Alternate Unit. If Buyer timely objects, Seller must identify another Alternate Unit within two (2) Business Days. Provided such Alternate Unit meets the requirements of aShown Unit under this Confirmation, this second Alternate Unit is deemed acceptable to and approved by Buyer upon receipt.

(c) Once the Alternate Unit is approved or deemed approved in accordance with Section 2.3(b), then any such Alternate Unit will be automatically deemed the Unit from which Product is delivered for purposes of this Confirmation for the affected Showing Month.

2.4 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 Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.

(ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.

(iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.

(b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.
2.5 **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 is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

For each applicable day during the Showing Month included in the Delivery Period in which the Buyer’s Monthly Payment has been received by Seller in accordance with Section 3.1 of this Confirmation only, the amount equal to (w) the applicable Contract Price divided by (x) the number of days included in the Showing Month multiplied by (y) the amount of Contract Quantity not delivered by Seller on such day, multiplied by (z) 1,000 kW per MW.

2.6 **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 or CAISO resulting from any of the following:

(i) Seller’s failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or

(ii) A Unit’s Scheduling Coordinator’s failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer’s right to the Contract Quantity purchased hereunder for each day of the Delivery Period.

(b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

2.7 **Buyer’s Re-Sale of Product**

(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 Product, Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability
to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

(b) If Buyer exercises its right to re-sell the Product, Buyer shall notify Seller in writing that such sale has occurred by providing to Seller the information described in Appendix C ("Re-sale Plan"). The Re-sale Plan shall be provided no later than three (3) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month, except where Buyer exercises its rights under Article 7, then Buyer shall notify Seller in accordance with deadlines described in Article 7. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, and such notice shall include all updates to the information in Appendix C in accordance with the deadlines described in this Section 2.7(b).

ARTICLE 3
PAYMENT

3.1 Monthly Payment

Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

\[
\text{Monthly Payment} = Q \times P \times CF
\]

where:

\[
Q = \text{The Contract Quantity of Product to be delivered by Seller to Buyer pursuant to Appendix B and consistent with Section 2.4 for the Showing Month}
\]

\[
P = \text{The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B}
\]

\[
CF = \text{The conversion factor equal to 1,000 kW per MW}
\]

The Monthly Payment calculation shall be rounded to two decimal places.

If the Confirmation Effective Date is more than fifteen (15) calendar days prior to the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, payment shall be paid by Buyer and received by Seller no later than fifteen (15) calendar days prior to the deadlines for the corresponding Compliance Showings applicable to the Showing Month. If the Confirmation Effective Date is fifteen (15) calendar days or less from the deadline for the corresponding Compliance Showing applicable to the relevant Showing Month, the Monthly Payment shall be made by Buyer and received by Seller no later than five (5) Business days following the Confirmation Effective Date.
3.2 **Allocation of Other Payments and Costs**

(a) Seller is entitled to retain any revenues it may receive from, and shall pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) revenue for flexible ramping product, and (v) any revenues for black start or reactive power services. All Seller revenues described in this Section 3.2(a) and received by Buyer or a purchaser of Resold Product must be remitted to Seller and Buyer shall pay such revenues to Seller if received by Buyer or if a subsequent purchaser of Resold Product fails to remit those revenues to Seller.

If Buyer fails to pay such revenues to Seller, Seller may recoup any amounts owing to it for such revenues against any future amounts it may owe to Buyer.

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) 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.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to tell the Seller or the Unit’s Scheduling Coordinator to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale.

(d) Buyer and Seller agree that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Any Availability Incentive Payments or Non-Availability Charges are for the account, or are the responsibility of, the Seller, as applicable.

**ARTICLE 4**

**CAISO OFFER REQUIREMENTS**

Seller is responsible for, as applicable, scheduling or causing the applicable Unit’s Scheduling Coordinator to schedule with, or make available to, CAISO the Product delivered to Buyer for each day during the Delivery Period in compliance with the Tariff, and performing all, or causing the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the Product sold hereunder. Buyer is not liable for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions or any penalties or fines imposed on Seller or the Unit’s Scheduling
Coordinator (unless Seller is the Scheduling Coordinator), owner, or operator for such noncompliance.

**ARTICLE 5**

**OTHER BUYER AND SELLER COVENANTS**

**5.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product**

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions (including the execution of documents or instruments) reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity on each day during the Delivery Period for the sole benefit of Buyer or any applicable subsequent purchaser pursuant to Section 2.7. The Parties shall make commercially reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Body having jurisdiction to administer Compliance Obligations, with regard to the following proceedings: (a) the Resource Adequacy (RA) Order Instituting Rulemaking (OIR) (Rulemaking (R.)17-09-020) at the CPUC; (b) the RA Enhancements stakeholder initiative at the CAISO; (c) the Integrated Resource Plan OIR (R.16-02-007) at the CPUC; (d) the Power Charge Indifference Adjustment (PCIA) OIR (R.17-06-026) at the CPUC.

**5.2 Representations, Warranties and Covenants**

(a) Seller represents and warrants to Buyer throughout the Delivery Period that:

(i) no portion of the Contract Quantity for any day during the Delivery Period has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(ii) the Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

(iii) each Unit’s Scheduling Coordinator, owner and operator is obligated to comply with applicable laws, including the Tariff, relating to the Product;

(iv) if Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit for each day included in the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit; and

(v) Seller has notified either the Scheduling Coordinator of the Unit or the entity from which Seller purchased the Product of the fact that Seller has transferred the Contract Quantity for each day of the Delivery Period to Buyer, or, if applicable, to a subsequent purchaser.

(b) Seller represents and warrants to Buyer as of the date of the relevant Compliance Showing, that Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit;
(e) Seller covenants as follows:

(i) Seller shall not offer, and shall ensure that the Unit’s Scheduling Coordinator does not offer, any portion of the Contract Quantity for any day during the Delivery Period to CAISO as CPM Capacity. However, if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall promptly notify Buyer, or shall cause the Unit’s Scheduling Coordinator to promptly notify Buyer within one (1) Business Day of the time Seller receives notification from CAISO. If CAISO makes such a designation, Seller shall not accept, and shall ensure that the Unit’s Scheduling Coordinator does not accept, any such designation by CAISO unless and until Buyer has agreed to accept such designation; and

(ii) Seller shall, upon request, furnish Buyer, CAISO, CPUC or other applicable Governmental Body evidence that its representation made in Section 5.2(c)(i) is true and correct

(d) Each Party covenants to the other Party throughout the Delivery Period to comply with the Tariff, relating to the Product.

(e) The Parties agree that the following sections of the Master Agreement between the Parties shall not be applicable to this Confirmation or Transactions hereunder until Party B’s exit from the Chapter 11 Cases has occurred: Sections 5.1(d), 5.1(e), 5.1(f), 10.2(v), 10.2(vi), and 10.10. Notwithstanding anything to the contrary contained herein, with respect to Party B: Party A acknowledges and agrees that (i) representations and warranties under Section 10.2(x) of the Master Agreement are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) the existence or continuation of Party B being Bankrupt is not an Event of Default with respect to Party B under this Agreement (including pursuant to Section 5.1(g) of the Master Agreement) and does not entitle Party A to terminate this Agreement solely because of such existence or continuation.

**ARTICLE 6**

**CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties may disclose all terms and conditions of this Transaction to any Governmental Body, the CPUC, CAISO and the Procurement Review Group, and Seller may disclose the transfer of the Contract Quantity for each day during the Delivery Period under this Transaction to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose information disclosed pursuant to this Article. In addition, if Buyer resells all or any portion of the Contract Quantity for any day during the Delivery Period to another party, Buyer shall be permitted to disclose to the purchaser of the Resold Product all such information necessary to effect such resale transaction, other than the Contract Price.
ARTICLE 7
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Buyer shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Buyer’s request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer’s use as Substitute Capacity only for Planned Outages within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day of the Planned Outage for which Buyer seeks to use such Substitute Capacity as required by the CAISO. The amount of Contract Quantity that is the subject of Buyer’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.4 for purposes of calculating a Monthly Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Section 2.5 or 2.6. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Buyer’s request under this Article 7.

Notwithstanding anything to the contrary in Sections 2.6, Seller shall not be liable for any costs, penalties, or fines assessed against Buyer by the CAISO as a result of Seller’s failure to make Substitute Capacity available to Buyer if Buyer did not timely comply with the notification requirements of this Article 7.

ARTICLE 8
COLLATERAL REQUIREMENTS

8.1 Buyerm Collateral Requirements

(a) Notwithstanding anything to the contrary contained in the Master Agreement, Buyer shall, within five (5) Business Days following the Confirmation Effective Date, provide to, and maintain with, Seller a Fixed Independent Amount as long as Buyer or its Guarantor, if any, does not maintain Credit Ratings of at least BBB- from S&P and Baa3 from Moody’s. The “Fixed Independent Amount” shall be 20% of the sum of the Monthly Payments for all unpaid months of the Delivery Period. For the purposes of calculating the Collateral Requirement pursuant to Section 8.2 of the Master Agreement, entitled “Party B Credit Protection”, and all corresponding provisions to Section 8.2 of the Master Agreement, such Fixed Independent Amount for Buyer shall be added to the Exposure Amount for Seller and subtracted from the Exposure Amount for Buyer.

(b) If the conditions in subsections (i) and (ii) of this Section 8.1(b) are satisfied throughout the Delivery Period, then this Confirmation’s Fixed Independent Amount shall not apply for that time period during which all such conditions are satisfied:
(i) Buyer’s customers are PG&E’s distribution or transmission customers and PG&E is the billing agent for those customers; and

(ii) PG&E is the provider of last resort pursuant to Cal. Pub. Util. Code Section 451 et seq. and applicable law for Buyer’s retail electric customers.

(c) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and Seller has provided Buyer with written notice of such failure to satisfy (Condition Notice), then Buyer shall comply with the credit requirements of Section 8.1(a), above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.

8.2 Seller Collateral Requirements

Section 8.1 of the Master Agreement, entitled “Party A Credit Protection”, and all corresponding provisions to Section 8.1 of the Master Agreement do not apply to this Confirmation.

8.3 Current Mark-to-Market Value

For the purposes of calculating Exposure pursuant to the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party’s Exposure.

ARTICLE 9
ADDITIONAL MASTER AGREEMENT AMENDMENTS

9.1 Declaration of an Early Termination Date and Calculation of Settlement Amounts

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation and with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from the CPUC, CAISO, or any Governmental Body having jurisdiction, because Buyer or a purchaser of Resold Product is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include this estimate
in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
Date: 10/18/2019

Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

By: [Signature]
Name: Anna Fogleseong
Title: Director, Energy Transactions and Legislation Policy
Date: 10/21/19

PG&E Resource Adequacy (Log No. 33B230S02)
2019 Multi-Year Resource Adequacy (RA) Solicitation
APPENDIX A
DEFINED TERMS

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

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

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

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

“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” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19- 30089 (DM), which are being jointly administered.

“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 monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by
which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

"FERC" means the Federal Energy Regulatory Commission.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

"FCR Attributes" means, with respect to a generating unit, any and all resource adequacy attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward an LSE’s FCR.

"FCR Contract Quantity" means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

"Flexible Capacity Category" has the meaning set forth in the Tariff.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include “market participants” as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

"Hold-Back Capacity" is defined in Article 7 of this Confirmation.

"Local 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, 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 of this Confirmation.

“MW” means megawatt.

“Outage” has the meaning set forth in the Tariff.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff. “Scheduling Coordinator” has the meaning set forth in the Tariff.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Scheduling Coordinator ID Code (SCID)” has the meaning set 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 “RA Substitute Capacity” as defined in the Tariff.

“Supply Plan” has the meaning set forth in the Tariff.

“System RAR” means the system resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction.

“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 any generation unit provided by Seller pursuant to Section 2.2 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 NOC” means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.
APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Path (North, South)</th>
<th>System RAR Quantity (MW)</th>
<th>Local RAR Quantity (MW)</th>
<th>Local Capacity Area*</th>
<th>FCR Quantity, if any (MW)</th>
<th>Flexible Capacity Category (1,2,3)</th>
<th>Contract Price ($/kW-Month)</th>
<th>SCID of Benefiting LSE</th>
</tr>
</thead>
</table>

* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura

PG&E Resource Adequacy (Log No. 33B230S02)
2019 Multi-Year Resource Adequacy (RA) Solicitation
## APPENDIX C
### SUBSEQUENT SALE INFORMATION

<table>
<thead>
<tr>
<th>Contract Key ID:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Benefitting LSE SCID:</td>
<td></td>
</tr>
<tr>
<td>Generic Volume (in MW):</td>
<td></td>
</tr>
<tr>
<td>Local Volume (in MW and by local area):</td>
<td></td>
</tr>
<tr>
<td>Flexible Volume (in MW):</td>
<td></td>
</tr>
<tr>
<td>Term:</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX D
NOTICE INFORMATION

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

All Notices:

Delivery Address:
Street: 333 W. El Camino Real, Suite 320
City: Sunnyvale State: CA Zip: 94087

Mail Address: (if different from above)
Attn: Monica Padilla
(email) monica.padilla@svcleanenergy.org
Phone: (408) 721-5301 x1009

Invoices and Payments:
Attn: SVCE Power Settlements
(email) powersettlements@svcleanenergy.org
Phone: (408) 721-5301

Scheduling:
Attn: ZGlobalEmail: eric@zglobal.biz
Phone: (916) 221-4327

Wire Transfer:
BNK: River City Bank
ACCT Title: SVCE
ABA: 224004370
ACCT: 123456789
DUNS: 123456789
Federal Tax ID Number: 123456789

Credit and Collections:
Attn: SVCE Power Settlements
(email) powersettlements@svcleanenergy.org
Phone: (408) 721-5301

Contract Management
Attn: SVCE Power Settlements
(email) powersettlements@svcleanenergy.org
Phone: (408) 721-5301

With additional Notices of an Event of Default to Contract Manager:
Attn: Girish Balachandran, CEO
(email) girish@svcleanenergy.org
Phone: (408) 721-5301 x1001
Supply Plan Contact: Mark Thomas
(email) mthomas@acespower.com
Phone: (317) 344-7136

Name: Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions
("Seller" or "Party B")

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 (candice.chan@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780

Invoices and Payments:
Attn: Fuel Settlements (egssettlements@pge.com)
Manager, Fuel Settlements
Phone: (415) 973-0795

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: 026008333
ACCT: 1234567
DUNS: 1234567
Federal Tax ID Number: 1234567

Credit and Collections:
Attn: Credit Risk Management (PGERiskCredit@pge.com)
Phone: (415) 972-5188

Contract Management
Attn: Elizabeth Motley (elizabeth.motley@pge.com)
Contract Management
Phone: (415) 973-2368

With additional Notices of an Event of Default to Contract Manager:
Attn: Ted Yura (ted.yura@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660

Supply Plan and Hold-Back Request:
EPP-RAFilingsMailbox@pge.com

PG&E Resource Adequacy (Log No. 33B230S02)
2019 Multi-Year Resource Adequacy (RA) Solicitation
Department of Energy  
Bonneville Power Administration  
Power Business Line  
CONFIRMATION AGREEMENT

From: Bonneville Power Administration  
P O Box 3621  
Portland, OR 97208-3621  
BPA Preschedule: 503-230-3813  
BPA Real Time: 503-230-3341  

To: Silicon Valley Clean Energy  
333 W. El Camino Real, Suite 290  
Sunnyvale, CA 94087  
BPA Contract: 20PM-16085  
Trade Date: 10/18/2019

The following Confirmation Agreement ("Confirmation") memorializes the terms of this transaction agreed to by the Bonneville Power Administration ("BPA") and Silicon Valley Clean Energy, a California joint powers authority ("SVCE"), together the "Parties", in which BPA agrees to provide to SVCE the right to purchase Federal Surplus Power as Import Resource Adequacy ("RA") Capacity as specified herein. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 19PM-16003 ("Enabling Agreement"). The definitions and provisions contained in the Enabling Agreement, in the decision of the California Public Utilities Commission ("CPUC") as contained in Decision ("D.") 04-10-035, D.05-10-042 and D.06-07-031, and in any subsequent or modifying rulings or decisions related to RA ("RA Rules"), and in the tariffs and protocols of the California Independent System Operator ("CAISO"), as amended from time to time ("Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that any provision in this Confirmation is inconsistent with any provision of the Enabling Agreement, then the provision in this Confirmation shall govern the rights and obligations of the Parties hereunder.

Buyer: SVCE  
Seller: BPA  
BPA Trader: Mark Miller  
Phone: 503-230-4003  
SVCE Trader: Monica Padilla  

Broker: None  
Holiday: NERC  
Product: Import System Resource Adequacy (RA)  
Capacity [BPA Surplus Firm Power]  
Product Description: Non-Resource  
Specific Import  
System RA

Point of Delivery: MALIN500 (Malin_5_N101)(COB N-S)  
Resource ID: TSC7_MALIN500_1_F_BPARA

<table>
<thead>
<tr>
<th>Start Date</th>
<th>End Date</th>
<th>Demand Limit</th>
<th>RA Capacity</th>
<th>Price $/kW-month</th>
<th>Hours</th>
<th>Amount (MW)</th>
<th>Revenue/Cost</th>
</tr>
</thead>
</table>

Additional Provisions:

1. Definitions:

a. "Import RA Capacity Product", or "Import RA Capacity" means the qualified and deliverable capacity from the System Resource that can be counted toward SVCE's System Resource Adequacy Requirements ("RAR") as described in the CPUC's RA Rules, and all other resource adequacy requirements established by any other regional entity responsible for RAR including but not limited to the CAISO. Import RA Capacity does not confer to SVCE any right to the Contract Quantity of BPA's
System Resource other than the right to count such Contract Quantity toward SVCE’s RAR during the Delivery Term. Specifically, no federal energy associated with BPA’s System Resource is required to be made available to SVCE as part of this RA Capacity obligation, and SVCE shall in no way be responsible to compensate BPA for any commitments to CAISO as set forth in this Transaction.

b. "Contract Quantity" means the amount of Import RA Capacity stated in megawatts ("MW"), made available twenty-four hours per day, seven days per week, to the RA Capacity Delivery Point through transmission service that is not recallable for economic reasons, and which is backed by operating reserves in the originating control area, delivered to the RA Capacity Delivery Point as set forth in this Confirmation.

c. "Flat" is defined as HE 0100 through HE 2400.

d. "RA Capacity Delivery Point" means the Point of Delivery, the CAISO Scheduling Point Malin (COB) which maps to the CAISO Branch Group PACI_MSL where SVCE holds intertie import capability.

e. "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for SVCE by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.


g. "System Resource" means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point. System Resource does not include any energy source with an e-tag from a busbar of a nuclear or coal-fired generating facility.

2. **CAISO Dispatch Requirements:** Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, BPA shall provide the full Contract Quantity to the CAISO in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, section 40.6 of the Tariff. SVCE shall have no liability for the failure of BPA to comply with such Tariff provisions, including any penalties or fines imposed on BPA by the CAISO for such noncompliance.

3. **Representations:**

3.1 BPA and SVCE represent and expressly agree that throughout the delivery term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure SVCE’s (or a subsequent purchaser’s) right to the use of the Contract Quantity for the sole benefit of SVCE’s RAR, consistent with the CAISO Tariff and RA Rules, including:

a. Meeting requirements established by the CAISO Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by BPA’s Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by SVCE’s Scheduling Coordinator (as such terms are defined in the CAISO Tariff);

b. Negotiating in good faith to make necessary amendments, if any, to this Confirmation Agreement mutually agreed upon to conform this Confirmation Agreement to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain for each of the Parties; and

c. At all times using "Good Utility Practice" as defined in the CAISO Tariff.

3.2 BPA represents that throughout the delivery term:
a. SVCE or subsequent purchaser has the exclusive right to count the Contract Quantity of Import RA Capacity Product from BPA’s System Resource toward SVCE’s RAR;

b. No portion of the Contract Quantity of Import RA Capacity Product has been sold by BPA to any third party in order to satisfy RAR; and

c. BPA shall meet all terms applicable to it under CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and Import RA Rules approved by the CPUC as applying to the RA Capacity Product.

4. Indemnity Against Penalties and Replacement:  If BPA fails to fulfill its obligation under this Confirmation to provide Import RA Capacity, and such failure is not excused under this Confirmation or the Enabling Agreement or by SVCE’s failure to perform, then BPA agrees to indemnify SVCE for:

a. any monetary penalties assessed by the CPUC and/or the CAISO against SVCE for SVCE’s failure to meet the requirements of the RA Rules or Tariff as a direct result of BPA not fulfilling its obligation under this Confirmation Agreement. Such failure may be excused to the extent BPA provides SVCE with sufficient notice to take action necessary to avoid such monetary penalties being assessed and

b. if BPA reimburses costs incurred by SVCE, using reasonable efforts to replace, if required, any RA Capacity to equal in total the volume of Contract Quantity and delivery term specified in Section 3.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for SVCE to make its equivalent RA demonstration with another System Resource.

5. Resale of Import RA Capacity:

a. SVCE may re-sell all or a portion of the Contract Quantity and any associated rights, in each case, acquired under this transaction. In the event SVCE re-sells all or a portion of the Contract Quantity of Import RA Capacity and any associated rights acquired under this transaction ("Resold Import RA Capacity") BPA agrees to follow SVCE’s instructions with respect to providing such Resold Import RA Capacity to subsequent purchasers of such Resold RA Capacity. With respect to any Resold Import RA Capacity, BPA continues to be liable to SVCE for any damages due to the failure of BPA to comply with the terms of this transaction; provided, and BPA shall have no contractual obligation or liability to any subsequent purchaser.

b. BPA’s obligations under this Section 5 are contingent on SVCE 1) providing BPA with the information required by this Section 5 no later than two (2) Business Days prior to the deadline for filing the Supply Plan for the Resold Import RA Capacity; 2) any requested assignment being consistent with federal law applicable to BPA. Further, any resale of Import RA Capacity by SVCE to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable federal law, and BPA shall not be required to take any action hereunder or execute any documents or instruments that would not be permitted under the Tariff, CAISO business practices or applicable federal law.

c. In the event there is any Resold Import RA Capacity, SVCE agrees to immediately notify BPA of such sale and agrees to provide BPA with all the information specified below promptly following such sale (and any other information reasonably requested by BPA so that BPA may perform its obligations in this Section 5) and promptly notify BPA of any subsequent changes to such information with respect to any particular sale:

i. Benefitting load serving entity SC identification number (SCID).

ii. Volume (in MW) of Resold Import RA Capacity,

iii. Sale delivery period for Resold Import RA Capacity.

6. Confidentiality: Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Notwithstanding the Enabling Agreement, the Parties agree that SVCE may disclose the Import RA Capacity under this Confirmation Agreement to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support

Deal: 696049
Page 3 of 4
SVCE 20PM-16085
10/18/2019

Bonneville Power RA
its RAR showings, if applicable, and BPA may disclose the transfer of the Import RA Capacity under this Confirmation Agreement to the Scheduling Coordinator in order for such Scheduling Coordinator to timely submit accurate Supply Plans (as such terms are defined in the Tariff).

7. **Entire Agreement, No Oral Agreements or Modifications:** This Confirmation sets forth the terms of this transaction and, along with the Enabling Agreement, shall constitute the entire agreement between the Parties for the purchase and sale of the Product. Notwithstanding any other provision of the Enabling Agreement, this transaction may be confirmed only by a Documentary Writing executed by both Parties, and no amendment or modification to this transaction shall be enforceable except under a Documentary Writing executed by both Parties.

8. **Joint Powers Authority:** SVCE 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 be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation.

9. **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 electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

We are pleased to have this agreed upon transaction. Please confirm the terms by signing and returning an executed copy of this Confirmation Agreement via fax to BPA 503-230-7463 or email to PTCContractAdmin@bpa.gov.

---

**AGREED AND ACCEPTED**

Bonneville Power Administration

[Signature]
Mark E. Miller  
Account Executive  
Date: **10-18-2019**

Silicon Valley Clean Energy

[Signature]
Girish Balachandran  
Print Name:  
Title: CEO  
Date: **10/21/2019**
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Seller"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 21, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

"Control Area" has the meaning set forth in the Tariff.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

"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" has the meaning specified in Section 4.1 hereof.

"Delivery Point" has the meaning specified in Section 4.2 hereof.

"Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

"Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

"FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limits and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

"FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"Firm RA Product" has the meaning specified in the Section 3.3 hereof.

"Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"Flexible RA Product" has the meaning specified in the Section 3.2 hereof.

"GADS" means the Generating Availability Data System or its successor.

"Generic RA Product" means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
1.28 "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.

1.29 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 "LRA" has the meaning set forth in the Tariff.

1.33 "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).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.37 "NERC" means the North American Electric Reliability Council, or its successor.

1.38 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.39 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.40 "Non-Availability Charges" has the meaning set forth in the Tariff.

1.41 "Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

1.42 "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
1.43 "Party" and "Parties" have the meanings specified in the introductory paragraph hereof.

1.44 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a 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.

1.45 "Product" has the meaning specified in Article 3 hereof.

1.46 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.47 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.48 "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

1.49 "RAR 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 Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

1.50 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

1.51 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.52 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

1.53 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.54 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.55 "Seller" has the meaning specified in the introductory paragraph hereof.

1.56 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. 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.

1.57 "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
1.69 "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.61 "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.

1.62 "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate
Location: Pittsburg, CA
CAISO Resource ID: DELTA_2_PL1X4
Resource Type: l_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of interconnection with the CAISO Controlled Grid ("Substation"): Pittsburg 230 kV substation
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): Yes
  If yes: Local Capacity Area (as of Confirmation Effective Date): Greater Bay Area
Product Type (Flexible/Generic): Generic
  If Generic: Unit NQC (as of the Confirmation Effective Date): Varies by Month
  If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A
3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be April 1, 2020 through November 30, 2020, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

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 of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
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4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a
reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) **Reductions in Unit EFC:** If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remainingShowing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) **UCAP:** If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller's pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity.

**4.5 Alternate Capacity and Replacement Units**

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of
Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

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Calpine RA Confirm
4.8 **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 any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 **Monthly RA Capacity Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**RA CAPACITY PRICE TABLE**

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>RA Capacity Price ($/kW-month)</th>
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4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver
the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each
RAR Showings, LAR Showings, and/or FCR Showings, as applicable, 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 SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9. BUYER'S RE-SALE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.
11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE FOLLOWS]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: ____________________________
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

By: ____________________________
Name: Girish Balachandran
Title: CEO

Calpine Deal: 2485582
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Buyer"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of October 21, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
1.13 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 “Control Area” has the meaning set forth in the Tariff.

1.15 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 06-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 “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.

1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.18 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.19 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

1.21 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 “Firm RA Product” has the meaning specified in the Section 3.3 hereof.

1.24 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.25 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

1.26 “GADS” means the Generating Availability Data System or its successor.

1.27 “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
1.28 “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.

1.29 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 “LRA” has the meaning set forth in the Tariff.

1.33 “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).

1.34 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

1.37 “NERC” means the North American Electric Reliability Council, or its successor.

1.38 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

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

1.40 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.41 “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

1.42 “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
1.43 "Party" and "Parties" have the meanings specified in the introductory paragraph hereof.

1.44 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a 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.

1.45 "Product" has the meaning specified in Article 3 hereof.

1.46 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.47 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.48 "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

1.49 "RAR 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 Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

1.50 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

1.51 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.52 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

1.53 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.54 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.55 "Seller" has the meaning specified in the introductory paragraph hereof.

1.56 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. 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.

1.57 "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
1.59 "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.61 "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.

1.62 "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate
Location: Pittsburg, CA
CAISO Resource ID: DELTA_2_PL1X4
Resource Type: 1_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of interconnection with the CAISO Controlled Grid ("Substation"): Pittsburg 230 kV substation
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): No
   If yes: Local Capacity Area (as of Confirmation Effective Date): N/A
Product Type (Flexible/Generic): Generic
   If Generic: Unit NQC (as of the Confirmation Effective Date): Varies by Month
   If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A
3.
RESOURCES ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be April 1, 2020 through November 30, 2020, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

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 of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
</tr>
</thead>
</table>

4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a
reduction in Unit NQC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity.

4.5 Alternate Capacity and Replacement Units

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of
Appendix A

Calpine RA Confirm Sale

Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.
4.8 **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 any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 **Monthly RA Capacity Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

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**RA Capacity Price Table**

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<tr>
<th>Contract Year/Month</th>
<th>RA Capacity Price ($/kW-month)</th>
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4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver
the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each
RAR Showing, LAR Showing, and/or FCR Showing, as applicable, 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 SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9. BUYER'S RE-SALE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.
11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE Follows]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: _______________________
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

DocuSigned by:

By: ________________
Name: Girish Balachandran
Title: CEO

Calpine Deal: 2485577
REVISED

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Seller"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 21, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.
1.12 “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

1.13 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 “Control Area” has the meaning set forth in the Tariff.

1.15 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 “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.

1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.18 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.19 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

1.21 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 “Firm RA Product” has the meaning specified in the Section 3.3 hereof.

1.24 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.25 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

1.26 “GADS” means the Generating Availability Data System or its successor.
1.27 "Generic RA Product" means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.28 "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.

1.29 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 "LRA" has the meaning set forth in the Tariff.

1.33 "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).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.37 "NERC" means the North American Electric Reliability Council, or its successor.

1.38 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.39 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.40 "Non-Availability Charges" has the meaning set forth in the Tariff.

1.41 "Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
"Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

"Party" and "Parties" have the meanings specified in the introductory paragraph hereof.

"Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"Product" has the meaning specified in Article 3 hereof.

"RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

"RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

"RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

"RAR 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 Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

"RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

"Replacement Capacity" has the meaning specified in Section 4.7 hereof.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

"Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

"Seller" has the meaning specified in the introductory paragraph hereof.

"Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. 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.

"Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

1.59 "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.61 "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.

1.62 "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Calistoga Power Plant
Location: Middletown, CA
CAISO Resource ID: SANTFG_7_UNITS
Resource Type: I_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of Interconnection with the CAISO Controlled Grid ("Substation"): Lakeview
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): Yes
If yes: Local Capacity Area (as of Confirmation Effective Date): NCNB
Product Type (Flexible/Generic): Flexible
If Generic: Unit NQC (as of the Confirmation Effective Date): N/A
If Flexible: Unit EFC (as of the Confirmation Effective Date): Varies by Month

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): Base

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☒ Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be January 1, 2020 through December 31, 2022, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

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 of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
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4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction
in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) **UCAP:** If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity.

4.5 **Alternate Capacity and Replacement Units**

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 **Delivery of Product**

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 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 any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization.
of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

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<tr>
<th>RA CAPACITY PRICE TABLE</th>
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<tr>
<td><strong>Contract Year/Month</strong></td>
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Calpine Deal: 2485591
4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.
6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2. Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, 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 SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9. BUYER'S RE-SALE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in...
such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller’s obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE FOLLOWS]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: ____________________________
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

By: ____________________________
Name: Girish Balachandran
Title: CEO

Calpine Deal: 2485591
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
SONOMA CLEAN POWER AUTHORITY

This Confirmation Letter ("Confirmation") confirms the Transaction between SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority ("Buyer") and Sonoma Clean Power Authority, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of October 22, 2019 (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 21, 2018, 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 3.3 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 the "Contract Quantity (MWs) 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 that is acceptably noticed pursuant to the Notification Deadline 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. A Unit shall not be a coal-fired generating facility.
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

<table>
<thead>
<tr>
<th>Name</th>
<th>Sunrise Power Project</th>
</tr>
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<tbody>
<tr>
<td>Location</td>
<td>Fellows, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>SUNRIS_2_FL1X3</td>
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<td>Resource Type</td>
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<td>Path 26 (North or South)</td>
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<td>Local Capacity Area (if any, as of Confirmation Effective Date)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>None</td>
</tr>
</tbody>
</table>

### 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
[X] 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, 2020 through July 31, 2020, 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:

<table>
<thead>
<tr>
<th>Contract Year and Months</th>
<th>Total Flexible LAR Contract Quantity (MWs)</th>
</tr>
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<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

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 (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 **Notification Deadline and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) 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.
Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

(c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
4.7 **Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(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

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity 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 to Buyer, including pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

### RA CAPACITY PRICE TABLE

<table>
<thead>
<tr>
<th>Contract Year and Months</th>
<th>LAR Capacity Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) 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 information regarding 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 information regarding this Transaction to the Scheduling Coordinator of each Unit as necessary for such Scheduling Coordinator to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a subsequent purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

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. JOINT POWERS AUTHORITY

Each Party hereby acknowledges and agrees that the other Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Each Party shall solely be responsible for all of such Party’s debts, obligations and liabilities accruing and arising out of this
Agreement, and each Party agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the other Party’s members, any cities or counties participating in the other Party’s community choice aggregation program, or any of the other Party’s retail customers in connection with the Transaction to which this Confirmation applies.

ARTICLE 13. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

ARTICLE 14. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

[Signatures appear on the following page]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SONOMA CLEAN POWER AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Michael Koszalka
Title: Chief Operating Officer

By: [Signature]
Name: Deb Emerson
Title: Director of Power Services

SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: CEO

DocuSign
Envelope ID: 5C9ED343-F85E-476B-A669-706E0B7C2425
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Seller"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"). each individually a "Party" and together the "Parties", dated as of October 25, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement, and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
1.13 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 "Control Area" has the meaning set forth in the Tariff.

1.15 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 "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.

1.17 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.18 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.19 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

1.21 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 "Firm RA Product" has the meaning specified in the Section 3.3 hereof.

1.24 "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.25 "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.

1.26 "GADS" means the Generating Availability Data System or its successor.

1.27 "Generic RA Product" means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
"Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

"LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

"LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

"LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

"LRA" has the meaning set forth in the Tariff.

"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).

"Master Agreement" has the meaning specified in the introductory paragraph hereof.

"Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

"Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

"NERC" means the North American Electric Reliability Council, or its successor.

"NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

"Net Qualifying Capacity" has the meaning set forth in the Tariff.

"Non-Availability Charges" has the meaning set forth in the Tariff.

"Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

"Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
1.43 "Party" and "Parties" have the meanings specified in the introductory paragraph hereof.

1.44 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a 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.

1.45 "Product" has the meaning specified in Article 3 hereof.

1.46 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.47 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.48 "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

1.49 "RAR 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 Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

1.50 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

1.51 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.52 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

1.53 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.54 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.55 "Seller" has the meaning specified in the introductory paragraph hereof.

1.56 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. 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.

1.57 "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
1.59 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 “Transaction” has the meaning specified in the introductory paragraph hereof.

1.61 “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.

1.62 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate
Location: Pittsburg, CA
CAISO Resource ID: DELTA_2_PL1X4
Resource Type: l_Phy_Res
Resource Category (1, 2, 3 or 4): 4
Point of Interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg 230 kV substation
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): Yes
   If yes: Local Capacity Area (as of Confirmation Effective Date): Greater Bay Area
Product Type (Flexible/Generic): Generic
   If Generic: Unit NQC (as of the Confirmation Effective Date): Varies by Month
   If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit’s Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be January 1, 2020 through December 31, 2020, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

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 of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
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4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with
any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reducions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity).

4.5 Alternate Capacity and Replacement Units

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such
Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 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 actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 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 any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).
4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure...
of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
The owner or operator of each Unit is obligated to maintain and operate each Unit using
Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the
Enforcement of Maintenance and Operation Standards for Electric Generating Facilities
Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such
Unit; provided, that the owner or operator of any Unit is not required to undertake capital
improvements, facility enhancements, or the construction of new facilities;

The owner or operator of each Unit is obligated to comply with Applicable Laws, including
the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR
Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit
does not exceed that Unit’s RA Capacity;

With respect to the RA Capacity provided under this Confirmation, Seller shall, and each
Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA
Capacity, and RAR, LAR and FCR;

Seller has notified the SC of each Unit that Seller has transferred the Designated RA
Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with
the Tariff;

Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to
provide to the Buyer, at least five (5) Business Days before the relevant deadline for each
RAR Showing, LAR Showing, and/or FCR Showing, as applicable, 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

Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section
4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to
Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose
information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having
jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as
applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as
necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to
this Transaction to a Subsequent Buyer.

9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will,
or will cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such
resold Product to Subsequent Buyers, to the extent such instructions are consistent with
Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to
take all commercially reasonable actions and execute all documents or instruments
reasonably necessary to allow such Subsequent Buyers to use such resold Product in a
manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability
to a Subsequent Buyer due to the failure of Seller or the Unit’s SC to comply with this
Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed
Buyer under this Confirmation if Buyer had not resold the Product.
(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller’s obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE Follows]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: _____________________________
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

By: _____________________________
Name: Girish Balachandran
Title: CEO
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Buyer"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of October 25, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
1.13 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 "Control Area" has the meaning set forth in the Tariff.

1.15 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 "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.

1.17 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.18 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.19 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

1.21 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 "Firm RA Product" has the meaning specified in the Section 3.3 hereof.

1.24 "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.25 "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.

1.26 "GADS" means the Generating Availability Data System or its successor.

1.27 "Generic RA Product" means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
1.28 “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.

1.29 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 “LRA” has the meaning set forth in the Tariff.

1.33 “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).

1.34 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

1.37 “NERC” means the North American Electric Reliability Council, or its successor.

1.38 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

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

1.40 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.41 “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

1.42 “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
1.43 “Party” and “Parties” have the meanings specified in the introductory paragraph hereof.

1.44 “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a 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.

1.45 “Product” has the meaning specified in Article 3 hereof.

1.46 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.47 “RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.48 “RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

1.49 “RAR 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 Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

1.50 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

1.51 “Replacement Capacity” has the meaning specified in Section 4.7 hereof.

1.52 “Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.

1.53 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.54 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.

1.55 “Seller” has the meaning specified in the introductory paragraph hereof.

1.56 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. 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.

1.57 “Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.

1.58 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.
1.59 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 “Transaction” has the meaning specified in the introductory paragraph hereof.

1.61 “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.

1.62 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate
Location: Pittsburg, CA
CAISO Resource ID: DELTA_2_PL1X4
Resource Type: L_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg 230 kV substation
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): No
  If yes: Local Capacity Area (as of Confirmation Effective Date): N/A
Product Type (Flexible/Generic): Generic
  If Generic: Unit NQC (as of the Confirmation Effective Date): Varies by Month
  If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☐ Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be January 1, 2020 through December 31, 2020, inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

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 of each Unit for each Monthly Delivery Period shall be:

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<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
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4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with...
any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) **Reductions in Unit NQC:** If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) **Reductions in Unit EFC:** If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) **UCAP:** If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity).

4.5 **Alternate Capacity and Replacement Units**

(a) **If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such**
Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 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 RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 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 actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 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 any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).
4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure
of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, 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

Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit’s SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.
(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller’s obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE FOLLOWS]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: 
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

By: Girish Bala
Name: Girish Bala
Title: CEO

Calpine Deal: 2488226
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
3 PHASES RENEWABLES INC.

This Confirmation Letter ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and 3 Phases Renewables Inc. ("Seller"), each individually a "Party" and together the "Parties", dated as of October 29, 2019 (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 EEI Master Power Purchase and Sale Agreement, effective as of November 28, 2016, as amended from time to time (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall control and shall govern the rights and obligations of the Parties in connection with the Transaction.

ARTICLE 1. DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.6 "CAISO" means the California Independent System Operator Corporation or its successor.

1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity (MWs) table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month, as such amount may be adjusted pursuant to Section 4.4.

1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-
Appendix A

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 **"Generic RA Product"** means Designated RA Capacity consisting of RA Attributes and, if applicable, LAR Attributes, which does not include Flexible RA Attributes.

1.22 **"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.

1.23 **"LAR"** means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.24 **"LAR Attributes"** means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

1.25 **"LAR Showings"** means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.26 **"Local RAR"** means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource
adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

1.27 "LRA" means Local Regulatory Authority as defined in the Tariff.

1.28 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.29 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.30 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.32 "Non-Excusable Event" means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.

1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.

1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.36 "Product" has the meaning specified in Article 3 hereof.

1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.

1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.42 "Replacement Unit" has the meaning specified in Section 4.5.

1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
1.45 "Seller" has the meaning specified in the introductory paragraph hereof.

1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.47 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.48 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.49 "Transaction" for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.

1.50 "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. A Unit shall not be a coal-fired generating facility.

1.51 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.52 "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**

<table>
<thead>
<tr>
<th>Name</th>
<th>Wadham Energy LP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Williams, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>WADHAM_6_UNIT</td>
</tr>
<tr>
<td>Unit NQC</td>
<td>Varies</td>
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<tr>
<td>Unit EFC</td>
<td>N/A</td>
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<tr>
<td>Resource Type</td>
<td>Biomass</td>
</tr>
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<td>Resource Category (1, 2, 3 or 4)</td>
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</tr>
<tr>
<td>Flexible RAR Category (1, 2 or 3)</td>
<td>NA</td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
<td>North</td>
</tr>
<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date)</td>
<td>N/A</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>N/A</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>N/A</td>
</tr>
</tbody>
</table>

4 3Phases RA
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:

[ ] Flexible RA Attributes with LAR Attributes

[ ] Flexible RA Attributes with RA 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:

[ ] RA Attributes

[ ] LAR Attributes

3.3 Delivery Obligation

☒ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply all or some of the Alternate Capacity to fulfill the remainder of the Contract Quantity or portion thereof, from one or more Replacement Units pursuant to Section 4.5 during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2020 through March 31, 2020, 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.
Appendix A

4.3 Contract Quantity
The Contract Quantity for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>WADHAM_6_UNIT (MWs)</th>
<th>CALFTN_2_SOLAR (MWs)</th>
<th>CSTRVL_7_PL1X2 (MWs)</th>
<th>Total Generic RAR Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

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 (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

(a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.

(c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.
4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

(c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO and not corrected by the time the CIRA Tool is locked for the applicable Showing Month or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation and Buyer has not provided instruction to withhold all or part of the Designated RA Capacity. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(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); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the Master Agreement.
4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
(c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Article 6 of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>RAR Capacity Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above, if applicable, and so long as the availability to earn such revenues does not increase Seller’s obligations or liabilities hereunder). In accordance with Section 4.9 of this Confirmation, all such Buyer revenues
received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit’s Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

**ARTICLE 5. CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

**ARTICLE 6. RESERVED**

**ARTICLE 7. OTHER BUYER AND SELLER COVENANTS**

**7.1 Further Assurances**

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party’s sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 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 Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.
ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder, 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 Master Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

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

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

3 PHASES RENEWABLES INC.

By: Eric Hulin
Name: Eric Hulin
Title: Director, Marketing
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Monterey Bay Community Power Authority, a California joint powers authority ("Purchaser") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller"), and each individually a "Party" and together the "Parties", dated as of October 29, 2019 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1

TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, and C are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☐ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

(b) Seller will deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Contract Quantity.

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. 1 A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser’s instructions, including Purchaser’s instructions to withhold all or part of the Expected Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

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1 Note to draft: Seller to revise as appropriate.
its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.2

2.2 Adjustments to Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller’s Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller’s obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the “Swap Reduction Option”). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

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2 For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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2.3 **Seller's Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

(a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser’s Compliance Showings related to such Showing Month; and

(b) the designation of any Replacement Unit by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 **Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 **Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity**

(a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

(b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the
Appendix A

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CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser's right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser's Re-Sale of Product

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market. Seller and the Unit's Scheduling Coordinator shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.
ARTICLE 3
PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Shown Unit’s SC to, within one Business Day of the time Seller receives notification from CAISO, notify
Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Shown Unit’s SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit’s SC, owner, or operator for noncompliance.

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown 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 Compliance Obligations under Applicable Laws, including to demonstrate that the Expected 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.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller’s Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions
with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.
5.3 **Dodd-Frank Act**


5.4 **Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

5.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 **No Recourse to Members of Purchaser or Seller**

Purchaser and Seller are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. Purchaser and Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation. Purchaser will have no rights and will not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller’s or Seller constituent members, in connection with this Confirmation.
5.8 **Other WSPP Agreement Changes**

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

(b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, "and is continuing" after "Event of Default occurs" in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the WSPP Agreement is amended by:

In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary."

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"

(e) In Section 22.3(f), delete the entire provision and replace with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

(f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend
for the netting provisions of Exhibit A to the WSPP Agreement to be effective on
the Confirmation Effective Date.

(g) Section 30.1 of the WSPP Agreement is amended by inserting "or requested" after
the word "required" in Section 30.1(4) and by adding the following at the end of
the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders,
counsel, accountants, advisors and agents who have a need to know such
information and have agreed to keep such terms confidential".

(h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced
with the following:

"34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS
TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF
A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH
DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN
GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND
INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A
DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER
RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND
ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO
THE LIMITATIONS SET FORTH IN THIS TRANSACTION."

"34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF
THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO,
CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS
AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY
OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE
CONVENIENCE OF SUCH FORUM."

(i) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

(j) The following shall be inserted as a new Section 34.5;

"34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED
IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS
CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR
MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR
MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE
REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE
BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN
THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW
OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN
ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF

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DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

(k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation.”.

(l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”
5.9 **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,\(^3\)] facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.10 **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

---

\(^3\) Exclude for SJCE.
AGREED AS OF THE EFFECTIVE DATE:

MONTEREY BAY COMMUNITY POWER AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Tom Habashi
Title: Chief Executive Officer

SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: Chief Executive Officer
APPENDIX A
DEFINITIONS

"Alternate Capacity" means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

"CAISO" means the California ISO.

"Capacity Attributes" means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, however entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"Contingent Firm RA Product" has the meaning set forth in Article 1 herein.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"Effective Flexible Capacity" has the meaning given in CAISO’s FERC-approved Tariff.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day
of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, less any reductions to Contract Quantity for such day specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.
“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

[“San José Clean Energy” means the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.]4

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between MBCP and Purchaser dated concurrently herewith, in which SVCE is the buyer of 2 MW total contract quantity amount for calendar year 2020, split as 1 MW of Humboldt LAR and 1 MW of System RAR with a delivery period of January 1, 2020 through December 31, 2020.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

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4 For SJCE only.
“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.5

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

5 Note to draft: Seller to revise as appropriate.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☒ Local RAR ☒ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: 1 MW System-North
MCC Bucket: 4
CPUC Local Area (if applicable): 1 MW Fresno RAR
Flexible Capacity Category (if applicable): 1

Contract Quantity and Contract Price:

RAR and Local RAR, both Flex Capacity, as applicable

<table>
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<tr>
<th>Showing Month and Year</th>
<th>Fresno LAR Contract Quantity (MW)</th>
<th>System RAR</th>
<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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<tbody>
<tr>
<td></td>
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# Appendix A

## Monterey Bay Community Power Sale

### Appendix B - 2

#### Unit 1 (Fresno with Flex)

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>WELLHEAD POWER PANOCHE</th>
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<tr>
<td>Physical Location</td>
<td>FRESNO</td>
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<tr>
<td>CAISO Resource ID</td>
<td>PANOCHE_1_PL1X2</td>
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<td>SCID of Resource</td>
<td>WPX1</td>
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<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50):</td>
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</tr>
<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
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<td>Prorated Percentage of Unit Factor</td>
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</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
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#### Unit 2 (System Generic)

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<tr>
<td>CAISO Resource ID</td>
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<td>SCID of Resource</td>
<td>CALJ</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50):</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>CAISO SYSTEM</td>
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Appendix A
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)
## APPENDIX C
PLANNED OUTAGE SCHEDULE

<table>
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<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
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<td>N/A</td>
<td>N/A</td>
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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Monterey Bay Community Power Authority, a California joint powers authority ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of October 29, 2019 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, and C are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

(b) Seller will deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Contract Quantity.

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility.¹ A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser’s instructions, including Purchaser’s instructions to withhold all or part of the Expected Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

¹ Note to draft: Seller to revise as appropriate.
its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.²

2.2 Adjustments to Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller’s Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller’s obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the “Swap Reduction Option”). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

² For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
2.3 **Seller’s Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

(a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser’s Compliance Showings related to such Showing Month; and

(b) the designation of any Replacement Unit by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 **Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 **Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity**

(a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

(b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the
CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, Seller and the Unit’s Scheduling Coordinator shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.
ARTICLE 3
PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Shown Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify
Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown 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 Compliance Obligations under Applicable Laws, including to demonstrate that the Expected 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.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
(b) theShown Unit qualifies under the Tariff for the Product, and the Shown Unit and
Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned,
or transferred for the Shown Unit during the Delivery Period does not exceed the
Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible
Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from
which Seller purchased the Product that Seller has transferred the Contract Quantity
of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to
the revenues set forth in Section 3.2(b), and such SC is obligated to promptly
deliver those revenues to Purchaser, along with appropriate documentation
supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a
letter of concurrence in support of any affirmative statement by Purchaser that this contractual
arrangement does not transfer “ownership or control of generation capacity” from Seller to
Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section
35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this
contractual arrangement conveys ownership or control of generation capacity from Seller to
Purchaser.

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the
WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be
liable for any penalties, fines or costs from CAISO, or any Governmental Body, because
Purchaser or a Subsequent Purchaser is not able to include the applicable Expected
Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then
Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and
include the estimate in its determination of the Termination Payment, subject to accounting
to Seller when those penalties, fines or costs are finally ascertained. If this accounting
establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs,
Purchaser must promptly remit to Seller the excess amount with interest in accordance with
Section 9.3 of the WSPP Agreement. The rights and obligations with respect to
determining and paying any Termination Payment, and any dispute resolution provisions
with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.
5.3 **Dodd-Frank Act**


5.4 **Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

5.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 **No Recourse to Members of Purchaser or Seller**

Purchaser and Seller are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. Purchaser and Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser’s constituent members, in connection with this Confirmation. Purchaser will have no rights and will not make any claims, take any actions or assert any remedies against any of Seller’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller’s or Seller constituent members, in connection with this Confirmation.

Monterey Bay Community Power RA
5.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets."

(b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the WSPP Agreement is amended by:

In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(e) In Section 22.3(f), delete the entire provision and replace with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend
for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

(i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.

(j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF
DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR
BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT
DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND
EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH,
AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY
ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY
CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF
DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY,
CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE
(INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS
INTERUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME,
WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY
NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON),
WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER
ANY INDEMNITY PROVISION, OR OTHERWISE.”

(k) Section 37 of the WSPP Agreement is amended by inserting the following in the
beginning of the section: “On the date of entering into this Confirmation.”.

(l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the
following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout
the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of
review for changes to any section of this Agreement (including all
Transactions and/or Confirmations) specifying the rate(s) or other material
economic terms and conditions agreed to by the Parties herein, whether
proposed by a Party, a non-party or FERC acting sua sponte, shall be the
“public interest” standard of review set forth in United Gas Pipe Line Co.
v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power
Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-
Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v.
Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power

(ii) The Parties, for themselves and their successors and assigns, (i) agree that
this “public interest” standard shall apply to any proposed changes in any
other documents, instruments or other agreements executed or entered into
by the Parties in connection with this Agreement and (ii) hereby expressly
and irrevocably waive any rights they can or may have to the application of
any other standard of review, including the “just and reasonable” standard.”
5.9 **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,3] facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

5.10 **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

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3 Exclude for SJCE.
AGREED AS OF THE EFFECTIVE DATE:

MONTEREY BAY COMMUNITY POWER AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: ____________________________
Name: Tom Habashi
Title: Chief Executive Officer

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: ____________________________
Name: Girish Balachandran
Title: Chief Executive Officer
APPENDIX A
DEFINED TERMS

"Alternate Capacity" means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

"CAISO" means the California ISO.

"Capacity Attributes" means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Compliance Obligations" means, as applicable, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"Contingent Firm RA Product" has the meaning set forth in Article 1 herein.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

"Effective Flexible Capacity" has the meaning given in CAISO’s FERC-approved Tariff.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day
of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, less any reductions to Contract Quantity for such day specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"FCR" means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"FCR Attributes" means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

"Firm RA Product" has the meaning set forth in Article 1 herein.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Net Qualifying Capacity" has the meaning given in CAISO’s FERC-approved Tariff.

"Notification Deadline" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"Product" means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.
"Prorated Percentage of Unit Factor" means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

"Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

"Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 2.3.

"Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

["San José Clean Energy" means the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.]4

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

"Subsequent Purchaser" means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

"Swap Confirmation" means that certain WSPP Agreement Confirmation between SVCE and Purchaser dated concurrently herewith, in which MBCP is the buyer of 2 MW contract quantity amount for calendar year 2020, split as 1 MW of Fresno LAR and 1 MW of System RAR with a delivery period of January 1, 2020 through December 31, 2020.

"Swap Reduction Option" has the meaning specified in Section 2.2(b).

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4 For SJCE only.
“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.5

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NOC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

5 Note to draft: Seller to revise as appropriate.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR ☐ Local RAR ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone:
MCC Bucket:
CPUC Local Area (if applicable):
Flexible Capacity Category (if applicable):

Contract Quantity and Contract Price:

RAR and Local RAR, both Flex Capacity, as applicable

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<th>Humboldt LAR Contract Quantity (MW)</th>
<th>FCR Quantity, if any (MW)</th>
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### Unit 1 - (Humboldt)

#### Unit Specific Information

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<td>Physical Location</td>
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<td>CAISO Resource ID</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
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### Unit 2 (Humboldt)

#### Unit Specific Information

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<td>Prorated Percentage of Unit Factor</td>
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<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>Humboldt</td>
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Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt) Resource Category as defined by the CPUC (DR, 1, 2, 3, 4) **Unit 3 (System)**

**Unit Specific Information**

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<thead>
<tr>
<th>Resource Name</th>
<th>DELTA ENERGY CENTER AGGREGATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td></td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>DELTA_2_PL1X4</td>
</tr>
<tr>
<td>SCID of Resource</td>
<td></td>
</tr>
<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
<td>813</td>
</tr>
<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
<td></td>
</tr>
<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Natural Gas Combined Cycle</td>
</tr>
<tr>
<td>MinimumQualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
<td></td>
</tr>
<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td></td>
</tr>
<tr>
<td>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>CAISO System (North)</td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>4</td>
</tr>
</tbody>
</table>

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
## Appendix C
### PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* N/A: Not Available