Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, December 11, 2019
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

Director Gibbons will attend by teleconference from Capital Hilton, 1001 16th Street NW, Washington, District of Columbia, 20036. Members of the public may provide testimony at the teleconference location.

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 November 13, 2019, Board of Directors Meeting

1b) Receive September 2019 Treasurer Report

1c) Receive Non-Standard Pricing Policy Performance Update

1d) Receive Customer Resource Center Follow Up Information

1e) Approve and Authorize Chief Executive Officer to Execute Agreement with School of Thought for Website Design and Marketing Services for Online Customer Resource Center

1f) Adopt Resolution to Authorize the Chief Executive Officer to Execute a Service Agreement with Energy and Environmental Economics and to Amend Approved Master Agreements

1g) Approve SVCE Advance Metering Infrastructure (AMI) Data Privacy and Security Policy

1h) Adopt Resolution Approving Amendments to SVCE Operating Rules and Regulations

1i) Receive Employee Health and Welfare Benefits Enhancements Report

1j) Legislative Ad Hoc Committee Report

1k) Finance and Administration Committee Report
Regular Calendar

2) CEO Report (Discussion)

3) Adopt Resolution to Authorize the Chief Executive Officer to Execute the PG&E Energy Confirmation with Non-Substantive Changes Comprised of Allocated Carbon-Free Attributes Including Attributes Generated by Hydroelectric Facilities and Diablo Canyon Power Plant ("DCPP") for 2020 Only and to Sell Carbon-Free Attributes Associated with DCPP (Action)

4) Approve and Authorize the Chief Executive Officer to Execute a Contract Extension with Calpine Energy Solutions for Data Management Services (Action)

5) Discuss Options for Board Input on Legislative and Regulatory Matters (Discussion)

6) SVCE Board Succession Planning (Discussion)

7) Executive Committee Report (Discussion)

8) Audit Committee Report (Discussion)

9) Authorize the Chief Executive Officer to Negotiate and Execute an Office Lease Agreement (Action)

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

Conference with Legal Counsel – Existing Litigation
Government Code Section 54956.9(d)(1)
Name of Case: In re Pacific Gas and Electric Company, Debtor, United States Bankruptcy Court, Northern District of California, San Francisco Division, Case No. 19-30088

Report from Closed Session

Adjourn

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Clerk for the Authority at (408) 721-5301 x1005. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.105 ADA Title II).
Silicon Valley Clean Energy Authority  
Board of Directors Meeting  
Wednesday, November 13, 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 7:03 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  
Alternate Director George Tyson, Town of Los Altos Hills  
Director Courtenay Corrigan, Town of Los Altos Hills (arrived at 7:07 p.m.)  
Director Liz Gibbons, City of Campbell  
Director Jeannie Bruins, City of Los Altos  
Director Susan Ellenberg, County of Santa Clara  
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 7:11 p.m.)  
Director Fred Tovar, City of Gilroy  

Absent:  
Director Fred Tovar, City of Gilroy  

Public Comment on Matters Not Listed on the Agenda  
James Tuleya, resident of Sunnyvale, commented on an article titled “World Scientists’ Warning of a Climate Emergency” published November 5, 2019 in the Journal of BioScience; Tuleya noted he would send a link to the Board via Board Clerk Andrea Pizano.  

Director Gibbons commented on an article in the Wall Street Journal regarding climate change.  

Director Corrigan arrived at 7:07 p.m. and Alternate Director Tyson left the meeting.  

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

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

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

Chair Abe-Koga announced a request to move Item 8) Legislative Ad Hoc Committee Report following Item 4) Utility Restructuring in Northern California – Discussion and Direction; there were no objections from the Board.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran provided a CEO report which included describing a project Bruce Karney would be working on for SVCE to study ways in which SVCE could work with local high schools to provide training on civic engagement; Directors Ellenberg, Sinks, and Smith offered their assistance to Mr. Karney and Directors shared their support for the project.

CEO Balachandran called attention to the community benefits summaries at Director’s seats and noted they would be sent to all city managers and city council members.

Manager of Regulatory and Legislative Affairs Hilary Staver provided a regulatory and legislative report which included information on the integrated resource planning (IRP) proceeding, and responded to Board member questions.

Director of Decarbonization and Grid Innovation Programs Aimee Bailey provided an update on the request for proposals (RFP) for resiliency in response to the public safety power shutoffs (PSPS); Director of Decarbonization and Grid Innovation Programs Bailey responded to Board member questions.

Chair Abe-Koga opened public comment. Bruce Karney commented on the work he will be doing for SVCE; Director Smith recommended the LRNG platform for the project.

James Tuleya applauded the effort of SVCE and partners for the resiliency RFP, commented on some of the public responses to reach codes and their push to keep fossil fuel natural gas, and noted the most resilient solution is all-electric solar and storage.

Director Martinez Beltran supported a previous comment by Director Ellenberg regarding including low income households and how it is incorporated in reach codes for new development.

Chair Abe-Koga closed public comment.

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

Board Clerk Andrea Pizano introduced the item. Chair Abe-Koga requested a future discussion item on SVCE board term length and board succession planning.

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

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

CEO Balachandran introduced the item and provided the following general principles that SVCE, representing the customers, would like to see in a PG&E that emerges from bankruptcy:

- Low cost of capital;
- Remove the profit motive;
- More transparency in governance and operations;
- Having the voice of the customer heard more in PG&E’s strategic planning and operations; and,
- Making sure worker rights are preserved moving forward.

CEO Balachandran noted the co-op idea being proposed by San Jose Mayor Liccardo would support many of the mentioned principles, and responded to Board member questions.

Board members provided comments in support of the co-op and principles outlined by CEO Balachandran, commented on PG&E and support in restructuring of the utility, and the letter sent to the California Public Utilities Commission (CPUC) from San Jose Mayor Liccardo on November 4, 2019.

Chair Abe-Koga opened public comment.

James Tuleya commented he favors the ongoing approach of uninterrupted PG&E customer programs, such as energy efficiency, demand response, and low-income programs, and commented generally all of PG&E’s portfolio of energy efficiency programs are cost effective. Tuleya requested Directors keep in mind to keep these programs in place.

Chair Abe-Koga closed public comment.

CEO Balachandran confirmed with Chair Abe-Koga he would be providing updates on PG&E restructuring to the Board in multiple ways.

Director Corrigan requested a follow-up letter to the CPUC regarding the co-op idea be distributed to the board as quickly as possible to address with their councils.

8) Legislative Ad Hoc Committee Report (Discussion)

Following Item 4, the Board heard Item 8.

Director Sinks reported the Legislative Ad Hoc Committee met October 22nd, reviewed the 2019 session, and began preparations for the 2020 session. Director Sinks noted the Aaron Read & Associates, LLC contract was approved earlier on the consent calendar, and commented it has been helpful to have their direct and immediate engagement in Sacramento. Director Sinks reported the committee also reviewed updates to SVCE’s legislative platform and provided feedback, and Steve Baker of Aaron Read & Associates, LLC would be present at the January Board of Directors meeting to provide an outlook for 2020.

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

Following Item 8, the Board considered Item 5.
Manag

Manager of Regulatory and Legislative Affairs Staver introduced the item and responded to board
member questions.

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

MOTION: Director Bruins moved and Director Sinks seconded the motion to approve the updated version
of SVCE’s legislative platform.

Vice Chair Miller suggested the legislative platform be brought back to the board biannually; once in the
fall for updates, and once in the spring for new directors.

The motion carried unanimously with Director Tovar absent.

6) Customer Resource Center Program Update (Discussion)

Director of Account Services and Community Relations Don Bray and Communications Manager Pamela
Leonard presented a PowerPoint and responded to board member questions.

Directors provided comments and feedback on the customer resource center.

Director Sinks commented on an editorial in the San Jose Mercury News, and asked SVCE staff to
address the critiques.

Chair Abe-Koga opened public comment.

James Tuleya commented on the PG&E Marketplace, found at marketplace.pge.com, which can be used
as an example for the “Appliances” column of the proposed SVCE Customer Resource Center, and
applauded SVCE’s effort with the Customer Resource Center. Tuleya provided information on the Home
Intel program and noted he is hopeful SVCE’s tool will help point people to existing programs, like the
Home Intel and BayRen’s Home Plus programs, which are already paid for by ratepayers.

Bruce Naegel commented on the City of Mountain View Sustainability Plan, SVCE's assistance with a
database, and questioned if there is a way to customize the Customer Resource Center by city.

Bruce Karney commented the level of investment that homeowners and businesses are going to need to
make in replacing natural gas and gasoline powered equipment with electrically powered equipment is an
important problem to solve and shared his past experience in working at Solar City as the Director of
Community Programs. Karney commented he doesn’t feel the Customer Resource Center is ready to be
something to get customers to act, but is hopeful.

Chair Abe-Koga closed public comment.

7) Executive Committee Report (Discussion)

Chair Abe-Koga reported the Executive Committee met October 25, 2019 and discussed the Customer
Resource Center and Virtual Power Plant Programs, and received information on member agency results
communication and the 2020 SVCE Board elections timeline. The group also approved to recommend the
amendments to SVCE’s Operating Rules and Regulations on consent.

Chair Abe-Koga reported the next committee meeting is scheduled for November 22nd, 9:00 a.m., at the
SVCE Office.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
**Board Member Announcements and Direction on Future Agenda Items**

Director Martinez Beltran announced she attended the CalCCA meeting on November 6, 2019, provided a synopsis, and noted she came away feeling encouraged about the efforts SVCE is making. Director Martinez Beltran reported Morgan Hill passed their reach code to ban natural gas in all new construction and shared her experience of the process.

Director Ellenberg thanked Director Martinez Beltran for raising equity and cultural responsive issues during the meeting, and noted those lenses are critically important and without them we are risking losing the attention of big chunks of the population. Director Ellenberg noted we don’t want electrification to be seen as a luxury item, and as we go forward with SVCE’s communication plan, she would like to see that SVCE has an equity lense as well as culturally specific. Director Ellenberg commented a referral has been submitted to Santa Clara County administration to come back to the Board of Supervisors with a suggestion on reach codes.

DirectorBruins announced reach codes would be considered next Tuesday at the City of Los Altos council meeting.

Director Gibbons reported she also attended the CalCCA meeting on November 6, 2019, and noted Campbell would be addressing reach codes at their city council meeting on Tuesday.

Vice Chair Miller announced the City of Saratoga gave direction to city staff on reach codes to ban gas for space and water heating, but not cooking and drying, and require two electric vehicle (EV) hook ups per house: one pre-wired, and one can be conduit only, but one has to be inside and one has to be outside.

Director Corrigan announced she is hopeful reach codes will pass in Los Altos Hills in some variation at their meeting next week.

Director Sinks thanked Chair Abe-Koga and Mountain View’s leadership on reach codes and announced his council’s study session meeting next Tuesday. Director Sinks requested a current website update after every council action regarding reach codes.

Director Smith reported she attended the League of California Cities event and noted she spent some time with CalCCA President Beth Vaughn. Director Smith also reported Sunnyvale’s Sustainability Commission hosted an event Saturday, November 9, 2019, called “Electric Cars Demystified” with EVucation which had an opportunity for people to showcase their electric vehicles, and learn about cost effective options. Director Smith reported Sunnyvale had a study session on reach codes where Sunnyvale staff presented a concept that Sunnyvale has been having a broader form of reach codes since 2006 with their Green Building Program.

Director Sayoc announced the Los Gatos City Council meeting to discuss reach codes would occur December 17, 2019 and noted the town manager will be reaching out to see what each city has done.

Director Ellahie commented a lot of ridesharing drivers are switching to electric vehicles and noted the importance of having EV chargers available.
Director Martinez Beltran thanked Account Services Manager John Supp and Tony Eulo for their work in getting reach codes passed in Morgan Hill, and commented on feedback received regarding gas cooktops.

Chair Abe-Koga thanked Director of Account Services and Community Relations Bray for attending council meetings, and thanked community members Bruce Karney, Bruce Naegel, James Tuleya, and Carbon Free Silicon Valley for their support.

**Public Comment on Closed Session**
No speakers.

Director Ellenberg left the meeting prior to convening in closed session.

The Board convened to closed session in the Community Hall Kitchen at 9:51 p.m.

**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

The Board returned from Closed Session at 10:06 p.m. with Directors Ellenberg and Tovar absent.

**Report from Closed Session**

Chair Abe-Koga announced there was no report from closed session.

**Adjourn**

Chair Abe-Koga adjourned the meeting at 10:06 p.m.
TREASURER REPORT

Fiscal Year to Date
As of September 30, 2019

(Preliminary & Unaudited)

Issue Date: December 11, 2019

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<td>Accounts Receivable Aging Report</td>
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Financial Highlights for the month of September 2019:

Note: The financial audit is expected to be completed by February 2020. It may result in material adjustments to the preliminary schedules presented in this report.

- SVCE operations resulted in a positive change in net position for the month of $12.4 million and year-to-date change in net position of $64.6 million.
  - September revenue of $33.7 million accounted for 333 GWh in net retail consumption.
  - Year-to-date operating margin is $75.2 million and $27.0 million above budget.
  - SVCE ends the year near targeted cash reserve target and is financially stable.

- Retail GWh sales for the month were on target to budget.
  - Year-to-date retail load is 33 GWh’s or 1% above budget.
  - September weather was near average.

- Power Supply costs are 7% below budget year-to-date.
  - Market prices were favorable compared to the mid-year budget resulting in better than expected power supply costs.
  - Joint Long-Term PPA RFO was issued in May from SVCE and MBCP. A short-list of suppliers was selected. Negotiations began in September.
  - Favorable adjustments for December through March power supply costs were recognized based on updated settlements from CAISO.

Decarbonization and Grid Innovations

- The Programs Roadmap was approved by the Board of Directors in December 2018.
- Programs continue to ramp up. Unspent program funds will be carried over to FY 2019-20.

Investing/Financing

- The Board approved the renewal of the $35 million line of credit with River City Bank for a 2-year term.
- SVCE is investing ~90% of available funds generating year-to-date investment income of $1.2 million.

### Change in Net Position

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<th>Oct</th>
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<th>Sept</th>
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<th>Amended Budget</th>
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<tr>
<td>Actual</td>
<td>8,092</td>
<td>953</td>
<td>1,947</td>
<td>(4,819)</td>
<td>(523)</td>
<td>4,026</td>
<td>4,650</td>
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### Power Supply Costs

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<th>Sept</th>
<th>Total</th>
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<td>Energy &amp; REC's</td>
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<td>12,890</td>
<td>18,224</td>
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<td>1,308</td>
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### Net Power Costs

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<th>Sept</th>
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### Other

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<td>36</td>
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<td>219</td>
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### Load Statistics - GWh

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<tr>
<td>Retail Sales Actual</td>
<td>323</td>
<td>318</td>
<td>354</td>
<td>336</td>
<td>299</td>
<td>311</td>
<td>307</td>
<td>305</td>
<td>347</td>
<td>359</td>
<td>373</td>
<td>337</td>
<td>3,969</td>
<td></td>
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<tr>
<td>Retail Sales Budget</td>
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<td>336</td>
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<td>328</td>
<td>353</td>
<td>345</td>
<td>337</td>
<td>3,936</td>
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Other Statistics and Ratios

- Working Capital: $142,717,859
- Current Ratio: 5.1
- Operating Margin: 26%
- Expense Coverage Days: 179
- Expense Coverage Days with LOC: 226
- Long-Term Debt: $0
- Total Accounts: 271,159
- Opt-Out Accounts (Month): 81
- Opt-Up Accounts (Month): 21

Retail Sales - Month

- Actual: 33.7
- Budget: 29.0
- FY16/17: 26.1

Retail Sales - YTD

- Actual: 292.5
- Budget: 282.6
- FY16/17: 250.0

O&M - Month

- Actual: 21.4
- Budget: 23.4
- FY16/17: 20.5

O&M - YTD

- Actual: 229.0
- Budget: 253.5
- FY16/17: 197.5
## ASSETS

**Current Assets**
- Cash & Cash Equivalents: $119,048,306
- Accounts Receivable, net of allowance: 30,276,814
- Energy settlements receivable: 166,657
- Accrued Revenue: 19,572,100
- Other Receivables: 17,900
- Prepaid Expenses: 1,333,915
- Deposits: 2,260,556
- Restricted cash: 5,000,000

**Total Current Assets**: 177,676,248

**Noncurrent assets**
- Capital assets, net of depreciation: 148,038
- Deposits: 129,060

**Total Noncurrent Assets**: 277,098

**Total Assets**: 177,953,346

## LIABILITIES

**Current Liabilities**
- Accounts Payable: 946,047
- Accrued Cost of Electricity: 32,132,309
- Accrued Payroll & Benefits: 355,192
- Other accrued liabilities: 257,530
- User Taxes and Energy Surcharges due to other gov'ts: 1,238,991
- Supplier Security Deposits: 28,320

**Total Current Liabilities**: 34,958,389

## NET POSITION

- Net investment in capital assets: 148,038
- Restricted for security collateral: 5,000,000
- Unrestricted (deficit): 137,846,919

**Total Net Position**: $142,994,957
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2018 through September 30, 2019

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>291,390,036</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>1,018,493</td>
</tr>
<tr>
<td>Other Income</td>
<td>64,606</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>292,473,135</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>217,237,705</td>
</tr>
<tr>
<td>Staff Compensation and benefits</td>
<td>3,399,752</td>
</tr>
<tr>
<td>Data Management</td>
<td>3,432,831</td>
</tr>
<tr>
<td>Service Fees - PG&amp;E</td>
<td>1,152,860</td>
</tr>
<tr>
<td>Consultants and Other Professional Fees</td>
<td>1,544,002</td>
</tr>
<tr>
<td>Legal</td>
<td>474,141</td>
</tr>
<tr>
<td>Communications &amp; Noticing</td>
<td>532,483</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>1,175,314</td>
</tr>
<tr>
<td>Depreciation</td>
<td>50,440</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>228,999,528</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING INCOME(LOSS)</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>63,473,607</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>1,230,787</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(144,157)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING EXPENSES</strong></td>
<td><strong>1,086,630</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>78,434,720</td>
</tr>
<tr>
<td><strong>Net Position at end of period</strong></td>
<td><strong>$ 142,994,957</strong></td>
</tr>
</tbody>
</table>
# Cash Flows from Operating Activities

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from electricity sales</td>
<td>$ 283,232,087</td>
</tr>
<tr>
<td>Receipts from wholesale sales</td>
<td>579,940</td>
</tr>
<tr>
<td>Receipts from other income</td>
<td>93,781</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>28,320</td>
</tr>
<tr>
<td>Tax and surcharge receipts from customers</td>
<td>5,410,678</td>
</tr>
<tr>
<td>Energy settlements received</td>
<td>6,183,047</td>
</tr>
<tr>
<td>Deposits and collateral received</td>
<td>13,558,737</td>
</tr>
<tr>
<td>Payments to purchase electricity</td>
<td>(226,077,528)</td>
</tr>
<tr>
<td>Payments for staff compensation and benefits</td>
<td>(3,312,266)</td>
</tr>
<tr>
<td>Payments for data manager fees</td>
<td>(3,443,113)</td>
</tr>
<tr>
<td>Payments for PG&amp;E service fees</td>
<td>(1,054,699)</td>
</tr>
<tr>
<td>Payments for consultants and other professional services</td>
<td>(1,413,755)</td>
</tr>
<tr>
<td>Payments for legal fees</td>
<td>(411,413)</td>
</tr>
<tr>
<td>Payments for communications and noticing</td>
<td>(547,824)</td>
</tr>
<tr>
<td>Payments for general and administrative</td>
<td>(1,128,227)</td>
</tr>
<tr>
<td>Payments of deposits and collateral</td>
<td>(1,763,023)</td>
</tr>
<tr>
<td>Return of security deposits to suppliers</td>
<td>(585,000)</td>
</tr>
<tr>
<td>Tax and surcharge payments to other governments</td>
<td>(5,272,035)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>64,077,707</strong></td>
</tr>
</tbody>
</table>

# Cash Flows from Non-Capital Financing Activities

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance costs paid</td>
<td>(209,367)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by non-capital financing activities</strong></td>
<td><strong>(209,367)</strong></td>
</tr>
</tbody>
</table>

# Cash Flows from Capital and Related Financing Activities

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of capital assets</td>
<td>(14,161)</td>
</tr>
</tbody>
</table>

# Cash Flows from Capital and Related Financing Activities

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>1,230,787</td>
</tr>
<tr>
<td><strong>Net change in cash and cash equivalents</strong></td>
<td><strong>65,084,966</strong></td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of year</td>
<td>58,963,340</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of period</strong></td>
<td><strong>$ 124,048,306</strong></td>
</tr>
</tbody>
</table>
## RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Income (loss)</td>
<td>$ 63,473,607</td>
</tr>
<tr>
<td><strong>Adjustments to reconcile operating income to net cash provided (used) by operating activities</strong></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>50,440</td>
</tr>
<tr>
<td>Revenue reduced for uncollectible accounts</td>
<td>(228,011)</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>(6,387,653)</td>
</tr>
<tr>
<td>(Increase) decrease in energy settlements receivable</td>
<td>(166,657)</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>68,361</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>(2,640,739)</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>(144,859)</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>11,795,714</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>225,509</td>
</tr>
<tr>
<td>Increase (decrease) in accrued payroll &amp; benefits</td>
<td>163,903</td>
</tr>
<tr>
<td>Increase (decrease) in energy settlements payable</td>
<td>337,904</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>(2,389,268)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>257,530</td>
</tr>
<tr>
<td>Increase (decrease) in taxes and surcharges due to other governments</td>
<td>218,606</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>(556,680)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>$ 64,077,707</strong></td>
</tr>
</tbody>
</table>
## REVENUES & OTHER SOURCES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Energy Sales</strong></td>
<td>$291,390,036</td>
<td>$281,890,207</td>
<td>$9,499,829</td>
<td>3%</td>
<td>$281,890,000</td>
</tr>
<tr>
<td><strong>Green Prime Premium</strong></td>
<td>1,018,493</td>
<td>630,000</td>
<td>388,493</td>
<td>62%</td>
<td>630,000</td>
</tr>
<tr>
<td><strong>Other Income</strong></td>
<td>64,606</td>
<td>100,000</td>
<td>(35,394)</td>
<td>-35%</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Investment Income</strong></td>
<td>1,230,787</td>
<td>850,311</td>
<td>380,476</td>
<td>45%</td>
<td>850,000</td>
</tr>
<tr>
<td><strong>TOTAL REVENUES &amp; OTHER SOURCES</strong></td>
<td>293,703,922</td>
<td>283,470,518</td>
<td>10,233,404</td>
<td>4%</td>
<td>283,470,000</td>
</tr>
</tbody>
</table>

## EXPENDITURES & OTHER USES

### CURRENT EXPENDITURES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Power Supply</strong></td>
<td>217,237,705</td>
<td>234,329,855</td>
<td>(17,092,150)</td>
<td>-7%</td>
<td>234,330,000</td>
</tr>
<tr>
<td><strong>Data Management</strong></td>
<td>3,432,831</td>
<td>3,560,259</td>
<td>(127,428)</td>
<td>-4%</td>
<td>3,560,000</td>
</tr>
<tr>
<td><strong>PG&amp;E Fees</strong></td>
<td>1,152,860</td>
<td>1,120,491</td>
<td>32,369</td>
<td>3%</td>
<td>1,120,000</td>
</tr>
<tr>
<td><strong>Salaries &amp; Benefits</strong></td>
<td>3,399,752</td>
<td>4,300,000</td>
<td>(900,248)</td>
<td>-21%</td>
<td>4,300,000</td>
</tr>
<tr>
<td><strong>Professional Services</strong></td>
<td>1,619,443</td>
<td>2,289,675</td>
<td>(670,232)</td>
<td>-29%</td>
<td>2,290,000</td>
</tr>
<tr>
<td><strong>Marketing &amp; Promotions</strong></td>
<td>361,215</td>
<td>909,500</td>
<td>(548,285)</td>
<td>-60%</td>
<td>910,000</td>
</tr>
<tr>
<td><strong>Notifications</strong></td>
<td>171,268</td>
<td>160,000</td>
<td>11,268</td>
<td>7%</td>
<td>160,000</td>
</tr>
<tr>
<td><strong>Lease</strong></td>
<td>325,917</td>
<td>330,000</td>
<td>(4,083)</td>
<td>-1%</td>
<td>330,000</td>
</tr>
<tr>
<td><strong>General &amp; Administrative</strong></td>
<td>699,171</td>
<td>836,160</td>
<td>(136,989)</td>
<td>-16%</td>
<td>836,000</td>
</tr>
<tr>
<td><strong>TOTAL CURRENT EXPENDITURES</strong></td>
<td>228,400,162</td>
<td>247,835,940</td>
<td>(19,435,778)</td>
<td>-8%</td>
<td>247,836,000</td>
</tr>
</tbody>
</table>

### OTHER USES

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Customer Programs</strong></td>
<td>548,926</td>
<td>5,640,000</td>
<td>(5,091,074)</td>
<td>-90%</td>
<td>5,640,000</td>
</tr>
<tr>
<td><strong>Office Equipment</strong></td>
<td>19,919</td>
<td>200,000</td>
<td>(180,081)</td>
<td>-90%</td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Financial Security Requirement</strong></td>
<td>-</td>
<td>147,000</td>
<td>(147,000)</td>
<td>0%</td>
<td>147,000</td>
</tr>
<tr>
<td><strong>Refund of Bond</strong></td>
<td>-</td>
<td>(100,000)</td>
<td>100,000</td>
<td>0%</td>
<td>(100,000)</td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
<td>568,845</td>
<td>5,887,000</td>
<td>(5,318,155)</td>
<td>-90%</td>
<td>5,887,000</td>
</tr>
</tbody>
</table>

### DEBT SERVICE

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Financing</strong></td>
<td>144,157</td>
<td>90,000</td>
<td>54,157</td>
<td>60%</td>
<td>90,000</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td>-</td>
<td>120,000</td>
<td>(120,000)</td>
<td>-100%</td>
<td>120,000</td>
</tr>
<tr>
<td><strong>TOTAL DEBT SERVICE</strong></td>
<td>144,157</td>
<td>210,000</td>
<td>(65,843)</td>
<td>-31%</td>
<td>210,000</td>
</tr>
</tbody>
</table>

### Total Expenditures, Other Uses & Debt Service

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Expenditures, Other Uses &amp; Debt Service</strong></td>
<td>229,113,164</td>
<td>253,932,940</td>
<td>(24,819,776)</td>
<td>-10%</td>
<td>253,933,000</td>
</tr>
</tbody>
</table>

### Net Increase(Decrease) in Available Fund Balance

<table>
<thead>
<tr>
<th>Item</th>
<th>FYTD Actual</th>
<th>FYTD Amended</th>
<th>Variance</th>
<th>FY 2018-19 Amended</th>
<th>FY 2018-19 Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Increase(Decrease)</strong></td>
<td>$64,590,758</td>
<td>$29,537,578</td>
<td>$35,053,180</td>
<td>119%</td>
<td>$29,537,000</td>
</tr>
</tbody>
</table>
**SILICON VALLEY CLEAN ENERGY AUTHORITY**

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

Net Increase (decrease) in available fund balance per budgetary comparison schedule $64,590,758

Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtract depreciation expense</td>
<td>(50,440)</td>
</tr>
<tr>
<td>Add back capital asset acquisitions</td>
<td>19,919</td>
</tr>
<tr>
<td><strong>Change in Net Position</strong></td>
<td><strong>64,560,237</strong></td>
</tr>
</tbody>
</table>

Sept. 2019 Treasurer Report
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
#### October 1, 2018 through September 30, 2019

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$26,013,308</td>
<td>$18,589,640</td>
<td>$20,295,540</td>
<td>$19,278,907</td>
<td>$17,206,905</td>
<td>$17,794,266</td>
<td>$18,251,196</td>
<td>$25,670,969</td>
<td>$30,086,479</td>
<td>$30,548,168</td>
<td>$34,170,329</td>
<td>$33,484,339</td>
<td>$291,390,036</td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>76,005</td>
<td>66,459</td>
<td>67,567</td>
<td>73,924</td>
<td>61,034</td>
<td>69,967</td>
<td>71,198</td>
<td>80,664</td>
<td>100,923</td>
<td>119,028</td>
<td>113,476</td>
<td>118,248</td>
<td>1,018,493</td>
</tr>
<tr>
<td>Other income</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>64,606</td>
<td>64,606</td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td><strong>$26,089,913</strong></td>
<td><strong>$18,656,099</strong></td>
<td><strong>$20,363,107</strong></td>
<td><strong>$19,352,831</strong></td>
<td><strong>$17,627,909</strong></td>
<td><strong>$17,864,233</strong></td>
<td><strong>$18,322,384</strong></td>
<td><strong>$25,751,633</strong></td>
<td><strong>30,187,402</strong></td>
<td><strong>30,667,196</strong></td>
<td><strong>34,283,805</strong></td>
<td><strong>33,667,193</strong></td>
<td><strong>292,473,135</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>17,160,575</td>
<td>16,892,744</td>
<td>17,551,069</td>
<td>23,433,656</td>
<td>16,893,908</td>
<td>12,980,824</td>
<td>12,768,605</td>
<td>17,052,324</td>
<td>21,078,947</td>
<td>20,295,745</td>
<td>21,147,246</td>
<td>19,982,062</td>
<td>217,237,705</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>236,907</td>
<td>256,826</td>
<td>264,613</td>
<td>269,608</td>
<td>250,743</td>
<td>287,282</td>
<td>275,835</td>
<td>293,292</td>
<td>293,358</td>
<td>305,947</td>
<td>338,355</td>
<td>326,896</td>
<td>3,399,752</td>
</tr>
<tr>
<td>Data manager</td>
<td>301,479</td>
<td>300,856</td>
<td>301,200</td>
<td>301,385</td>
<td>301,626</td>
<td>302,227</td>
<td>303,253</td>
<td>153,148</td>
<td>291,172</td>
<td>292,894</td>
<td>292,448</td>
<td>291,143</td>
<td>3,432,831</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>94,279</td>
<td>94,000</td>
<td>94,377</td>
<td>94,000</td>
<td>99,753</td>
<td>94,263</td>
<td>94,613</td>
<td>99,147</td>
<td>99,475</td>
<td>96,705</td>
<td>95,000</td>
<td>97,248</td>
<td>1,152,860</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>130,737</td>
<td>114,869</td>
<td>129,999</td>
<td>123,353</td>
<td>230,634</td>
<td>161,132</td>
<td>256,854</td>
<td>236,477</td>
<td>286,604</td>
<td>258,879</td>
<td>173,991</td>
<td>447,187</td>
<td>2,550,626</td>
</tr>
<tr>
<td>General and administration</td>
<td>99,316</td>
<td>70,743</td>
<td>70,028</td>
<td>71,621</td>
<td>106,969</td>
<td>117,599</td>
<td>76,370</td>
<td>60,525</td>
<td>60,359</td>
<td>88,542</td>
<td>100,476</td>
<td>244,766</td>
<td>1,175,314</td>
</tr>
<tr>
<td>Depreciation</td>
<td>4,179</td>
<td>4,179</td>
<td>4,335</td>
<td>4,393</td>
<td>3,989</td>
<td>4,160</td>
<td>4,130</td>
<td>4,219</td>
<td>4,219</td>
<td>4,219</td>
<td>4,219</td>
<td>50,440</td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td><strong>18,027,472</strong></td>
<td><strong>17,734,317</strong></td>
<td><strong>18,419,531</strong></td>
<td><strong>24,300,016</strong></td>
<td><strong>17,878,602</strong></td>
<td><strong>13,947,487</strong></td>
<td><strong>13,781,660</strong></td>
<td><strong>17,899,122</strong></td>
<td><strong>22,114,134</strong></td>
<td><strong>21,342,931</strong></td>
<td><strong>22,151,735</strong></td>
<td><strong>21,393,521</strong></td>
<td><strong>228,999,528</strong></td>
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<tr>
<td>Operating income (loss)</td>
<td><strong>$8,061,441</strong></td>
<td><strong>$921,782</strong></td>
<td><strong>$1,943,576</strong></td>
<td><strong>$4,947,185</strong></td>
<td><strong>$619,663</strong></td>
<td><strong>$3,916,746</strong></td>
<td><strong>$4,540,724</strong></td>
<td><strong>$7,852,511</strong></td>
<td><strong>$8,073,268</strong></td>
<td><strong>$9,324,265</strong></td>
<td><strong>$12,132,070</strong></td>
<td><strong>$12,273,672</strong></td>
<td><strong>63,473,007</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest and related expense</td>
<td>-</td>
<td>-</td>
<td>(55,856)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(50,608)</td>
<td>(9,316)</td>
<td>(9,316)</td>
<td>(9,746)</td>
<td>(144,157)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total nonoperating revenues (expenses)</strong></td>
<td><strong>30,474</strong></td>
<td><strong>30,758</strong></td>
<td><strong>3,141</strong></td>
<td><strong>128,308</strong></td>
<td><strong>96,180</strong></td>
<td><strong>109,063</strong></td>
<td><strong>108,802</strong></td>
<td><strong>64,599</strong></td>
<td><strong>112,955</strong></td>
<td><strong>124,433</strong></td>
<td><strong>126,890</strong></td>
<td><strong>151,067</strong></td>
<td><strong>1,086,630</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>$8,092,315</td>
<td>$952,540</td>
<td>$1,946,717</td>
<td>$(4,618,877)</td>
<td>$(523,483)</td>
<td>$4,025,809</td>
<td>$4,649,526</td>
<td>$7,917,070</td>
<td>$8,186,223</td>
<td>$9,448,698</td>
<td>$12,258,960</td>
<td>$12,424,739</td>
<td>$64,960,237</td>
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</tr>
</tbody>
</table>

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**Sept. 2019 Treasurer Report**
## HEADCOUNT

<table>
<thead>
<tr>
<th>Position</th>
<th>Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Account Services and Community Relations</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Account Services Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Energy Consultant</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Energy Associate</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Communications Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Community Outreach Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Communications Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Board Clerk/Executive Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Finance and Administration</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Services Manager</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Management Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Power Resources</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Planner</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Power Settlements &amp; Compliance Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Manager of Regulatory and Legislative Affairs</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Decarboniation and Grid Innovation</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Data Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>25</strong></td>
<td><strong>21</strong></td>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>
## Return on Investments

<table>
<thead>
<tr>
<th>Money Market</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
</table>

### Portfolio Invested

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily portfolio invested</td>
<td>20,154,823</td>
<td>20,185,339</td>
<td>35,700,846</td>
<td>60,277,386</td>
<td>60,380,303</td>
<td>60,476,566</td>
<td>60,585,707</td>
<td>70,923,535</td>
<td>70,927,788</td>
<td>72,350,029</td>
<td>91,194,298</td>
<td></td>
<td></td>
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<tr>
<td>% of average daily portfolio invested</td>
<td>36.5%</td>
<td>31.7%</td>
<td>57.3%</td>
<td>87.2%</td>
<td>85.3%</td>
<td>84.6%</td>
<td>85.1%</td>
<td>81.7%</td>
<td>92.7%</td>
<td>86.5%</td>
<td>79.3%</td>
<td>90.0%</td>
<td></td>
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</table>

### Detail of Portfolio

<table>
<thead>
<tr>
<th>Money Market - River City Bank</th>
<th>Opening Rate</th>
<th>August Rate</th>
<th>Carrying Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.26%</td>
<td>2.08%</td>
<td>$91,347,492</td>
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* Note: Balance available to invest does not lockbox or debt serve reserve funds.
CUSTOMER ACCOUNTS

RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>Oct</td>
<td>239.7</td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td>240.0</td>
<td></td>
</tr>
<tr>
<td>Dec</td>
<td>240.4</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>240.5</td>
<td></td>
</tr>
<tr>
<td>Feb</td>
<td>240.6</td>
<td></td>
</tr>
<tr>
<td>Mar</td>
<td>240.8</td>
<td></td>
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<tr>
<td>Apr</td>
<td>241.4</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>240.4</td>
<td></td>
</tr>
<tr>
<td>Jun</td>
<td>240.3</td>
<td></td>
</tr>
<tr>
<td>Jul</td>
<td>243.1</td>
<td></td>
</tr>
<tr>
<td>Aug</td>
<td>243.1</td>
<td></td>
</tr>
<tr>
<td>Sep</td>
<td>243.1</td>
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</table>

NON-RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>27.8</td>
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<tr>
<td>Nov</td>
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<td></td>
</tr>
<tr>
<td>Dec</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Feb</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Mar</td>
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<td></td>
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<tr>
<td>Apr</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>May</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Jun</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Jul</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Aug</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Sep</td>
<td>28.0</td>
<td></td>
</tr>
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</table>
WEATHER STATISTICS

COOLING DEGREE DAYS

HEATING DEGREE DAYS
<table>
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<tr>
<th>Accounts Receivable</th>
<th>Days</th>
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<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>0-30</td>
<td>31-60</td>
<td>61-90</td>
<td>90-120*</td>
<td>Over 120*</td>
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<tr>
<td>Total</td>
<td>31,776,814</td>
<td>29,228,755</td>
<td>777,162</td>
<td>370,939</td>
<td>196,439</td>
</tr>
<tr>
<td>Period %</td>
<td>100%</td>
<td>92.0%</td>
<td>2.4%</td>
<td>1.2%</td>
<td>0.6%</td>
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</table>

*Note: A portion of accounts that are greater than 90 days old have been sent back to PG&E, however the receivable remains outstanding until PG&E writes the account off.
Item 1c: Receive Non-Standard Pricing Policy Performance Update

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Bray, Director of Account Services and Community Relations

Date: 12/11/2019

RECOMMENDATION

BACKGROUND
At the June 12, 2019 meeting of the SVCE Board, the Board approved a Non-Standard Pricing Agreement Policy and Resolution delegating authority to the Chief Executive Officer ("CEO") to negotiate and execute non-standard pricing agreements with eligible commercial and industrial (C&I) customers, provided that the pricing agreements meet the minimum requirements set forth in the Non-Standard Pricing Agreement Policy.

This new policy was established as a result of Senate Bill 237, passed in 2018, which re-opened the cap on Direct Access ("DA") for C&I customers. Historically, many large PG&E or CCA customers have been on a ‘waitlist’ to become DA customers, as associated energy pricing structures are typically lower-cost and more flexible. As a result of the re-opening, some commercial customers with SVCE will now be eligible to move to DA beginning in 2021.

Large C&I customers represent nearly one-third of SVCE’s overall load. Losing large customers to DA means measurable load loss for SVCE. C&I customers are critical partners in helping SVCE achieve its primary goals:
1) Reducing local GHG emissions
2) Maintaining a strong financial foundation and competitive electricity prices
3) Enabling ongoing GHG reduction via electrification of transportation and the built environment
4) Enabling re-investment in the local community

DA allocations are apportioned to customers on the waitlist via a lottery administered by PG&E. There have been two recent lotteries: one for the 2019 waitlist and one for the 2020 waitlist. Under the re-opening, each lottery awarded approximately 940 GWh of Direct Access allocation across all load-serving entities in PG&E territory, including SVCE, for a total of 1,880 GWh in new Direct Access load.

When the policy was adopted by the Board in June, the lottery results were not yet known. SVCE had as much as 10% of its load at risk of departure, if key customers were successful in getting DA capacity in the lottery. In August, SVCE was informed of the full 2019 and 2020 lottery results, and that our associated load loss in January 2021 would likely be 57 GWh/year, or approximately 1.5% of our overall load. While near-term load loss to DA is modest, Phase 2 of the SB 237 proceeding is currently in process, and the CPUC study on expanding DA, due in June of 2020, may lead to additional DA market expansion.

The Direct Access marketplace is highly competitive, offering more flexible or lower-cost pricing structures than offered by traditional load-serving entities. Being competitive with Direct Access providers requires that SVCE structure non-standard pricing agreements in a way that is highly responsive and protects confidential customer information.
Under SVCE’s approved non-standard pricing agreement policy, a non-standard pricing agreement must:

1) apply exclusively to customers with annual load in SVCE’s service territory greater than 10GWh

2) be marginal cost-based and account for any volume and/or price risk

3) be priced to allow SVCE to cover variable costs and achieve some level of contribution to fixed cost and reserve margin, in conformance with SVCE’s financial objectives, Risk Management Policy and controls.

4) require a commitment level from the customer (e.g. volume, length of term) commensurate with the non-standard pricing agreement offered to the customer

5) meet SVCE’s carbon-free requirements, and be consistent with SVCE’s decarbonization strategy for power supply, transportation and the built environment

ANALYSIS & DISCUSSION

Since approval of the policy in June, SVCE has worked to develop two new general offerings for large customers eligible for non-standard pricing agreements:

GreenPrime Direct
Under the new GreenPrime direct offering, large customers can work with SVCE to contract for electricity from a specific renewable energy project. This helps large customers meet their exact needs for additionality, load matching and/or technology type. SVCE provides the associated RECs and power to the customer’s site, under a competitively priced long-term agreement. Historically, such arrangements have been structured by several of our major high-tech customers through direct access service provider relationships.

Eco-Investment Discount
Eligible customers who make a multi-year commitment to buying clean electricity from SVCE can accrue an additional monthly discount into a co-investment fund that can be used for qualifying building and vehicle electrification projects. Discount amounts are lower for shorter-term agreements, e.g. three years, and greater for longer-term agreements, e.g. 7 years. Funds can be used to pay for up to 50% of a customer’s electrification project cost, or up to 100% if the project qualifies as an innovation pilot.

SVCE staff has presented these new offerings to several qualifying C&I customers, and currently has active negotiations underway with pilot customers for both offerings.

Staff has developed detailed non-standard pricing policy checklist, with requirements for development and review of proposed agreements against the approved non-standard pricing policy. The Risk Oversight Committee is briefed monthly on the status of these offerings, and related customer activities and offers.

STRATEGIC PLAN
The Non-Standard Pricing Agreement Policy is in direct support of the Board approved Strategic Plan as follows:

- Goal 2: Maintain competitive rates to acquire and retain customers
  - Strategy 2.4: Examine customized rate options for large customers while meeting SVCE’s carbon and financial goals
- Goal 11: Manage power supply resources and risks to financial and rate objectives
  - Strategy 11.1: Optimize existing resources to increase value to SVCE customers and evaluate opportunities to minimize cost of procuring and scheduling electricity and related products; and
- Strategy 11.2: Manage market price, credit, load and supplier volume risk to meet rate and financial objectives
**ALTERNATIVE**
Alternatives include maintaining a standard tariff only. This approach will limit SVCE’s ability to respond in a competitive and responsive fashion to customers considering leaving SVCE for DA service.

**FISCAL IMPACT**
SVCE expects 57 GWh (the volume from the 2019 and 2020 waitlists) will depart, resulting in an annual revenue loss of approximately $5-6 million. The fiscal impact of establishing future non-standard pricing agreements will be weighed against the associated financial and decarbonization benefits of longer-term retention of the customer in question.
Staff Report – Item 1d

Item 1d: Receive Customer Resource Center Program Follow Up Information

To: Silicon Valley Clean Energy Board of Directors

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

Date: 12/11/2019

RECOMMENDATION
Receive update and follow-up information about the SVCE Customer Resource Center.

BACKGROUND
The Customer Resource Center (CRC) will be an online platform for customer engagement. The goal is to build awareness and offer tools that will get customers to be inspired, educated and act on electrification. The CRC will help customers assess energy use, costs and impacts, and opportunities for vehicle and building electrification.

The CRC program was approved in December 2018 as part of the Decarbonization Programs Roadmap. Staff presented an update at the November 13 Board of Directors meeting, to share the latest developments of the CRC structure and timeline. The CRC development process included a request for proposals for solutions, and SVCE received 16 responses. Staff shared that the board should expect three to five contracts in December 2019 and January 2020, for selected vendor solutions that fulfill critical functions of the CRC. The CRC is targeted for an initial launch in April 2020.

ANALYSIS & DISCUSSION
During the Nov. 13 presentation and discussion, the SVCE Board of Directors asked staff several questions about the tools being evaluated for the CRC. The following answers apply to all vendors being considered for the EV, solar+storage and appliance marketplace tools. Answers were developed in consultation with SVCE’s legal counsel.

1. If our site is recommending specific vendors or products, does this create liability or a stamp of approval from the agency? Legally, are we protected from liability of products and vendors recommended?
   - The products, contractors and installers featured are selected by the CRC vendor. SVCE is not directly involved in the selection process related to the directory of products and services and related information featured on the vendor-provided site. When a customer purchases an item or agrees to be contacted by installers to receive quotes, they are agreeing to the terms and conditions of the vendor, and entering into a relationship with the vendor and not SVCE. Customers will go through the SVCE website for information on general product or service categories, but specific products are curated, purchased and shipped through the third-party vendor. We can add language to the CRC web page that states that the customer will be buying products from the listed vendors and not from SVCE and that SVCE is not making recommendations on any particular products or contractors.
• SVCE may make category suggestions on products, such as featuring Wi-Fi-enabled EV chargers, but SVCE would not recommend specific brands. It is up to the vendor to select the products that are featured. Customers are presented with detailed product information and reviews in a familiar online shopping experience, to ultimately decide which products or services to select.

2. Will SVCE monetize or earn revenue anywhere along the stream as a result of making recommendations or referrals?
   • This is an option that some vendors have proposed, but it is up to the SVCE to determine if a revenue-share model is desired. Staff is recommending that the best possible price go to the customer, versus receiving a share of the revenue from the CRC. However, from a legal standpoint, there is nothing that would prohibit SVCE from earning a portion of the sales revenue. Such revenue could be used to offset the cost of the annual licensing agreements and reduce the administrative costs of the CRC.

3. Will customers have access to only local vendors/contractors, or will they have access to vendors/contractors that are within the region and may be able to do the job at a more competitive rate?
   • SVCE is not directly involved in the selection process for the contractors and installers featured on a vendor’s website. Each CRC vendor has their own process for reviewing and authorizing their network of contractors/installers. Vendors typically have a screening process to make sure the contractors/installers in their network are licensed, have been in business for several years, and have good reviews. The vendor will typically remove contractors/installers that receive complaints or negative reviews from customers. The contractors/installers presented to customers are based on whether they serve our county.

4. As a public agency, can we encourage the CRC vendor to include more women and minority-owned businesses?
   • The products, contractors and installers featured are selected by the CRC vendor. SVCE is not directly involved in the selection process. The CRC vendor provides and selects the directory of products and services to feature on the vendor-provided site and information.
   • SVCE may ask vendors to seek products/services from local businesses including woman and/or minority-owned businesses. We also could directly encourage such businesses to make applications to our vendors. In the end, the CRC vendor would be making the selection.

5. Could the board get a mock-up of what this will look like?
   • At the conclusion of contract negotiations with a vendor, staff can provide mock-ups of the associated software solution in the Board staff report seeking contract approval.

6. How will we ensure that links are working and not broken?
   • Service agreements will contractually state the expected level of service from vendors, including strict adherence to SVCE’s IT security and customer data and privacy policies.

7. Should we look at how we monetize our assets to these vendors, which is access to our customers?
   • The vendors being considered for the CRC typically provide their products via a ‘Software as a Service’ (SaaS) business agreement. The cost to SVCE for implementation includes an initial one-time setup fee, and an on-going annual SaaS license fee. In combination, these costs reflect the value the vendor places on SVCE’s business channel.

Timeline
Final vendor selections are wrapping up with contract negotiations expected to conclude in December. The marketing firm contract will be brought to the board in December, and the remaining contracts in January for
Agenda Item: 1d

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.
Staff Report – Item 1e

Item 1e: Approve and Authorize the Chief Executive Officer to Execute Agreement with School of Thought for Website Design and Marketing Services for Online Customer Resource Center

To: Silicon Valley Clean Energy Board of Directors

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

Date: 12/11/2019

RECOMMENDATION
Staff recommends the Board of Directors authorize the Chief Executive Officer to execute an agreement with School of Thought for an amount not to exceed $140,000 through June 2020, to develop messaging, an updated website design, and a marketing/communications plan for the new SVCE Online Customer Resource Center.

BACKGROUND
The goal of the Online Customer Resource Center (CRC) is to provide easily-accessible information and tools that inspire, educate, and enable customers to take action related to decarbonization and electrification. The CRC will help customers assess energy use, costs and impacts, and opportunities for vehicle and building electrification.

The CRC program was approved in December 2018 as part of the Decarbonization Programs Roadmap. Staff presented an update at the November 13 Board of Directors meeting, to share the latest developments of the CRC structure and timeline. This contract for website design and marketing services aligns with the “Inspire” section of the CRC scope.

ANALYSIS & DISCUSSION
In order to meet the agency’s longer-term decarbonization goals, SVCE must shift its messaging from the operational aspects of Community Choice Aggregation to inspiring, educating and enabling customer action related to electrification of buildings and transportation.

The CRC development process included a request for proposals for solutions. SVCE received numerous responses. Four responses were focused on the ‘Inspire’ section of the CRC scope. The School of Thought proposal best matched SVCE’s needs for a capable web design and marketing firm with relevant experience in decarbonization and electrification.

School of Thought is currently working with the California Building Decarbonization Coalition (BDC) to create a mass awareness campaign about the need to move away from fossil fuels in homes, targeted to both residents and the contractor and building communities. SVCE is a founding member of the BDC and a funding partner for the awareness campaign. School of Thought will be able to leverage the considerable research they have already performed for this initiative, including with a Sunnyvale-based focus group. After six months of work, BDC reports an excellent experience in their work with School of Thought.
A critical first step in inspiring customers to learn about lowering their carbon footprint is relevant and catchy messaging. School of Thought is well qualified to provide such messaging development, web design and marketing approaches for the top level of the CRC, and to help re-frame the overall SVCE website as a resource for customers.

**Messaging Strategy**  
Messaging needed to drive customers to a revamped CRC-focused SVCE website must speak to multiple customer segments – from those with advanced energy knowledge to those with little or no related knowledge. School of Thought will leverage its relevant experience with the California Building Decarbonization Coalition, and additional research with SVCE customers and stakeholders, to gain a strong understanding of customer ‘care-abouts’ and external perceptions. This will enable development of strong high-level messaging, and relevant local content and calls to action.

SVCE will separately work with our translation vendor and community partners to translate these messages into culturally appropriate messaging for the translated microsites on the SVCE website available in Spanish, Chinese and Vietnamese.

**Website Design & Functionality**  
In addition to developing messaging around the CRC, School of Thought will develop the user experience and user interface design (UX/UI). This includes key webpages that make up the CRC platform, as well as re-imagining the website homepage. The messaging and flow of information on key CRC webpages will be designed to inspire customers, and lead them into the education and action sections of the platform. The content for these sections will be provided by other vendors - those with solar+storage, electric vehicle and appliance marketplace tools.

**Integrated Marketing Plan**  
School of Thought will also develop the marketing campaign look and feel, incorporating the messaging work informed by their research. These campaigns will be used to drive traffic to the CRC from a variety of outreach methods - including direct customer email outreach, leveraging member agency communications, and paid advertising. The ads may also be customized to drive traffic directly to the most relevant aspects of the CRC, based on customer personas and preferences. For example, ads can lead directly to the EV or solar+storage functions of the CRC to customers who are already interested in these technologies.

**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

**ALTERNATIVE**  
Do not approve the contract with School of Thought. Staff will pursue other possible vendors, and the timeline for launching the Customer Resource Center will likely be delayed.

**FISCAL IMPACT**  
The contract is not-to-exceed $140,000. The budget is allocated from the approved $350,000 for the CRC program in Fiscal Years 18-19 and 19-20.
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
SCHOOL OF THOUGHT FOR
WEBSITE DESIGN AND MARKETING SERVICES

THIS AGREEMENT, is entered into this 16th day of December 2019, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and School of Thought, a California corporation whose address is 544 Pacific Avenue, Third Floor, San Francisco, CA 94133 (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 website design and marketing services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**
   The term of this Agreement shall commence on December 16, 2019, and shall terminate on June 30, 2020, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**
   Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**
   Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one-hundred forty thousand dollars ($140,000.00) based on the rates and terms set forth in Exhibit "C," 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 specially trained professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel.

6. **INDEPENDENT PARTIES**
Authority and 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 RECOUSE 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 of 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.

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. Tom Geary 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:
Tom Geary
School of Thought
544 Pacific Avenue, 3rd Floor
San Francisco CA 94133

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

_______________________________
Don Bray
Director of Account Services & Community Relations
CONSULTANT NAME
Tom Geary

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
Exhibit A
Scope of Services

Project Kick-off

School of Thought (SoT) recommends starting off the project with a workshop that will include key team members from SVCE. The objective behind this workshop will be for both parties to align on project goals, and for SoT to gain a deeper understanding of the brand, target market, and ask.

The discussion will include:
- Company history, current marketing strategies, past challenges and key success metrics
- Learning more about target market segments
- Develop a well-rounded internal perspective of the brand, mission and vision
- Brainstorming, collectively, to answer questions about the brand

Part A: Messaging Strategy

The workshop, at the beginning of the project, will give a great internal perspective for the brand, but SoT will also want to uncover some external (customer) perceptions of the brand. SoT recommends a customer survey that will provide key insights for the messaging strategy. An efficient approach may be to speak to some of the customers in SVCE’s database. SoT will also study and analyze existing market research reports and marketing materials provided by SVCE.

The messaging strategy will include creating new key messaging territories, high level content buckets, tone, “reasons to believe”, sample headlines and possible call to action language.

Objective: Gather feedback/perceptions about SVCE from the vantage point of customers. Discussion guides will be drafted based on learnings from the working session and from SoT’s analysis of the provided materials. The goal here being to determine which concepts overwhelmingly drive customer engagement with SVCE and can inform the direction in the following stage of UX/UI development.

Deliverables:
- Develop and finalize questionnaire - Qualitative Research (30 min interviews)
- Conduct the survey - SoT will speak to 10-12 SVCE customers via Zoom
- Analyze results in relation to goals (findings will inform messaging and design strategy)
- Round 1 Strategy Presentation: Development of Messaging Strategy
- Round 2 Strategy Presentation: Changes to Round 1 presentation. Aim to finalize the direction and strategy

Part B: UX/UI design

Objective: Design a modern, easy to navigate CRC experience for SVCE customers. The CRC must come across as inspiring, educational and have actionable tools. SoT will design 5-6 sections for the CRC and also the most-visited sections (2-3) of the main SVCE website. The overall look and feel of the SVCE website will align to that of the CRC.
Content modules (taken from RFP):
The key topics that SVCE wishes to include in the CRC are as follows:

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

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

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

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

**Deliverables:**
- Round 1 Presentation: Wireframe
- Round 2 Presentation: Tweaks to wireframe / Mood boards / Creative directions
- Round 3 Presentation: Approved direction, polished (5-6 pages)
- Final Presentation: Tweaks from Round 3

SoT will provide full design support and coordinate the handover of design files to the developer designated for the project. SoT will meet with the partner at the beginning of the project to ensure we are synced on the specific needs for production.

**Part C: Integrated Marketing Campaign Concepts**

Objective: To create a compelling integrated campaign to drive our target audience to the CRC site. SoT will brainstorm both digital and non-digital components as part of this effort. Neither media planning nor production is included in this scope.

**Tasks:**
- Round 1: Up to 3 Creative directions
- Round 2: Develop selected direction across a hypothetical media array (Print, Out of Home (e.g. bus shelters, buses, light rail), Digital, Social, Activation / Events suggestions)
- Round 3: Continue to polish selected direction based on client comments. SoT will deliver ad-like objects using stock. Art costs and production of final assets is not included in this scope.
Exhibit B
Schedule of Performance

Work in this schedule is to be performed from December 16, 2019 through the anticipated CRC launch around Earth Day, April 22, 2020. The contract runs through June in case there is a delay in the expected launch date.

This schedule may be modified with the written approval of the Authority.

<table>
<thead>
<tr>
<th>Task</th>
<th>Begin</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Stakeholder workshop</td>
<td>Dec. 16</td>
<td>Dec. 20</td>
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<tr>
<td>4. Messaging Development</td>
<td>Jan. 21</td>
<td>Feb. 21</td>
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<tr>
<td>5. Website Design</td>
<td>Jan. 6</td>
<td>Apr. 15</td>
</tr>
<tr>
<td>6. Website Development Review and Feedback</td>
<td>Mar. 15</td>
<td>Apr. 20</td>
</tr>
<tr>
<td>7. Integrated Marketing Campaign Concepts</td>
<td>Jan. 30</td>
<td>Mar. 2</td>
</tr>
</tbody>
</table>
Exhibit C
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. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount 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 one-hundred forty thousand dollars ($140,000.00), as set forth below. 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.

<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Budget</th>
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<tbody>
<tr>
<td><strong>Part A – Messaging Strategy</strong></td>
<td></td>
</tr>
<tr>
<td>1. Prep and Working session with key team members</td>
<td>$42,240</td>
</tr>
<tr>
<td>2. Study existing marketing materials + research</td>
<td></td>
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<tr>
<td>3. Customer Survey / Interviews: Discussion guide, interviewing and analysis (findings will inform the messaging and design strategy)</td>
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<tr>
<td>4. Development of the Messaging Strategy. Distillation of all findings for presentation. 2 to 3 rounds</td>
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<tr>
<td><strong>Part B – UX/UI Design</strong></td>
<td>$56,760</td>
</tr>
<tr>
<td>1. Round 1 Wireframe Presentation</td>
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<tr>
<td>2. Round 2: Changes to wireframe / Mood boards / Creative directions</td>
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<tr>
<td>3. Round 3: Approved direction polished (5-6 pages/ modules)</td>
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<tr>
<td>4. Final: Final adjustments from round 3</td>
<td></td>
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<tr>
<td>5. Trafficking assets to development team (multiple waves)</td>
<td></td>
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<tr>
<td><strong>Part C – Integrated Marketing Campaign Concepts</strong></td>
<td>$34,000</td>
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<tr>
<td>1. Round 1: Up to 3 Creative directions</td>
<td></td>
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<tr>
<td>2. Round 2: Polish selected direction (Print, OOH, Digital, Social, activation / booth design)</td>
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<tr>
<td>3. Round 3: Tweaks to Round 2 (SOT will deliver ad-like objects using stock imagery. Production of assets is not included in this scope)</td>
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<tr>
<td>4. Development Review</td>
<td></td>
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<tr>
<td><strong>Miscellaneous costs to be authorized and approved by SVCE staff</strong> (e.g. stock art and photography, or additional design review)</td>
<td>$7,000</td>
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<tr>
<td><strong>Total</strong></td>
<td>$140,000.00</td>
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**Rates**
SoT’s rates are blended, meaning all members of the team bill at the same rate of $165/hour. Project management, account management and planning is included in this scope.
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, personnel who performed the services, hours worked, task(s) for which work was performed).

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 expenses must be authorized in advance in writing by Authority.

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 D
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.
Item 1f: Adopt Resolution to Authorize the Chief Executive Officer to Execute a Service Agreement with Energy and Environmental Economics and to Amend Approved Master Agreements

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation Programs
Monica Padilla, Director of Power Resources

Date: 12/11/2019

RECOMMENDATION
Adopt Resolution No. 2019-20 to authorize the Chief Executive Officer (CEO) to:

1. Execute a service agreement with Energy and Environmental Economics ("E3") for general strategic consulting and support related to resource management, decarbonization strategy and programs roadmap implementation, load forecasting, and retail rate design and pricing options; and,

2. Amend the authority delegated under the master service agreements with Flynn Resources Consulting Inc. ("Flynn"), Hanover Strategy Advisers ("Hanover") and Ascend Analytics Inc. ("Ascend") approved under Resolution No. 2018-15 to include E3.

Once approved by the Silicon Valley Clean Energy Authority (SVCE) Board of Directors ("Board"), the four service agreements would collectively be an “Approved Master Services Agreements”. Subject to Board-appropriation of funds, projects may be assigned under this agreement on a task order basis under the Approved Master Services Agreements.

BACKGROUND
SVCE has a need to rapidly advance its portfolio management and retail pricing capabilities with the goals of reducing costs, managing risk and enhancing value for its customers through various rate offerings in order to meet the Board-adopted mission and policies. Staff’s ability to effectively monitor, digest and respond to this huge influx of legislative and regulatory changes along with increasing demands to improve internal processes and efficiencies, reduce costs and enhance the customer’s value proposition is limited by existing bandwidth and tools.

Staff has successfully carried out key strategic and pricing analyses under master services agreements with Flynn, Hanover, and Ascend approved by the Board under Resolution No. 2015-15. The Board by resolution and/or minute action has previously authorized the CEO to execute service agreements with multiple counterparties. The attached resolution provides authority to enter into a service agreement with E3.

ANALYSIS & DISCUSSION
Power supply planning and acquisition requires specialized knowledge and expertise to perform the requisite analysis, plan development, regulatory submittals, and effective energy procurement. Accordingly, these functions are well suited to be served through additional consultant resources.

E3 brings a unique set of tools, experience and resources to effectively meet SVCE’s needs. Work will be assigned under a task order system and compensated via a time-and-material arrangement with a cost not to exceed
amount established for each task. The services will vary and require flexibility as SVCE’s needs are expected to evolve in response to market conditions, external opportunities and internal initiatives. In some cases, E3 may be asked to work together with other consultants on a specific task and/or project.

E3 possesses certain specialized capabilities and experience in the areas around resource management, and CPUC regulatory proceedings, PG&E rates, and decarbonization strategies, policies and programs. E3 also has deep experience in providing strategic support to many municipal utilities, investor owned utilities, and community choice aggregators, both throughout California and the United States.

Specific areas in which E3 may provide services include, but are not limited to, the following:

- Resource management (including integrated resource planning)
- Decarbonization strategy and programs roadmap implementation
- Load forecasting
- Retail rate design and pricing options

**STRATEGIC PLAN**

Approval of the attached Resolution and Approved Master Services Agreement is in direct support of the Board-approved Strategic Plan as follows:

- **Goal 2:** Maintain competitive rates to acquire and retain customers
  - **Strategy 2.1:** Provide carbon-free electricity to additional customers in the SVCE service area and increase market share;

- **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 (Please see the Decarb Roadmap for the comprehensive list of programs and strategies SVCE is pursuing) to achieve community-wide emissions reduction targets

- **Goal 12:** Manage power supply resources and risks to financial and rate objectives
  - **Strategy 12.1:** Optimize existing resources to increase value to SVCE customers and evaluate opportunities to minimize cost of procuring and scheduling electricity and related products; and
  - **Strategy 12.2:** Manage market price, credit, load and supplier volume risk to meet rate and financial objectives

**ALTERNATIVE**

A request for proposals (RFP) for consulting services was not issued to select E3. Instead, staff determined that recent experience under an existing contract and the need to expediously put in place support services could best be achieved through their addition under the master consulting agreement framework. Alternatively, the Board may direct staff to issue an RFP to select one or more consultants and bring each consultant agreement to the Board for approval. This approach is not recommended due to the need to develop competitive strategies and modeling ability for IRP implementation and beyond, as soon as possible.

**FISCAL IMPACT**

The Board approved Resolution 2018-15 which authorized the CEO to spend an amount not to exceed one-million dollars ($1,000,000) in aggregate through September 30, 2021, for all service agreements, including Flynn, Hanover, and Ascend. Spending under a contract under the Approved Master Services Agreements would have no additional fiscal impact, as staff’s ability to commit to spending under the Approved Master Services Agreements through task orders is limited to the Board’s appropriation of funds as part of the annual budget approval process. Staff has reported spending to the Board under the agreements on a quarterly basis. The table below is a summary of expenditures and commitments to date.
ATTACHMENTS

1. Resolution 2019-20 Authorizing the CEO to Execute a Service Agreement with E3 and to Amend the Authority Set Under Resolution No. 2018-15
2. E3 Agreement
SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2019-20

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE A MASTER SERVICES AGREEMENT WITH ENERGY AND ENVIRONMENTAL ECONOMICS AND TO AMEND APPROVED MASTER SERVICES AGREEMENT WITH HANOVER STRATEGY ADVISORS, FLYNN RESOURCES CONSULTING INC. AND ASCEND ANALYTICS, INC.

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

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

WHEREAS, launch of service for Phase I occurred in April 2017, and launch of service for the remaining Phases occurred in July 2017;

WHEREAS, SVCE has a need to rapidly advance its portfolio management and retail pricing capabilities with the goals of reducing costs, managing risk and enhancing value for its customers through various rate offerings in order to further the Board’s Strategic Plan;

WHEREAS, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, SVCE has engaged several consultants to provide support services and enhance SVCE’s internal capabilities;

WHEREAS, on November 14, 2018 the Board via Resolution No. 2018-15 delegated authority to the Chief Executive Officer (CEO) to execute service agreements with the following consultants currently parties to the Master Consulting Agreement:

Hanover Strategy Advisors
Flynn Resources Consulting
Ascend Analytics

WHEREAS, the Board further delegated to the CEO a total expenditure authorization under the Master Consulting Agreements of one million dollars ($1,000,000) through September 30, 2021 inclusive and subject to sufficient appropriations approved by the Board in each fiscal year;

WHEREAS, to date SVCE has spent $240,619.38 as of December 4, 2019, well within Board approved appropriations;
WHEREAS, the Board continues to reserve to itself the authority to authorize new Approved Master Agreements;

WHEREAS, Energy and Environmental Economics desire to provide tools and support for resource management, decarbonization strategy and programs implementation, load forecasting, and retail rate design and pricing options on a task order basis pursuant to a master agreement (“Services”);

WHEREAS, Silicon Valley Clean Energy desires to enter into a Master Services Agreement with E3 and to amend the Approved Master Services Agreement with Hanover Strategy Advisers, Flynn Resources Consulting and Ascend Analytics.

WHEREAS, no commitment of funds shall be made without the appropriation of such funds by the Board;

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

Adopt Resolution No. 2019-20 to authorize the Chief Executive Officer (CEO) to execute a service agreement with Energy and Environmental Economics (“E3”) and to amend the authority delegated to the CEO under the Master Consulting Agreements with Flynn Resources Consulting Inc. (“Flynn”), Hanover Strategy Advisers (“Hanover”) and Ascend Analytics Inc. (“Ascend”) approved under Resolution No. 2018-15 to include E3.

ADOPTED AND APPROVED this 11th day of December 2019.

Chair

ATTEST:

Clerk

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<td>City of Sunnyvale</td>
<td>Director Smith</td>
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AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND ENERGY AND ENVIRONMENTAL ECONOMICS GENERAL CONSULTING SERVICES

THIS AGREEMENT, is entered into this 12 day of December, 2019, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Energy and Environmental Economics (E3), a California corporation whose address is 44 Montgomery St Suite 1500 San Francisco, CA 94104 (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 consulting services related to resource management, decarbonization strategy and programs roadmap implementation, load forecasting, and retail rate design and pricing options upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM
   The term of this Agreement shall commence on December 12, 2019, and shall terminate on September 30, 2021, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED
   Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. COMPENSATION TO CONSULTANT
   Consultant shall be compensated for services performed pursuant to this Agreement on a task order basis as directed by the Authority and based on the rates and terms set forth in Exhibit "C," 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 specially trained professionals in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel.

6. **INDEPENDENT PARTIES**
Authority and 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 RECOURSE 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 workers compensation 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 of 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.

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. Amber Mahone 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:
Amber Mahone
Energy and Environmental Economics
44 Montgomery Street
Suite 1500 San Francisco, CA 94104

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**

Monica V. Padilla  
Director of Power Resources
CONSULTANT NAME
E3
By: __________________________
Name: Amber Mahone
Title: Partner
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
Exhibit A
Scope of Services

The services to be provided by Consultant to Authority under this Scope of Services may be varied and flexible based on SVCE’s specific requirements as they evolve over time in response to market conditions, external opportunities and internal initiatives. Specific areas in which Consultant may provide services to SVCE are expected to include, but are not limited to, the following:

Provide analysis, strategies and assistance related to:

1. Resource management
2. Decarbonization Strategy & Programs Roadmap implementation
3. Load forecasting
4. Retail rate design and pricing options
5. Other areas as required
Exhibit B
Schedule of Performance

Work will be assigned by the Authority on a task order basis.
Exhibit C
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. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall be determined on a task order basis, which shall specify a not to exceed amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in an approved task order for such work shall be at no cost to Authority unless previously approved in writing by Authority.

Rates

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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, personnel who performed the services, hours worked, task(s) for which work was performed).

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 expenses must be authorized in advance in writing by Authority.
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 D  
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.

   5. **Cyber Coverage**
      Cyber coverage with an aggregate limit of liability of $1 million dollars ($1,000,000.00).
**Staff Report – Item 1g**

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<th>Approve SVCE Advance Metering Infrastructure Data Privacy and Security Policy</th>
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**To:** Silicon Valley Clean Energy Board of Directors

**Prepared by:** Don Eckert, Director of Finance and Administration
Nik Zanotto, Management Analyst

**Date:** 12/11/2019

**RECOMMENDATION**
Staff recommends the Board approve the Advance Metering Infrastructure (AMI) Data Privacy and Security Policy.

**EXECUTIVE COMMITTEE RECOMMENDATION**
The Executive Committee met November 22, 2019 and were in consensus to recommend the proposed AMI Data Privacy and Security Policy.

**BACKGROUND**
Decision 12-08-045 (the “Decision”) was issued by the California Public Utilities Commission (CPUC) establishing privacy protections for customers of load serving entities, including Community Choice Aggregators (CCA’s) as it relates to a CCA’s internal privacy and data security policies regarding “Covered Information”.

Covered Information is defined as any usage information obtained using the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or non-residential customer. Examples of usage information are customer names, addresses and electrical usage.

The Decision requires CCAs to perform an AMI audit by an Independent Auditor every three (3) years. SVCE completed its initial AMI Audit in Spring 2019.

**ANALYSIS AND DISCUSSION**
As a result of the audit, the proposed policy provides guidelines and procedures in the use of customer data.

**ALTERNATIVE**
Staff is open to recommendations from the Board regarding the proposed policy.

**FISCAL IMPACT**
There is no fiscal impact to the agency with this recommendation.

**ATTACHMENTS**
1. Advance Metering Infrastructure (AMI) Data Privacy and Security Policy
Subject: Advance Metering Infrastructure (AMI) Data Privacy and Security Policy

Policy: Decision 12-08-045, issued by the California Public Utilities Commission (Commission) on August 31, 2012, requires certain privacy protections for the energy usage data of customers of Community Choice Aggregators, including SVCE. This policy provides those protections.

1. General

   a. SVCE will implement reasonable administrative, technical, and physical safeguards to protect “covered information” from unauthorized access, destruction, use, modification, or disclosure.

   b. SVCE will provide reasonable training to all employees and contractors who use, store, or process covered information.

   c. SVCE will collect, store, use, and disclose only as much covered information, and for as long, as is reasonably necessary or as authorized by the Commission, to accomplish (1) a specific “primary purpose” or (2) a specific secondary purpose authorized by a customer.

   d. SVCE will ensure that the covered information it collects, stores, uses, and discloses is reasonably accurate and complete or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.

“Covered information” means “any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or nonresidential customer, except that covered information does not include usage information from which identifying information has been removed” or “information provided to the Commission pursuant to its oversight responsibilities.” Decision (D.) 12-08-045, at B1-B2.

“Primary purposes” include: (1) providing or billing for electrical power or gas; (2) providing for system, grid, or operational needs; (3) providing services required by law
or the Commission; and (4) planning, implementing, or evaluating “demand response, energy management, or energy efficiency programs” under a contract with CCAs or the PUC, “or as part of a PUC-authorized program conducted by a governmental entity under the supervision of the” Commission. “Secondary purposes” include “any purpose that is not a primary purpose.” D.12-08-045, at B2.

e. SVCE will use covered information only for the purpose(s) it specifies in its Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information (see Section 2(b)).

2. Transparency and notification

a. SVCE will provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of covered information. However, when SVCE uses covered information solely for a primary purpose on behalf of and under contract with a utility, SVCE is not required to provide notice separate from that provided by the utility.

b. SVCE will provide written notice when confirming a new customer account and at least once a year. The notice will: (1) inform customers how they may obtain a copy of SVCE’s notice regarding the accessing, collection, storage, use, and disclosure of covered information; (2) provide a conspicuous link to the notice on the home page of SVCE’s website; and (3) include a link to SVCE’s notice in all electronic correspondence to customers.

i. The notice will be labeled “Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information,” written in easily understandable language, and be no longer than is necessary to convey the requisite information.

ii. The notice and the posted privacy policy will state clearly: (1) the identity of SVCE; (2) the effective date of the notice or posted privacy policy; (3) SVCE’s process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations; (4) where prior versions will be made available to customers; and (5) the title and contact information, including email address, postal address, and telephone number, of an official at SVCE who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.

iii. The notice will provide an explicit description of: (1) each category of covered information collected, used, stored or disclosed, and for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed; (2) each category of covered information that is disclosed to third parties, and, for each such category, a
description of the means by which customers may view, inquire about, or dispute their covered information; and (3) the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.

c. SVCE will provide to customers upon request convenient and secure access to their covered information, in an easily readable format that is at a level no less detailed than that at which SVCE discloses the data to third parties.

3. Data minimization

a. Generally. Covered entities shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose or for a specific secondary purpose authorized by the customer.

b. Data Retention. Covered entities shall maintain covered information only for as long as reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose or for a specific secondary purpose authorized by the customer.

c. Data Disclosure. Covered entities shall not disclose to any third party more covered information than is reasonably necessary or as authorized by the Commission to carry out on behalf of the covered entity a specific primary purpose or for a specific secondary purpose authorized by the customer.

4. Use, disclosure, and customer authorization

a. SVCE may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission, or to a governmental entity for the purpose of providing energy efficiency or energy-efficiency evaluation services pursuant to an order or resolution of the Commission.

b. SVCE may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission, or for a primary purpose being carried out under contract with and on behalf of SVCE, provided that SVCE requires, by contract, the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which SVCE itself operates.

c. Any entity that receives covered information derived initially from SVCE may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information
shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.

d. When SVCE discloses covered information to a third party under this subsection it will specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party’s contractual obligations to handle the covered information under policies no less protective than those under which the covered information was initially derived.

e. If SVCE finds that a third-party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party’s contractual obligations related to handling covered information, SVCE will promptly cease disclosing covered information to such third party.

f. Separate authorization by each customer will be obtained for all disclosures of covered information except as otherwise provided for herein.

g. SVCE will permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.

h. SVCE will permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

5. Disclosures pursuant to a legal process

a. When SVCE receives a subpoena for covered information:

i. The recipient must immediately inform, via email, the Director of Account Services & Community Relations, Manager of Regulatory & Legislative Affairs, Chief Executive Officer, Board Clerk/Executive Assistant, and General Counsel (at Richard Watson and Gershon office).

ii. Working with counsel, the Director of Account Services & Community Relations and Board Clerk/Executive Assistant must: (1) calendar the
subpoena next steps and requirements; (2) create designated electronic and paper folders; (3) save the subpoena and all related documents in the designated folders; (4) add the subpoena to the tracking spreadsheet for inclusion in any following compliance report; and (5) within 7 days of receipt, inform the affected customer(s) of the potential disclosure (see D.12-08-045, Att. B., § 4(c)(2)).

iii. Counsel will evaluate the subpoena for specificity and ensure customer contact and information (see D.12-08-045, Att. B., § 4(c)(1)-(2)).

b. In addition, in processing a subpoena for covered information, SVCE will meet the requirements in Section 4(c) of Attachment B to D.12-08-045, which provide as follows:

(1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, law, or order of the Commission, covered entities shall treat requests for real-time access to covered information as wiretaps, requiring approval under the federal or state wiretap law as necessary.

(2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena for disclosure of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure.

(3) Nothing in this rule prevents a person or entity seeking covered information from demanding such information from the customer under any applicable legal procedure or authority.

(4) Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent is express, in written form, and specific to the purpose and to the person or entity seeking the information.

(5) Nothing in this rule prevents a covered entity from disclosing, in response to a subpoena, the name, address and other contact information regarding a customer.

(6) On an annual basis, covered entities shall report to the Commission the number of demands received for disclosure of customer data pursuant to legal
process or pursuant to situations of imminent threat to life or property and the number of customers whose records were disclosed. Upon request of the Commission, covered entities shall report additional information to the Commission on such disclosures. The Commission may make such reports publicly available without identifying the affected customers, unless making such reports public is prohibited by state or federal law or by order of the Commission.

6. Data security

a. SVCE will follow the procedures outlined below to prevent, identify, report, and respond to security breaches of covered information. Such breaches may be unauthorized access, destruction, use, modification, or disclosure to third parties for secondary purposes.

b. Procedures:

i) All SVCE employees who handle or have access to covered information must protect that information from unauthorized access, destruction, use, modification, or disclosure to noncovered entities for secondary purposes.

ii) SVCE’s Director of Account Services & Community Relations (or CEO) will review and approve any requests by third parties for access to SVCE’s customer usage data to ensure that there is no inadvertent release of covered information.

iii) All authorized releases of covered information to third parties will be logged and reported to SVCE’s Director of Account Services & Community Relations and Manager of Regulatory & Legislative Affairs for SVCE’s reporting purposes.

iv) Any discovery by a third party of a security breach of covered information must be reported by the third party to SVCE within one week of detection.

v) The discovering party, after receiving complaint/notification from a third party or having discovered any security breach of covered information, must immediately contact SVCE’s Director of Account Services & Community Relations and Chief Executive Officer.

vi) SVCE’s Director of Account Services & Community Relations will then quantify and validate the type and extent of the security breach(es).

vii) SVCE will report any single security breach of covered information affecting 1,000 or more SVCE customers to the California Public Utilities Commission’s Executive Director. SVCE will make such report within two weeks of detecting the breach or within one week of notification of a breach by a third party.
viii) SVCE will report any security breaches of covered information to the Commission’s Executive Director when ordered to do so by the Commission.

ix) Within sixty (60) days of the end of a calendar year, SVCE’s Director of Account Services & Community Relations will review all annual discoveries of security breaches of covered information and prepare a summary report to SVCE’s Chief Executive Officer and Manager of Regulatory & Legislative Affairs.

x) By April 30 of each year, SVCE will file an annual report with the Commission identifying all breaches of covered information during the prior calendar year. The report must include, for the prior calendar year: (1) the number of authorized third parties accessing covered information, and (2) the number of non-compliances with the Commission’s security-breach requirements or with contractual provisions required by those requirements, and the number of customers affected by each non-compliance and a detailed description of each non-compliance.

xi) At least annually, SVCE’s Director of Account Services & Community Relations will review this policy and SVCE’s Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information to update them based on their implementation over the prior year. Any changes to this policy or the aforementioned Notice will be reviewed by SVCE’s Manager of Regulatory & Legislative Affairs, Chief Executive Office, and counsel, and then approved by SVCE’s Board of Directors.

7. Accountability and auditing

a. SVCE will submit to the Commission on an annual basis the data breach report described in Section 6(b) above.

b. SVCE will cause to be conducted an independent audit of SVCE’s data privacy and security measures every three years, to be submitted to the Commission by April 30 of the year following the three-year period.

c. SVCE will provide its customers a process for reasonable access to covered information, for correction of inaccurate covered information, and for addressing customer complaints regarding covered information.

d. SVCE will provide reasonable training to all employees and contractors who use, store or process covered information;

e. SVCE will make available to the Commission, upon request:
i. SVCE's privacy notices, including its Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information;

ii. SVCE's internal privacy and data-security policies;

iii. The categories of agents, contractors and other third parties to which SVCE discloses covered information for a primary purpose, the identities of agents, contractors and other third parties to which SVCE discloses covered information for a secondary purpose, and the purposes for which all such information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose (SVCE will also retain and make available to the Commission upon request information concerning who has received covered information from SVCE); and

iv. Copies of any secondary-use authorization forms by which SVCE secures customer authorization for secondary uses of covered data.
Staff Report – Item 1h

Item 1h: Adopt Resolution Approving Amendments to SVCE Operating Rules and Regulations

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 12/11/2019

RECOMMENDATION
Staff recommends the Board adopt Resolution 2019-21 approving amendments to SVCE’s Operating Rules and Regulations (ORR). The changes identified in this resolution were reviewed and proposed at the November 13, 2019 Board of Directors Meeting; a notification was emailed to all Directors on November 27, 2019 per the ORR amendment process (Article VI).

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 reviewed the existing ORR for updates or changes.

Amendments identified include:

Defining unexcused absences from board meetings (Article 3, Section 5a)
Unexcused absences were not previously defined. This change includes the definition of 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 makeup of committees. The amendment identifies 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.

The amendment states that no more than one committee member shall represent a particular 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; this amendment clarifies that Executive Committee members are appointed in January (all others are appointed in February, as mentioned in Article 4, Section 1, Establishment of Committees).

ALTERNATIVE
Staff is open to suggestions from the Board of Directors.

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

ATTACHMENT
1. Resolution 2019-21 Amending the Operating Rules and Regulations
2. SVCE Operating Rules and Regulations Amendments Draft (redline)
3. SVCE Operating Rules and Regulations Amendments (clean)
RESOLUTION NO. 2019-21

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE OPERATING RULES AND REGULATIONS TO DEFINE UNEXCUSED ABSENCES, INCLUDE THE CODE OF ETHICS POLICY, CLARIFY COMMITTEE MEMBERSHIP, AND CLARIFY COMMITTEE APPOINTMENT TIMING

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, Section 2.5.11 of the Joint Powers Agreement provides for adoption by the Board of Directors of Operating Rules and Regulations; and

WHEREAS, the Board of Directors adopted Resolution No. 2016-04 on June 8, 2016 approving the initial Operating Rules and Regulations for the Authority; and

WHEREAS, the Operating Rules and Regulations currently do not provide a definition of an unexcused absence; and

WHEREAS, the Operating Rules and Regulations currently do not address the consequences of violating SVCE’s Code of Ethics Policy; and

WHEREAS, the Operating Rules and Regulations currently do not specify committee membership; and

WHEREAS, the Operating Rules and Regulations currently do not provide committee appointment timing.

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

Section 1. Section 5 of Article III of the Operating Rules and Regulations is hereby amended to read:

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.

Section 2. Section 1 of Article IV of the Operating Rules and Regulations is hereby amended to read:

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 3. Section 3 of Article V of the Operating Rules and Regulations is hereby amended to read:

Section 3. Annual Meeting. The Board shall hold an annual meeting in January of each year at which time it will appoint Board officers and Executive Committee members.
ADOPTED AND APPROVED this 11th day of December, 2019, by the following vote:

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Chair

ATTEST:

Clerk
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.
SILICON VALLEY CLEAN ENERGY AUTHORITY
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Staff Report – Item 1i

Item 1i: Receive Employee Health and Welfare Benefits Enhancements Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 12/11/2019

RECOMMENDATION
Receive the employee health and welfare benefits enhancements report and recommendations for the February 1, 2020 plan year.

EXECUTIVE COMMITTEE RECOMMENDATION
The Executive Committee recommends the Board receive this report. At the November 22, 2019 meeting, the Executive Committee received an overview of the health and welfare benefits enhancements. The direction from the Executive Committee was support of the benefit enhancements within the parameters the benefits changes are competitive with other Community Choice Aggregators (“CCA”) and are fiscally responsible.

BACKGROUND
SVCE’s health and welfare benefits package was established soon after the agency was formed in 2016. In the summer of 2018, the Board of Directors approved several improvements to the benefits package that were implemented for the 2019 plan year. In support of the attract and retain goals of the agency, staff conducts an annual review of the health and welfare benefits package.

Recent Human Resource Activity
1. Employee Survey – Staff conducted an employee survey in September 2019. The responses to the survey provided the guidance for the benefit enhancements in this report.
2. Human Resource Generalist – Staff completed contract negotiations with Enhance HCM and a Human Resource Generalist will provide on-site accessibility to employees. The Human Resource Generalist will begin December 9th.
3. Payroll System – As the agency has grown, SVCE has outgrown the capabilities of the current payroll system and commissioned PrimePay for payroll services. The new system will feature improved and more robust reporting that will streamline the onboarding process and assist employees with obtaining needed information. The payroll system will be on-line for the first pay period in January 2020.
4. Benefits Broker – Staff commissioned Marsh & McLennan Agency (“MMA”) as our benefits broker that will provide communications to the employees of benefit options and assist staff with the evaluation of benefits options and provide long-term strategies. MMA began services in November 2019.

ANALYSIS & DISCUSSION
As mentioned earlier, the feedback from the employee survey provided the guidance for changes to SVCE’s current benefits offerings. The following guiding principles were referenced in the development of benefits changes:
1. Any changes to the health and welfare benefits package must maintain SVCE’s competitive position in attracting and retaining employees.
2. The benefit enhancements must be fiscally responsible.
3. The benefit enhancements must be responsive to the needs and concerns expressed by the employees through the survey.
4. Implementation of the benefit enhancements must be timely and be available by the beginning of the new plan year (February 1, 2020).

**Health and Welfare Improvements**
The following enhancements to the overall health and welfare benefits package offered by SVCE is recommended by staff:

1. Employee Assistance Program ("EAP") – The EAP is a work-related program that offers free and confidential assessments, short-term counseling, referrals, and follow-up services to employees who have personal and/or work-related problems.
2. Tuition Reimbursement/Professional Education Support - Offering tuition reimbursement or professional education opportunities shows high-value candidates that SVCE is invested in their professional and educational growth. This benefit supports the attraction of top candidates and the policy can be written that the tuition assistance requires the employee stay with the agency for a length of time which reduces turnover and in return SVCE saves the costs of having to find and train new hires.
3. Gym or Health Club memberships stipends – The genesis of this benefit was the facility expansion project and SVCE foregoing a move to a more expensive Class A building that typically offers in-house gym facilities. Other advantages to SVCE by offering this benefit includes promotion of the health and welfare of our employees, it is preventative medicine that can result in fewer sick days and it is cost effective as it may help employees avoid long-term, chronic health issues that may require costly surgery or expensive medications.
4. Cash in Lieu program – Cash in Lieu of benefits program, or cash-out option, offers an incentive for those employees to waive the employer coverage and instead enroll in the other plan. The incentive is in the form of a cash payment added to their paycheck.

**Other Health and Welfare Improvements**
The following changes to the benefits package will have no fiscal impact to the agency:

1. Selection of a new Administrator for the Flexible Spending Account (FSA) and Health Reimbursement Account (HRA) – Feedback from the survey revealed dissatisfaction with the interface and customer service from the current Administrator. Staff is researching alternative vendors and will have a new Administrator available at the start of the new plan year.
2. Application of HRA funds toward health insurance premiums – Recent tax law changes will allow employees to apply the employer funded HRA funds towards insurance premiums. This will assist employees where the $1,000 per month SVCE provides toward health, vision and dental insurance premiums is less than their costs.
3. Dental and Vision upgrades – SVCE will be able to offer Delta Dental and Vision Service Plan options to employees that provides an expanded network of options to allow better access for employees.
4. Remove “Pilot” language from the holiday office closure policy – When the current policy was adopted, it referenced the benefit as being a two-year pilot. The holiday office closure is a success in the support of the attraction and retaining of employees and with most employees having remote availability, the continuation of this benefit would have no impact to operations.

**Next Steps**
Staff will incorporate any feedback from the Board of Directors to this report and provide updated human resource policies or employee handbook changes at the January 8, 2020 Board of Directors meeting for review. The policies will be structured to fit under an overall budget incremental impact of $200,000 per year. The benefits offerings would be available to employees for the new plan year, February 1, 2020.

**STRATEGIC PLAN**
This report supports the human resources goals of the strategic plan.
**ALTERNATIVE**
Staff is open to suggestions from the Board regarding the health and welfare benefits enhancements.

**FISCAL IMPACT**
Staff recommends changes to the benefits package not-to-exceed $200,000 per year.
Staff Report – Item 1j

Item 1j: Legislative Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 12/11/2019

No report as the Legislative Ad Hoc Committee has not met since October 22, 2019.
Staff Report – Item 1k

Item 1k: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 12/11/2019

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.
Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 12/11/2019

REPORT

SVCE Staff Update
Zoe Elizabeth joins the Account Services team as a Senior Energy Consultant, primarily engaging with our cities and regional partners on electric vehicle infrastructure and resiliency efforts. She is a proven leader with a track record of developing stakeholder-driven, data-backed solutions to reducing carbon and increasing equity. She led local efforts with the County of Santa Clara and regional efforts with UC Berkeley’s Center for Resource Efficient Communities and the Los Angeles Collaborative for Climate Action and Sustainability. In addition, Zoe has secured funding from, and collaborated with, key state agencies such as the CEC, CPUC, CARB, and SGC on numerous energy and transportation projects.

SVCE is excited to welcome Kevin Armstrong as our Administrative Services Manager; Kevin joined us December 9th. Kevin brings a wealth of experience to the position including managing numerous sustainability projects. Kevin’s most recent role was with the County of Santa Clara as the Sustainability Manager. During his time at the County, Kevin was the primary contact for the newly formed SVCE and assisted in start-up operations in helping SVCE get off the ground. Kevin has a Bachelors from Stanford University and a Masters in Science from the University of California-Berkeley in Civil and Environmental Engineering.

PG&E Restructuring Update
At the last Board meeting, the SVCE Board supported the following principles be utilized in evaluating and advocating for a restructured PG&E.

1. Low cost of capital
2. Remove profit motive
3. Transparency in governance
4. Customer voice in running the utility
5. Worker rights to be preserved

Additionally, the Board requested that updates be provided.

- Attached are the updated Draft Consumer Owned Utility Operating Principles that reflect the initiative being led by Mayor Liccardo. Several of our Board members are supporting this initiative and currently 114 elected officials in Northern California are in support. On December 5, 2019, Mayor Liccardo issued a press release on the Operating Principles as well as a list of officials endorsing the mayor’s plan to transform PG&E into a customer-owned utility; the press release and list can be found in Attachment 1.
- A verbal update will be provided at the Board meeting
Rates Update
PG&E’s 2020 ERRA Forecast filing as of November 8, 2019 and independent analysis indicate that PG&E gen rates are likely to drop by approximately 5-6% as of January 1, and then increase by 2-3% as of March 1. SVCE’s current discount to customers averages approximately 4.2%.

More significantly, PG&E’s November ERRA Forecast also identified a major PCIA increase for 2020 on the order of 80%. This would increase the current average PCIA of approximately 2.5 cents/kWh to approximately 4.5 cents/kWh. The PCIA increase is high enough that the 0.5 cent/kWh ‘cap’ will apply. The cap was established by the CPUC in its October 2018 PCIA Decision (D.18-10-019) in order to provide rate stability. Accordingly, a 0.5 cent increase to the PCIA will likely be implemented March 1, 2020. In addition, per existing rules, the remainder of the PCIA increase (approximately 1.5 cents/kWh) will likely be implemented September 1, 2020. The exact magnitude and timing of this change will be subject to developments in the ERRA proceeding in December and January. SVCE is filing comments on December 6th with other CCAs that will highlight errors in PG&E’s methodology that could result in a lower PCIA.

Given these developments, SVCE staff will plan to make a 2020 rate change effective April 1, or possibly sooner if PG&E’s March 1st rates and PCIA values are known by early February. Based on this timing, recommendations for SVCE’s 2020 rate change will be presented for approval at the February and/or March BOD meetings.

Participation Rate Instead of Opt-Out Rate
As SVCE transitions from a startup-like, enrollment-focused method of operation to a more mature, program-oriented organization, it has become clear to staff that tracking a cumulative opt-out percentage is no longer an effective way of measuring the success of the agency’s enrollment efforts. While the two numbers, ‘Opt-Out Rate’ and ‘Participation Rate’, provided the same information immediately after our enrollments, Participation Rate reflects actual SVCE customers more accurately over time. Currently opt-outs are tracked as a cumulative total by Calpine, which invites double counting of opt-outs at the same physical address as residents move in and move out over time. Also, this method does not adequately address that the size of our territory has and will continue to grow in physical addresses over time.

For these reasons, staff is adjusting enrollment tracking to a measurement of Participation Rate. Rather than tracking each historical instance of a customer opting out, Participation Rate seeks to measure the number of SVCE-enrolled customers at any given point in time against the number of total available physical service points.

Participation Rate = (All valid accounts – # PG&E accounts – # DA accounts) / (All valid accounts – # DA accounts)

A valid account is either “active” or “pending stop”. Inputs for this formula are provided on a bi-weekly basis from PG&E, and a current Participation Rate will be provided to the Board at each monthly board meeting within the CEO report. Using the above method, the Participation Rate for the month of November was 95.95% of all eligible accounts.

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

1) ADM, Task Order #2: Program Design Consultation for Evaluation, Measurement & Verification; not to exceed $20,130
2) Camus: Data Analytics Services; not to exceed $50,000
3) MRW: 2020 IRP Development Services; not to exceed $80,000
4) Gridwell: (CAISO) Technical Support and Integration of Electric Resource Services, not to exceed $45,000
5) Joint Venture Silicon Valley: Convening Support for Silicon Valley Transportation Electrification Clearinghouse and Regional Electric Vehicle Leadership Recognition Programs Services, not to exceed $48,000
6) EnhancedHCM: HR Generalist Services, not to exceed $70,000
7) ADM, Task Order #3: Program Design Consultation for Evaluation, Measurement & Verification, not to exceed $15,480
8) Ascend Analytics, Task Order #5: 2020 Integrated Resource Planning Portfolio Modeling, not to exceed $50,000
9) Ascend Analytics, Task Order #6: Request for multi-dimensional Stochastic Customer “Y” Analysis, not to exceed $39,712

10) Claremont Partners, Inc.: Amendment, Human Resources Services, not to exceed $57,444

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

**Presentations & Relevant Meetings Attended by CEO**
- Speaker at CalCCA Annual Meeting – Meeting SB100 Goals
- Participated in meeting with coop and muni representatives regarding potential opportunities for development of additional coops in California
- Attended Churchill Club open forum regarding SB100
- Speaker on LEAN Energy’s December 6, 2019 US Market Webinar regarding the structural future of PG&E

**ATTACHMENTS**
1. Updated Draft Consumer Owned Utility Operating Principles, press release from SJ Mayor Liccardo, 12/5/19
2. Decarb & Grid Innovation Programs Update, December 2019
3. Account Services & Community Relations Update, December 2019
4. Regulatory and Legislative Update, December 2019
5. Long-term Renewable RFP Update, December 2019
Customer-Owned Utility Operating Principles

**Geographic Inclusion and Equity**
- The customer-owned utility will not seek to sever any geographic portion of the current PG&E service area.
- Governance and operations will prioritize ensuring that no disparate negative impact is borne by any specific region, county, or city, as a result of the transformation of the utility from investor-owned to customer-owned.

**Governing Board Responsibilities & Selection Process**
- The fiduciary duty of the Governing Board will be to the customer-owners.
- Governing Board will assume ratemaking and capitalization responsibilities in place of CPUC regulation.
- Interim Governing Board nominees will be presented in the Bankruptcy Process.
- Selection of Governing Board members will be through a two-step process, with a nominating committee patterned on the CAISO selection process (see attached), vetting candidates for election.
- Governing Board will oversee the management of the organization, hire and/or retain senior management.
- Organization charter will require board members to meet qualification requirements of competence, independence, and specific skill sets (e.g., utility expertise, safety, cyber-security, infrastructure, management).

**Labor and Workforce**
- The customer-owned utility will preserve existing PG&E labor contracts and preserve the existing skilled workforce.
- The customer-owned utility will commit to maintaining and growing a skilled workforce that is focused on improving the safety and reliability of the utility’s infrastructure, as well as improving customer service and affordability.

**Power Supply Procurement**
- The customer-owned utility will be subject to all State requirements requiring renewable energy procurement, energy efficiency initiatives, and emission reductions as they relate currently to the investor-owned utilities.
- Existing contracts with independent power producers would be maintained and respected.
- The customer-owned utility will support local efforts to administer and implement public purpose programs such as energy efficiency and renewable energy incentives programs funded through the public goods charge. Primary responsibility for power supply procurement in areas where qualified Community Choice Aggregators (CCA’s) already procure power will shift to those qualified CCAs, who will become the provider of last resort (POLR) in their territory. “Qualified” CCAs will meet good utility practices, including adopting risk management policies and procedures, maintaining a bond rating, retaining adequate operating reserves, and establishing limits on uses of ratepayer funds. The customer-owned utility will serve the remaining customers whose communities choose not to form a CCA.
- The customer-owned utility will support new CCA formation and options to reduce costs for all ratepayers including options to reduce and stabilize the Power Charge Indifference Adjustment (PCIA) and other non-bypassable utility charges.
Public Accountability

- Notwithstanding “private” entity legal status, the customer-owned utility will operate as though it were a public agency with regard to transparency and accountability of decision-making. That includes:
  - Adherence with applicable public record and open meeting rules, including the Brown Act and Public Records Act.
  - Prohibitions on organized political contributions.
  - Outreach to underserved communities.
  - Goals for supplier diversity including women, minority, disabled veteran, and LGBTQ contracting and employment.
  - And other important public policy objectives.

Rate & Credit Quality

- The customer-owned utility will be committed to low-cost financing for capital investments needed to maintain the grid, adhere to safety and reliability standards, realize energy policy objectives, and improve customer affordability.
- By charter, the organization will be required to maintain investment-grade credit quality.
- The current balance of rate allocation between urban and rural customers will be maintained.
- The customer-owned utility will commit to ensuring continued rate discounts for low-income residents (through the CARE program and similar initiatives).
- The customer-owned utility will continue to offer the same Net Energy Metering (NEM) rates for customers with on-site solar as did PG&E. The customer-owned utility will fully grandfather NEM rates for existing NEM customers and any future changes to NEM will apply only prospectively for new NEM installations.
- As a not-for-profit, rates will not include any profit. Rates will be set to maintain adequate reserves and all excess revenues will be re-invested into the communities served by the customer-owned utility.

Safety and Response

- The customer-owned utility will be subject to state agency standards and oversight relating to health, safety, and wildfire protection.
- The customer-owned utility will develop a transparent, prioritized capital investment plan to address infrastructure needs of both the distribution and transmission system to prevent wildfires, reduce Public Safety Power Shutoff (PSPS) events, and improve overall system reliability.
- Required Public Safety Power Shutoffs (PSPS) events will be based on best practices, with a transparent decision-making structure, emphasis on coordination with local first responder and emergency service agencies, and high-quality customer communication.
- The customer-owned utility will fully support the development of distributed energy generation and storage, including local micro-grids.
OFFICIALS REPRESENTING MAJORITY OF CALIFORNIANS SERVED BY PG&E ENDORSE SAN JOSE MAYOR’S PLAN TO TRANSFORM PG&E INTO A CUSTOMER-OWNED UTILITY

Coalition releases a new set of Operating Principles to guide the transformation of PG&E into a customer-owned utility, and expands to 114 elected officials.

Post Date: 12/05/2019

San José, CA. — A broad coalition of elected officials led by San José Mayor Sam Liccardo has unveiled a set of seven Operating Principles to transform Pacific Gas and Electric (PG&E) into a customer-owned utility. Support for the Mayor’s plan — first announced in his and other officials’ letter to the California Public Utilities Commission (CPUC) last month — has increased by a factor of five. The plan is now endorsed by a coalition of 114 elected leaders from 58 cities and 10 counties who represent more than 8 million Californians — a majority of all customers served by PG&E.

“With these principles, we’ve presented a framework for a viable customer-owned PG&E that will be transparent, accountable, and equitable,” said Mayor Liccardo. “I’m proud to stand with our growing coalition of 114 elected leaders — who together represent more than half of Californians served by PG&E — urging the company’s transformation to put its days of underinvestment, mismanagement, and negligence far behind us.”

The Operating Principles outline how a successful customer-owned utility would operate, and aim to add transparency to the Mayor and coalition’s plan. The Principles also commit to preserving existing PG&E labor contracts and skilled workers. They cover seven categories:

- Geographic Inclusion and Equity
- Governing Board Responsibilities and Selection Process
- Labor and Workforce
- Power Supply Procurement
- Public Accountability
- Rate Impact and Credit Quality
- Safety and Response

Read the full set of operating principles pasted below, or download the document.

Through the holiday season, Mayor Liccardo will continue outreach to additional elected officials, stakeholders, and customer groups to expand the coalition advocating for a PG&E that serves customers, rather than investors.
Download a complete list of elected officials who have joined the coalition.

###

**Media Contact:**

Chloe Meyere, Office of Mayor Sam Liccardo, 408-806-2470 or chloe.meyere@sanjoseca.gov

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**CUSTOMER-OWNED UTILITY - OPERATING PRINCIPLES**

**Geographic Inclusion and Equity**

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Safety and Response

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Press release from Mayor Liccardo’s Office, 12/5/19

https://www.sanjoseca.gov/Home/Components/News/News/535/4959
The customer-owned utility will develop a transparent, prioritized capital investment plan to address infrastructure needs of both the distribution and transmission system to prevent wildfires, reduce Public Safety Power Shutoff (PSPS) events, and improve overall system reliability.

Required PSPS events will be based on best practices, with a transparent decision-making structure, emphasis on coordination with local first responder and emergency service agencies, and high-quality customer communication.

The customer-owned utility will fully support the development of distributed energy generation and storage, including local micro-grids.

Return to full list >>
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Half Moon Bay
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Hollister
Hayward
Hayward
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Lafayette
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Livingston
Livingston
Los Altos
Los Altos
Los Altos
Los Altos Hills
Los Altos Hills
Los Gatos
Los Gatos
Menlo Park
Millbrae
Milpitas
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Monterey
Morgan Hill
Morgan Hill
Mountain View
Newark
Oakland
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Pacific Grove
Pacifica
Petaluma
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<tr>
<td>Jim</td>
<td>Provenza</td>
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<tr>
<td>Mike</td>
<td>Wilson</td>
<td>Board of Supervisors</td>
<td>Humboldt County</td>
</tr>
</tbody>
</table>
1. Reach Code Initiative

- **Two cities have adopted Reach Codes** – Morgan Hill and Mountain View
- **Three more have approved at 1st Readings** – Milpitas, Monte Sereno, Saratoga
- **Buildings**
  - Three methods – Encourage Gas Reduction, Limit Gas Usage, Ban gas
    - SVCE provided Encourage model language
    - Majority of member agencies considering or adopting Limit or Ban
- **EVs**
  - Amend quantity, speed and/or readiness of EV charging above code
  - Four of the first five member agencies have included above code EV requirements
2. FutureFit Home Program

• Program launched in June 2019, providing rebates to replace 100 natural gas water heaters with electric heat pump water heaters

• Progress
  • **35 Completed.** Currently on a waitlist system.
  • 4 rebate slots available for CARE/FERA customers
  • Mailed offering to 500 CARE/FERA customers on November 15th

• Co-funded by BAAQMD

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<table>
<thead>
<tr>
<th>Program Rebates</th>
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<tbody>
<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>
<thead>
<tr>
<th>Optional Additional Rebates</th>
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<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 December 19th
- **Regional EV Leadership Recognition** is in final development, with launch in early 2020
- Member agency staff are supporting the ongoing **Priority Zone DC Fast Charging** zone identification work – solicitation will open in Feb/Mar 2020

Digital version available at: [https://www.svcleanenergy.org/programs/](https://www.svcleanenergy.org/programs/)
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 1st - **29 applications received**

- Finalist interviews scheduled for Dec 13

- Evaluation panel includes reps from **New Energy Nexus** and **Rocky Mountain Institute**
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
• Scheduled for Jan 31 - Feb 1 @**Google Launchpad**
• Sponsors: Peninsula Clean Energy, East Bay Community Energy, City of Palo Alto Utilities, and San Jose Clean Energy
5. Resilience RFP & VPP Update

• On Nov 5, four public agencies jointly released RFP to support community resilience
• Solicitation will spur >30MW of batteries at homes and businesses
• Batteries will form a “virtual power plant” to provide grid services to SVCE when not in use for back-up power
• Proposals due Dec 23, 2019
• Contracts expected to be brought to BOD for review in Spring 2020
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** – first two [tentative] contracts on consent, update on regular calendar

• 5 additional profiles have been added to the **All-Electric Showcase Awards web gallery**

• SVCE contracted with **Camus Energy** and **E3** to carry out electrification potential assessment to inform the IRP and Decarb Roadmap implementation
1. Outreach Events & Sponsorships

SVCE staff continues to present to customers and stakeholders about SVCE’s mission and programs. With the winter season, SVCE is engaged in sponsoring and tabling at seasonal community events.

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>Dec. 3</td>
<td>1 – 2 PM</td>
<td>Monta Vista High School Environmental Club – presentation</td>
<td>Cupertino</td>
</tr>
<tr>
<td>Dec. 3</td>
<td>5 – 6:30 PM</td>
<td>Morgan Hill Youth Advisory Council – presentation</td>
<td>Morgan Hill</td>
</tr>
<tr>
<td>Dec. 6</td>
<td>6 – 8 PM</td>
<td>Los Altos Holiday Tree Lighting – tabling and sponsor</td>
<td>Downtown Los Altos</td>
</tr>
<tr>
<td>Dec. 8</td>
<td>2:30 – 9 PM</td>
<td>Winter Ice Rink Onsite Activation – tabling and sponsorship</td>
<td>Downtown Sunnyvale</td>
</tr>
<tr>
<td>Dec. 9</td>
<td>4 – 7 PM</td>
<td>Energy Presentation with Cub Scouts – presentation</td>
<td>Sunnyvale</td>
</tr>
<tr>
<td>Dec. 16</td>
<td>10 – 11:30 AM</td>
<td>BayREN Multifamily Property Owner Workshop – presenting</td>
<td>Mountain View City Hall</td>
</tr>
</tbody>
</table>

Sponsorship at the Sunnyvale Winter Ice Rink

Monta Vista High School Presentation
2. Customer Participation

Transitioning Methodology:
• Moving away from a total tally of all opted out accounts since beginning of service to a participation rate, which reflects actual SVCE customers more accurately over time
• Participation rate is calculated using this formula: (All valid accounts – # of PG&E accounts – # of Direct Access accounts) / (All valid accounts – # of Direct Access accounts)
• Staff will share the GreenPrime upgrade totals on a quarterly basis since the amount does not change significantly month-to-month

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
<th>GreenPrime Upgrade</th>
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</thead>
<tbody>
<tr>
<td>Residential</td>
<td>95.92%</td>
<td>95.95%</td>
<td>1,264</td>
</tr>
<tr>
<td>Commercial</td>
<td>96.22%</td>
<td></td>
<td>1,999</td>
</tr>
</tbody>
</table>
Outreach Grants

With the 2018-2019 outreach grant cycle, SVCE awarded $75,000 to local organizations to collaborate on outreach to traditionally underserved and hard-to-reach residential customers.

**Total Engagement: 3,024 people**  
**Total Reach: 308,534 people**

Total engagement and reach are broken down by each organization below.

**Acterra**

- Hosted Energy Clinics and conducted weekly social media posts
  - **Engagements: 764 people**
  - **Reach: 3,626 people**
Outreach Grants

El Concilio
- Tabled at many outreach events promoting SVCE and presented at the Mexican consulate
  o Engagements: 588 people
  o Reach: 4,120 people

California Interfaith Power and Light
- Engaged with local congregations, tabled at events, hosted trainings and posted on social media
  o Engagements: 520 people
  o Reach: 500 people
Outreach Grants

Sound of Hope
- Conducted a radio interview, co-hosting a presentation, digital ads and radio ads
  - Engagement: 27 people
  - Reach: 295,800 people*
*High reach due to the organization’s broadcast media presence throughout the Bay

Sunnyvale Community Services
- Hosted presentations and staff trainings and promoted SVCE at events
  - Engagements: 862 people
  - Reach: 1,000 people

Vietnamese Voluntary Foundation
- Engaged customers through Gamble counseling, community events and consulting walk-ins about SVCE
  - Engagements: 263 people
  - Reach: 3,488 people
4. Member Agency Working Group Update

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

• SVCE Updates
  o New Hire
  o Education Fund
  o PG&E Cooperative Restructuring Letter
  o B-Rates

• SVCE Initiatives
  o EV - Priorities Zone DC Fast Charging
  o Resiliency at the City Level
  o C&I Clean Power Offerings
  o Reach Code/ HPWH Updates
5. Community Engagement Programs

Grid Alternatives Outreach

- SVCE worked with the cities of Gilroy and Morgan Hill to connect customers to Grid Alternative’s statewide program offering free solar installation to underserved communities.
- Letters were mailed to residents in order to inform residents of these opportunities.

Education Fund

- Applications are now open for students to apply to have their projects funded by SVCE.
- Projects will include SVCE mission of fighting climate change and decarbonization but can vary in discipline and project type.
6a. Media

Latest SVCE News

- **Four Bay Area Community Energy Agencies Kick Off New Program to Provide Local Resiliency**, Press Release, 11-05-19

News Mentions

- **Program aims to make customer data more accessible for DERs**, American Public Power Association, 10-30-19
- **California Demands 3.3GW of New Resources as Grid Shortfall Looms**, Greentech Media, 10-30-19
- **Guest opinion: Natural gas ban is important step for climate protection**, Mountain View Voice, 11-22-19
- **Is our carbon-free electricity really carbon-free?**, Palo Alto Online, 11-24-19
- **Opinion: How Silicon Valley is rising to climate challenge**, The Mercury News, 11-26-19
6b. News Mentions – Resiliency RFP

- PG&E outages prompt clean energy programs to focus on solar, batteries, *San Francisco Chronicle*, 11-05-19
- Bay area energy agencies launch distributed storage solicitation amid PG&E power shutoffs, *Utility Dive*, 11-05-19
- Bay Area Orgs To Create Backup Power System For Future Shutoffs, *Patch*, 11-05-19
- Bay Area CCAs Solicit 30MW of Distributed Batteries to Weather Grid Outages, *Greentech Media*, 11-05-19
- CCAs, public power utility issue RFP to offset shutoffs, *American Public Power Association*, 11-06-19
- Will Your EV Keep the Lights On When the Grid Goes Down?, *Greentech Media*, 11-08-19
- A Good Trade to Keep the Lights on in San Francisco’s Bay Area, *Microgrid Knowledge*, 11-15-19
- Calling all California solar and storage developers – 6,000+ systems, 32 MW+ request for proposals, *PV Magazine*, 11-18-19
SVCE Regulatory and Legislative Update  
December, 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.** Since the Commission passed the final Decision setting the new requirements on 11/7, SVCE staff have focused on planning how we will meet our new 67.2 MW additional capacity requirement by 2023. On 12/2 the Commission released its database of the resources it considers “baseline” and thus not eligible for counting towards these new incremental requirements. SVCE staff are currently reviewing the database to determine which of the projects SVCE has in the pipeline are included, because any that are not will count towards this 67.2 MW. SVCE has until 2/15/20 to notify the Commission whether we will self-procure the required amount or request on-behalf-of procurement by the IOUs.

2) **2020 Reference System Plan.** Analysis of the Final Reference System Plan (DRSP) released 11/6 continues for both internal and external purposes. Comments on the DRSP are due to the Commission on 12/17, providing an opportunity to critique the Commission’s assumptions and methodology before they are used as the standard of comparison for judging our individual IRPs in spring/summer 2020. SVCE staff are also incorporating the DRSP into our internal IRP preparation, including by recreating the RSP in PowerSimm so that we can compare the emissions and cost results to our own preferred portfolios.

3) **Internal development of SVCE’s 2020 IRP.** Under guidance from SVCE staff, Ascend Analytics has begun modeling a series of portfolios for SVCE based on the guidance received from the Board at the September and October workshops. This modeling will be the focus of our efforts until early 2020, when emphasis will shift to selecting which of the modeled portfolios we will submit to the Commission and completing the required IRP submission materials, including the narrative report. SVCE staff have contracted with MRW & Associates, which completed one of the few CCA IRPs to be certified without modification in 2018, to assist with preparation of the IRP compliance materials.

**Resource Adequacy (“RA”; R.17-09-020)**

Again here, there are multiple areas of focus:

1) **The Settlement Proposal.** As we have discussed previously, on 8/30 CalCCA, San Diego Gas & Electric, and six other parties submitted a settlement proposal to the CPUC for a residual central buyer structure encompassing system, local, and flexible RA. The Commission held a workshop to discuss the settlement proposal on 11/1 but has yet to make an official response. 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 2019.

2) **2020 Year-Ahead RA Compliance Filing and Waivers.** As you know, on 10/31 SVCE completed our annual year-ahead RA compliance filing, and filed for waivers for region-months for which sufficient local RA was not available on the market at reasonable cost. The CPUC has not yet responded to the local RA waiver requests submitted by SVCE and many other LSEs, but in the meantime we are filing the required monthly updates detailing our ongoing attempts to find and procure the missing RA.
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) **Working Group 1: Benchmarking, True-Ups, and Load Forecasting, Billing Determinants, and Bill Presentation.** As discussed last month, on 10/10 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 now being applied to calculation of the 2020 PCIA in PG&E’s 2020 ERRA Forecast proceeding (see below). Working Group 1 is now on a brief hiatus before returning to work on remaining issues related to load forecasting and how the PCIA is presented on CCA and bundled customer electricity bills.

2) **Working Group 2: PCIA Prepayment.** After months of inactivity, the CPUC held a workshop on this issue on 11/4. The workshop featured discussion of several methods by which CCAs and ESPs could potentially prepay their portions of the PCIA, and informal comments were submitted 11/11. This working group is expected to continue into 2020.

3) **Working Group 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). These proposals include the GHG-free hydro and nuclear allocations we discussed at the September and October Board IRP workshops. PG&E filed an Advice Letter on 12/2 spelling out the terms of the carbon-free resources that should be made available to SVCE in 2020. This allocation, subject to CPUC and CEC approval, could have a significant impact on SVCE’s future procurement plans.

In addition, Working Group 3 is developing proposals for certain high cost contracts to be removed from the IOUs portfolio’s and purchased by CCAs, which should lower. The working group is also developing recommendations to strengthen oversight of IOU portfolio management and make shareholders more responsible for IOU portfolios. The last workshop is scheduled for 12/11 at the CPUC, and a final Decision from the Commission on these proposals is expected in Q2 2020.

Ratesetting (A.18-06-001, A.18-12-009, and A.19-06-001)
Both PG&E’s 2020-2022 General Rate Case (“GRC”; A.18-12-009) and 2020 Energy Resources Recovery Account (“ERRA”) Forecast proceeding (A.19-06-001) are moving forward despite controversy and schedule delays. In the GRC, Phase 1 works towards its conclusion while Phase 2 has just begun:

1) Apart from the efforts of the Joint CCAs (of which SVCE is a part) in this proceeding, TURN and the CA Public Advocates Office have agreed to a settlement proposal which was shared with other parties on 12/3. The Joint CCAs and other parties now have until 12/11 to negotiate with the settling parties and decide whether to join the settlement coalition. This discussion will hinge on inclusion of issues of interest to the Joint CCAs that are currently not covered in the settlement proposal. A final decision in the GRC phase 1 is expected February 2020.

2) **PG&E filed its GRC Phase 2 Application (A.19-11-019) on 11/22.** Phase 2 of the GRC includes marginal cost of service studies, revenue allocation, and rate design.

In the ERRA forecast proceeding, PG&E issued its final 2020 PCIA forecast on 11/8. PG&E projects that the 2020 PCIA should be 72% higher than 2019 across all customer classes. 10-15% of this increase is
due to the change in the methodology developed in the PCIA proceeding, and should be a one-time adjustment increase. However, the forecasted 2020 PCIA’s increase over the 2019 PCIA is high enough to trigger a new “cap” mechanism created by the CPUC in 2018 in order to provide rate stability by limiting year-to-year volatility. That mechanism caps the year-over-year PCIA increase at ½ cent/kWh, and tracks any remaining need in a balancing account to be recovered over a longer period of time than one year. With the application of the cap, the 2020 PCIA rates will be approximately 21% higher than the 2019 rates. Comments on PG&E’s forecast are due 12/6, and the new rates are expected to become effective 3/1/2020.

**Direct Access (“DA”; R.19-03-009)**

No news here since last month. 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 early 2020.

**Legislative**

Preparation for the 2020 legislative session continues, now guided by the updated platform the Board approved at November’s meeting. The legislative ad hoc committee has not met since then, but discussion of upcoming issues and topics for possible bills continues with CCA, CalCCA, and legislative staff. Additionally, Board members are invited to participate in a series of meetings with our legislators in their district offices in mid-December to set the stage for the 2020 session. Invitations with specific dates and times are forthcoming.

Finally, an update on the PG&E restructuring process. At the last Board meeting, the SVCE Board supported the following principles be utilized in evaluating and advocating for a restructured PG&E.

1. Low cost of capital
2. Remove profit motive
3. Transparency in governance
4. Customer voice in running the utility
5. Worker rights to be preserved

Additionally, the Board requested that updates be provided.

- The updated Draft Consumer Owned Utility Operating Principles that reflect the initiative being led by Mayor Liccardo are included as an attachment to the CEO report. Several of our Board members are supporting this initiative and currently 114 elected officials in Northern California are in support.
- A verbal update with further details will be provided at the Board meeting.
Monterey Bay Community Power &
Silicon Valley Clean Energy 2019 Joint
RFP for Carbon-free RPS Resources

Board of Directors –
December 11, 2019
Monica Padilla,
Director of Power
Resources
Purpose

• RPS Goals & Mandates
• May 2019 Joint RFP – objective & protocol
• RFP Process & Results
• Current status of negotiations
• 2020 Integrated Resource Plan
• Next Steps
RPS Goals & Mandates

- California RPS Mandate
  - 2020 – 33%
  - 2026 – 50%
  - 2030 – 60%
- SVCE’s RPS Goal – 52% to 62%
- RFP Goal
  - Contract for ~10% of SVCE’s load – 400 GWh per year
  - Meet SB350 long-term RPS procurement mandate - minimum of ten years
    - Compliance Period #4 (2021-2024): 26%

State RPS Procurement % Requirements

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<th>Year</th>
<th>2019</th>
<th>2020</th>
<th>2021</th>
<th>2022</th>
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<th>2028</th>
<th>2029</th>
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<tr>
<td>State Mandate</td>
<td>31%</td>
<td>33%</td>
<td>36%</td>
<td>39%</td>
<td>41%</td>
<td>44%</td>
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<td>SVCE Policy w/GreenPrime</td>
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<td>52%</td>
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<td>52%</td>
<td>54%</td>
<td>57%</td>
<td>59%</td>
<td>62%</td>
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*Beginning in 2021, 65% of RPS requirements must be procured from contracts ≥ 10 years*
Overall Procurement Objectives

- Achieve GHG reduction goals
- Meet RPS requirements including long-term resources
- Pursue cost effective DERs
- Consider carbon-free on an hourly basis
- Consider impacts to ratepayers
- Consider risk associated with resource variability
- Consider cost of integration

- Meet Resource Adequacy requirements
- Meet storage requirements
- Consider deliverability constraints for in- and out-of-state resources
- Support long-term and overall grid reliability
RFP Objectives

• Progress towards Annual RPS Mandates and SVCE Policy
• Meet Compliance Period long-term procurement mandates
• Diversify technology, counterparties & location
• Enable custom product offerings for Commercial/Industrial Customers
RFP Process

April 2019
- Issued Joint RFP

May - July 2019
- Evaluate, Scoring, Rank & Analyze

July - August 2019
- Shortlist & Exclusivity Agreements

September 2019 - now
- Negotiations of PPAs – Terms & Conditions
RFP Process & Results

Ranked:
- Cost
- Risk
- Peak deliverability
- Experience
- Location
- Reliability – Resource Adequacy
- COD

Shortlisted:
- Energy Value/Implied REC Value
- Generation profile
- Resource Adequacy
- COD/Interconnection
- Counterparty

- 57 Projects
- 170 offers
  - Mostly solar plus storage

Nominal $/MWh Cost by Technology Type

Adjusted Solar+Storage Cost
Solar + Storage
Solar
Wind
Geo
Hydro
All

Silicon Valley Clean Energy
RPS Annual Progress

2017 Joint RFP Executed PPAs
• 10% Wind
  • Pattern COD Dec 2020
• 10% Solar
  • Slate COD June 2021
  • Big Beau COD Dec 2021

2019 RFP Finalist – Tier 1
• 4 Solar + Storage (13%)
• 2 Geothermal (8%)
• COD 2022 & 2023

42% RFP in 2023
RPS Compliance Period Mandates

- On track for meeting or exceeding long-term procurement mandates for CP4 (2021-2024)

- Uncertainties:
  - PG&E RPS Allocations – long-term vs. short-term
  - Developer risk for existing PPAs
  - Transmission path for Pattern Wind project
  - Negotiation & PPA execution of new PPAs
Board Review & Approval

Jan 2020
1 Geothermal Project PPA
Amendments to Existing RE Slate 1 PPA

Feb 2020
2 New Solar plus Storage PPAs
2020-2030 IRP Modeling Results (informational)

Mar 2020
PG&E Carbon-Free & RPS Allocation (2021+)
2020-2030 IRP Approval

Apr 2020
2 New Solar plus Storage PPAs
1 Geothermal Project PPA
Questions?
<table>
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<th>MILESTONES</th>
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<th>JANUARY 2020</th>
<th>FEBRUARY 2020</th>
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<td><strong>Board of Directors, Jan 8:</strong></td>
<td><strong>Board of Directors, Feb. 12:</strong></td>
<td><strong>Board of Directors, March 11:</strong></td>
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<td><strong>Audit Committee Meeting, Dec. 4:</strong></td>
<td><strong>Finance and Administration Committee, Jan. 17:</strong></td>
<td><strong>Executive Committee, TBD:</strong></td>
<td><strong>Executive Committee, TBD:</strong></td>
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**MILESTONES**

**ADMINISTRATION, POLICIES, ETC.**

- Board of Directors, Dec 11:
- Board of Directors, Jan 8:
- Board of Directors, Feb. 12:
- Board of Directors, March 11:
- Executive Committee, TBD:
- Audit Committee Meeting, Dec. 4:
- Finance and Administration Committee, Jan. 17:
- Executive Committee, TBD:
- Executive Committee, TBD:
Staff Report – Item 3

Item 3: Adopt Resolution to Authorize the Chief Executive Officer to Execute The PG&E Energy Confirmation with Non-Substantive Changes Comprised of Allocated Carbon-Free Attributes Including Attributes Generated by Hydroelectric Facilities and Diablo Canyon Power Plant ("DCPP") for 2020 Only and To Sell Carbon-Free Attributes Associated with DCPP

To: Silicon Valley Clean Energy Board of Directors

From: Monica Padilla, Director of Power Resources
      Ian Williams, Power Resources Manager

Date: 12/11/2019

RECOMMENDATION
Adopt Resolution No 2019-22 to authorize the Chief Executive Officer ("CEO") to:

1) Execute the PG&E Energy Confirmation* with non-Substantive changes comprised of allocated carbon-free attributes including attributes generated by hydroelectric facilities and Diablo Canyon Power Plant ("DCPP") for deliveries in 2020 only; and,

2) Sell carbon-free attributes associated with DCPP

* The confirm includes a 2019 retroactive allocation of SVCE’s PCIA % of PG&E’s carbon-free portfolio.

BACKGROUND
Silicon Valley Clean Energy Authority ("SVCE") currently procures its carbon-free energy needs via large-hydro to meet its Strategic Plan Goal #11: Acquire sufficient resources to ensure that 100% of SVCE’s energy needs are from carbon free resources. The market prices for carbon-free energy have increased dramatically due to the proliferation of CCAs and their aggressive carbon-free targets coupled with Pacific Gas and Electric (PG&E) and Southern California Edison’s (SCE) (the two largest carbon-free generation portfolios in CA) failure to sell carbon-free energy. Carbon-free prices have increased by approximately 500% since SVCE’s inception in 2017 to today rising from $1.75/MWh to $9/MWh. Carbon-free procurement costs were $4.1 million in 2017 and if the same volumes were procured today the costs could be up to $18 million.

At the October 9, 2019 SVCE Board Integrated Resource Plan workshop, staff introduced the possibility of receiving allocation of carbon-free resources from PG&E’s electric supply portfolio which is comprised of large in-state hydroelectricity and nuclear energy from the Diablo Canyon Power Plant, scheduled to shut down in 2025. SVCE is paying for the above market costs of PG&E’s carbon-free portfolio via the Power Charge Indifference Adjustment ("PCIA") while receiving none of the carbon-free attributes associated with the carbon-free portfolio. Through the California Public Utilities Commission’s ("CPUC") PCIA Working Group Number Three (WG#3) proceeding key stakeholders, including CCAs, will propose a plan to allocate, assign, and/or sell Renewable Portfolio Standard Power Content Category One (PCC1) resources, carbon-free energy and resource adequacy capacity for approval in 2020.

PG&E filed an advice letter to the CPUC on December 2nd to allow for the sale/allocation of 2019 and 2020 carbon-free attributes to PCIA customers in exchange for customers’ waiving the ability to make petitions, arguments, or filings to the CPUC or California legislature asserting PG&E has not offered any allocation, sale or transfer of carbon free energy.

SVCE’s carbon-free portfolio is comprised of large hydroelectric and renewable portfolio standard (RPS) resources. SVCE is systematically deficient in carbon-free resources and while it will eventually bring long-term RPS resources on-line, large hydroelectric resources are difficult to acquire. SVCE is approximately 4.8% of
PG&E’s total load and is eligible to receive the following estimated annual carbon-free energy allocation representing about 31% of SVCE’s overall energy needs as shown below:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2021*</th>
<th>2022*</th>
<th>2023*</th>
<th>2024*</th>
<th>2025*</th>
</tr>
</thead>
<tbody>
<tr>
<td>SVCE Retail Sales (MWh)</td>
<td>3,915,839</td>
<td>3,935,418</td>
<td>3,955,095</td>
<td>3,974,871</td>
<td>3,994,745</td>
<td>4,014,719</td>
</tr>
<tr>
<td>SVCE Long-Term RPS (MWh)</td>
<td>1,056</td>
<td>545,856</td>
<td>888,153</td>
<td>885,809</td>
<td>885,842</td>
<td>881,150</td>
</tr>
<tr>
<td>PG&amp;E Large-Hydro Allocation (MWh)</td>
<td>504,000</td>
<td>504,000</td>
<td>504,000</td>
<td>504,000</td>
<td>504,000</td>
<td>504,000</td>
</tr>
<tr>
<td>PG&amp;E DCPP Allocation (MWh)**</td>
<td>768,000</td>
<td>768,000</td>
<td>768,000</td>
<td>768,000</td>
<td>705,929</td>
<td>250,389</td>
</tr>
</tbody>
</table>

* The initial allocation is for 2020 volumes. Future annual allocations will be determined by CPUC PCIA Working Group #3 proceeding with estimated ruling by Q2 2020.
** DCPP #1 retires on 11/2/2024 and DCPP #2 retires on 8/26/2025

**ANALYSIS & DISCUSSION**

While SVCE does not have an explicit policy to exclude nuclear power from its carbon-free portfolio, staff recognizes that the inclusion of nuclear power was not contemplated when SVCE was formed and adding it to SVCE’s power mix may be controversial given the nature of nuclear power and the desire to shut down all plants in California due to safety concerns. However, nuclear power is considered carbon-free, already exists as part of PG&E’s power content label and California’s system power and is scheduled to shut down in 2025. Taking an allocation of nuclear energy from PG&E will not extend the life of the plant nor generate additional nuclear energy. Further nuclear energy is a baseload resource with very little variability making it a more predictable resource compared to hydroelectricity which is highly dependent on precipitation conditions.

Assuming achievement of its RPS goal of 52%, SVCE is currently deficient approximately 574,000 megawatt hours ("MWh") of carbon-free energy in 2020 (15% of retail sales). The cost of procuring this deficiency is estimated at four million dollars ($4 million) but can be as high as $5.7 million should carbon-free energy prices increase.

Through PG&E’s proposed allocation, SVCE can choose to take its full allocation of large hydroelectricity, nuclear energy or both. Given the high value of carbon-free energy and attributes and difficulties in acquiring carbon-free resources, staff requests that the Board adopt the attached resolution authorizing the CEO to execute the PG&E Energy Confirmation with non-substantive changes comprised of allocated carbon-free attributes including attributes generated by hydroelectric facilities and DCPP for delivery in 2020 only and to sell carbon-free attributes associated with DCPP. Doing so will enable SVCE to receive the benefit of carbon-free resources that SVCE is currently paying for via PCIA thus significantly reducing its carbon-free procurement costs by a range of approximately ($3.5 million- $8.9 million). Carbon free energy allocated in surplus to SVCE’s needs may be sold to other load serving entities, with a preference to sell nuclear energy attributes first, or simply retired without allowing PG&E, SVCE or any other load serving entity (LSE) to claim ownership to the carbon-free energy.

Figure 1 is an illustration of SVCE’s estimated 2020 power content label given current resources and execution of a confirmation for its full allocation of PG&E’s hydroelectric portfolio using the proposed draft California Energy Commission (CEC) Power Source Disclosure Program calculator. There is no change to the 2020 GreenPrime power content label as its power content label is unaffected by the proposed carbon-free allocation.
PG&E is also considering a retroactive allocation of carbon free resources for the 2019 delivery period, however the ability to demonstrate such resources as part of a load serving entities supply mix and power content label is subject to the CEC approval. SVCE does not anticipate receiving a retroactive allocation of carbon free resources for the 2019 delivery period as SVCE has procured its stated carbon-free targets.

Through the upcoming Integrated Resource Plan (IRP) process, staff intends to return to the Board with long-term alternative carbon-free portfolios and the merits of taking an allocation of PG&E’s carbon-free resources beyond 2020. A specific recommendation will be provided after the CPUC PCIA Working Group #3 Proposal is finalized, which is expected by May 2020. Under Resolution No.2019-03 the Board authorized the CEO to execute transactions with certain suppliers under Electric Master Agreements. PG&E is one such authorized supplier and execution of the confirmation would be subject to the Electric Master Agreement in place between SVCE and PG&E.

**STRATEGIC PLAN**

The execution of the PG&E Energy Confirmation with non-substantive changes comprised of allocated carbon-free attributes including attributes generated by hydroelectric facilities and DCPP and to sell carbon-free attributes associated with DCPP will better enable Staff to meet its power supply procurement, cost management and rate objective goals as outlined in SVCE’s Strategic Plan, Power Supply Goals 11 and 12. In addition, the allocation of carbon-free resources from PG&E’s portfolio provides fairness as PG&E currently assigns its carbon-free portfolio to its Power Content Label while CCA’s are obligated to pay the above market costs associated with these carbon-free resources.
ALTERNATIVES
The alternatives to the recommended resolution of authorizing the CEO to execute the PG&E Energy Confirmation with non-substantive changes comprised of allocated carbon-free attributes including attributes generated by hydroelectric facilities and DCPP for 2020 only and to sell carbon-free attributes associated with DCPP include the following:

1) Executing the PG&E Energy Confirmation with allocated carbon-free attributes from only the PG&E large hydro portfolio; or
2) Not executing the PG&E Energy Confirmation and allowing PG&E to retain SVCE’s share of its carbon-free portfolio

These alternatives would expose SVCE to significantly higher carbon-free procurement costs associated with its net open position and fail to remedy the inequity associated with PG&E using its entire carbon-free portfolio on its Power Content Label while departed load customers pay the PCIA for those resources without receiving the carbon-free benefit.

FISCAL IMPACT
Adoption of the recommended resolution creates the following forecasted fiscal impact assuming carbon-free attribute value of $7/MWh in 2020:

<table>
<thead>
<tr>
<th>Scenario #1</th>
<th>SVCE does NOT accept PG&amp;E carbon-free allocation</th>
<th>$4,012,631</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario #2</td>
<td>SVCE accepts only the PG&amp;E large-hydro carbon free allocation</td>
<td>$484,631</td>
</tr>
<tr>
<td>Scenario #3</td>
<td>SVCE accepts the entire carbon-free allocation and sells the carbon-free attributes associated with Diablo Canyon Power Plant</td>
<td>$(4,891,369)</td>
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</table>

For fiscal year 2019-2020, the expected net savings is calculated below using various carbon-free attribute prices:

<table>
<thead>
<tr>
<th>Scenario #1</th>
<th>$7/MWh</th>
<th>$8/MWh</th>
<th>$9/MWh</th>
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<td>Scenario #2</td>
<td>$3,528,000</td>
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<td>$4,536,000</td>
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<tr>
<td>Scenario #3</td>
<td>$8,904,000</td>
<td>$10,176,000</td>
<td>$11,448,000</td>
<td>$12,720,000</td>
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ATTACHMENTS
1. Resolution 2019-22 of the Board of Directors of Silicon Valley Clean Energy Authority to Authorize the CEO to Execute the PG&E Energy Confirmation with Non-Substantive Changes Comprised of Allocated Carbon-Free Attributes Including Attributes Generated by Hydroelectric Facilities and DCPP for 2020 Only and To Sell Carbon-Free Attributes Associated with DCPP.
RESOLUTION NO. 2019-22

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE PG&E ENERGY CONFIRMATION WITH NON-SUBSTANTIVE CHANGES COMPRISED OF ALLOCATED CARBON-FREE ATTRIBUTES INCLUDING ATTRIBUTES GENERATED BY HYDROELECTRIC FACILITIES AND DIABLO CANYON POWER PLANT FOR 2020 ONLY AND TO SELL CARBON-FREE ATTRIBUTES ASSOCIATED WITH DIABLO CANYON POWER PLANT

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

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

WHEREAS, Silicon Valley Clean Energy launched service under a community choice aggregation program on April 3, 2017;

WHEREAS, to provide such service, Silicon Valley Clean Energy purchases energy, renewable energy, carbon free energy, resource adequacy and related products and services (the “Product”) from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, Silicon Valley Clean Energy Board of Directors (Board”) pursuant to Resolution No. 2016-09 delegated authority to the Chief Executive Officer (“CEO”) to negotiate and execute separate Master Agreements with certain energy suppliers (“Suppliers”), (such agreements, the “Approved Master Agreements”);

WHEREAS, the Board granted the CEO the authority to execute Confirmations with Board-approved Suppliers under Approved Master Agreements for Silicon Valley Clean Energy’s projected requirements for energy and other Products, provided that such transaction are expressly subject to then-current limits of the ERM Policy, as may be revised by the Board from time to time;

WHEREAS, the Board pursuant to Resolution No. 2019-03 delegated authority to the CEO including (a) entering into Confirmations for terms not greater than 60 months and (b) limiting the Chief Executive Officer’s transaction authority to purchases of Product consistent with forecasted load and within the Energy NOP Tolerance Bands (as defined in the Energy Risk Management (ERM") Policy);

WHEREAS, PG&E is offering to allocate carbon-free attributes including attributes from hydroelectric facilities and Diablo Canyon Power Plant (“DCPP”) for 2019 and 2020 generation and is in the process of determining the mechanics of implementation;

WHEREAS, the staff presented to the Board on October 9th, 2019 during the Integrated Resource Plan (“IRP”) Workshop the possibility of receiving a carbon-free allocation from PG&E’s carbon-free portfolio including DCPP;
WHEREAS, the staff will model the long-term allocation of SVCE’s proportional share of PG&E’s carbon-free portfolio including hydroelectric facilities and DCCP through its 2020 IRP modeling effort and measure the affordability, reliability and carbon-reduction of said allocation.

WHEREAS, the Board continues to reserve to itself the authority to authorize the CEO to enter into Confirmations to purchase Product as defined in the ERM and the definition of carbon-free Product does not explicitly exclude nuclear generation.

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

1. Execute the PG&E energy confirmation comprised of allocated carbon-free attributes including attributes generated by hydroelectric facilities and Diablo Canyon Power Plant for 2020 only and to sell carbon-free attributes associated with Diablo Canyon Power Plant.

ADOPTED AND APPROVED this 11th day of December, 2019 by the following vote:

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<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<td>Director Sinks</td>
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<td>Director Tovar</td>
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<td>Director Bruins</td>
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<td>Director Martinez Beltran</td>
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<td>Director Abe-Koga</td>
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<td>City of Sunnyvale</td>
<td>Director Smith</td>
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Chair

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Secretary
Item 4: **Approve and Authorize the Chief Executive Officer to Execute a Contract Extension with Calpine Energy Solutions for Data Management Services**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Bray, Director of Account Services and Community Relations

Date: 12/11/2019

**RECOMMENDATION**

Authorize the Chief Executive Officer to execute a third amendment to the Agreement between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions LLC for data management services, extending the contract term through 2024, reducing rates and modifying service terms effective January 1, 2020.

**BACKGROUND**

Effective November 1, 2016, the Silicon Valley Clean Energy Authority (SVCE) entered into an Agreement with Noble Americas Energy Solutions LLC (now Calpine Energy Solutions) for data management services. Services include support of mission-critical customer billing and data management functions, data exchange with PG&E, customer call center support, payment and settlement processing.

The term of the existing Agreement ends as of June 30, 2020, unless SVCE and Calpine agree by December 31, 2019 to extend the contract for one year. Under the existing Agreement, SVCE currently pays Calpine $1.10 per month per active meter per month. The Agreement also specifies that if the contract is rolled forward, this price shall escalate annually by 3% or the local Consumer Price Index, whichever is lower.

For data management services after June 30th, 2020, SVCE considered three general options:

- extend the current Calpine agreement for 12 months through June 30th, 2021 at a cost of approximately $1.13 per month per transaction
- explore a longer-term extension with Calpine, in exchange for a lower price and/or other changes in service
- issue a new request for proposal (RFP) soliciting bids from Calpine and other providers for a replacement contract for data management services

Calpine began serving the CCA market for data management services with MCE Clean Energy in 2011, and now serves a majority of CCAs, including SVCE, Peninsula Clean Energy, San Jose Clean Energy, Sonoma Clean Power, Clean Power SF, Clean Power Alliance, Redwood Coast, and Lancaster Community Energy.

Two other data management service providers have entered the CCA market more recently. East Bay Community Energy and Valley Clean Energy currently receive services from the Sacramento Municipal Utility District (SMUD), and Monterey Bay Community Power from GridX.

**ANALYSIS & DISCUSSION**

SVCE has had a positive experience with Calpine to date, receiving accurate and timely billing and customer call center services. Since the inception of Calpine’s billing service for SVCE, over 4.6 million SVCE invoices have been billed by Calpine through PG&E, and only 247 invoices have required re-billing due to a calculation error – an accuracy rate greater than 99.99%. In addition, Calpine has consistently met its call center service
level agreement (SLA) commitments for call answer times and abandonment rates. CCAs working with the other data management service providers have reported more in the way of operational and/or billing issues.

To date, no operating CCA has switched data management services providers. Switching from one provider to another would require a complex information technology (IT) conversion of software systems and historical SVCE customer data, training of personnel on new systems/processes, and hiring of new call center personnel. Such a conversion would require extensive planning and incremental costs, and involve significant risks to the timeliness and accuracy of customer transactions during and immediately after the transition.

In the interest of lowering future costs and limiting potential third-party risks, SVCE and other CCAs are exploring establishment of a jointly-owned data management service. Ultimately pursuing such a course would require significant long-term organizational, investment and timeframe commitments.

Peninsula Clean Energy (PCE) is under a contract with Calpine similar to SVCE’s, and also has a contract end date in mid-2020. Rather than rolling the current contracts forward, SVCE and PCE met with Calpine to explore their willingness to offer improved contract economics if SVCE and PCE were willing to both commit to contract extensions longer than one year.

Working with both SVCE and PCE, Calpine has agreed to the following terms for a multi-year contract update, with a minimum length of three years, and maximum length of five years:

<table>
<thead>
<tr>
<th>Contract Length</th>
<th>3 years</th>
<th>4 years</th>
<th>5 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>End Date</td>
<td>Dec 31, 2022</td>
<td>Dec 31, 2023</td>
<td>Dec 31, 2024</td>
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<td>Cost per Meter/Month</td>
<td>$0.85</td>
<td>$0.85</td>
<td>$0.85</td>
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<tr>
<td>Monthly fee</td>
<td>$25,000</td>
<td>$25,000</td>
<td>$25,000</td>
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<tr>
<td>Termination Cost</td>
<td>$280,000</td>
<td>$140,000</td>
<td>$0</td>
</tr>
<tr>
<td>Est. Blended Cost per Meter/Month</td>
<td>$0.97</td>
<td>$0.955</td>
<td>$0.94</td>
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</table>

The new contract cost represents a substantial 14-17% reduction from the prospective 2020 roll-forward cost of $1.13 per meter/month. Further, any future adjustments for inflation or cost increases over the next three to five years are included in the new (and reduced) blended per meter/month charge. The pricing structure offers SVCE the flexibility to exit the agreement after three years, should SVCE elect at that point to move to another data services provider.

Included in the updated contract are changes to call center staffing requirements that will allow some resources to be shared between PCE, SVCE, and SJCE. This allows for better resource utilization and reduces costs for Calpine, without any measurable impact to SVCE service. In addition, some Calpine-provided services such as support of electric rate changes are now ‘bounded’, meaning the costs of up to two annual rate changes are covered under the contract, and any additional major rate changes would involve an associated one-time fee as specified in the contract. Such a structure allows Calpine to reduce its month-to-month charges to SVCE.

In the updated contract, Calpine formalizes its commitment to SVCE to provide improved data management tools, and operational support for management of hourly and 15-minute interval customer usage data. These new capabilities will support significant advancements in CAISO settlement processes, and help enable new SVCE customer demand management and rate structure offerings.

**STRATEGIC PLAN**
Maintaining highly accurate, timely and cost effective customer services is core to SVCE’s mission, as identified in several elements of SVCE’s strategic plan:
4. Maintain customer service satisfaction
6. Commitment to excellence – optimizing business processes to maximize value to the community and realize cost-efficiency opportunities at both the department and agency levels
8. Empower decision making with data

**FISCAL IMPACT**
The updated agreement with Calpine will result in improved data management services, and savings of $0.16 - $0.19 per meter per month, depending on the ultimate length of the contract as determined by SVCE (3, 4 or 5 years). This equates to SVCE savings of approximately $520,000 to $616,000 per year. The fiscal impact will be $9.4 million over 3 years or $15.2 million over 5 years.

**ATTACHMENT**
1. Third Amendment to the Agreement between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions, effective January 1, 2020.
2. First and Second Amendments and Agreement between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions
THIRD AMENDMENT to the
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND CALPINE ENERGY SOLUTIONS, LLC
As of November 1, 2016
Amendment Effective Date: January 1, 2020

This Third Amendment is made and entered into by and between Calpine Energy Solutions, LLC ("Contractor") and Silicon Valley Clean Energy Authority ("SVCEA"). Effective upon the Amendment Effective Date, SVCEA and Contractor hereby agree to amend that certain Agreement Between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions, LLC dated as of November 1, 2016.

For good and sufficient consideration, including the mutual covenants set forth in this Amendment, all of the following terms, conditions, covenants, and representations set forth in this Amendment are hereby incorporated by reference as part of the Original Agreement, which together shall hereafter constitute the “Agreement.”

I. The Original Agreement is hereby amended by deleting Item 4 in its entirety and replacing it with the following:

“4. Term
Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be from November 1, 2016 through December 31, 2024. Thereafter, the term of this Agreement shall automatically renew for successive one (1) year terms unless one party provides written notice to the other party at least one hundred eighty (180) calendar days in advance of the end of the then existing term that it does not wish to renew the term of this Agreement.”

II. The Original Agreement is hereby amended by adding a new Item 5.f:

“5. f) Early Termination Option. Upon ninety (90) days’ advance notice to the other party, this Agreement may be terminated by the Chief Executive Officer of SVCEA or his/her designee on December 31, 2022 subject to an early termination fee of $280,000 or on December 31, 2023 subject to an early termination fee of $140,000.”

III. The Original Agreement is hereby amended by deleting Item 3. c) in its entirety and replacing it with the following Item 3. c):

“c) For any month in which Contractor has failed to meet the performance standards specified in Exhibit A, Sections II.4(g), II.4(h) and II.5(k), SVCEA shall have the right to reduce payment of any invoice by $20,000 as liquidated damages as provided in this section. Prior to exercising this right, SVCEA shall provide written notice to Contractor that identifies the performance standard(s) that SVCEA believes have not been met and states SCVEA’s intent to invoke this subsection if the failure to achieve such performance standard(s) are not remedied within thirty (30) calendar days. The Parties shall then confer to establish a plan to remedy such failure, which plan may provide a different deadline for remedying of the failure at the mutual agreement of the Parties. In the event that Contractor is unable to achieve such remedy by the deadline established by the Parties or in the absence of such mutually agreed to deadline, 30 calendar days after SVCEA’s notification, SCVEA may exercise its rights under this subsection to reduce payment of each subsequent invoice by $20,000 until the failure is remedied. The foregoing liquidated damages payment shall be limited to $20,000 per month regardless of how many performance standards are not met. SCVEA and Contractor agree that Contractor’s failure to comply with these standards may cause SCVEA to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by SCVEA of actual damages, including increased opt-out rates, reputational harm and general customer dissatisfaction, and these liquidated damages represent a fair, reasonable and appropriate estimate thereof. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and Contractor agrees to pay such liquidated damages in the form of a reduction in invoice payment if it fails to meet the performance standards without limiting SCVEA’s right to terminate this Agreement for default as provided by Section S(b) of this Agreement.”
IV. The Original Agreement is hereby amended by deleting Exhibit A and Exhibit B in their entirety and replacing them with the Exhibit A and Exhibit B attached hereto.

V. All capitalized terms used, but not defined, in this Amendment shall have the meanings set forth in the Agreement. As modified by this Amendment, the Agreement shall remain in full force and effect.

VI. This Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Amendment is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Second Amendment as of the Amendment Effective Date.

For CONTRACTOR:
CALPINE ENERGY SOLUTIONS, LLC

By: ________________________________
Title: ______________________________

For SVCEA:
SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ________________________________
Title: ______________________________
Exhibit A

I. Definitions.

“Ad Hoc Request” or “Ad Hoc” refers to services, including: new services, additional services or significant modifications to current services, requested by SVCEA that fall outside the scope of what Calpine is contractually obligated to provide under the terms of this Agreement. In the event of SVCEA requesting Ad Hoc services, SVCEA shall specify in reasonable detail the nature, business reason and scope of the request and Calpine will use commercially reasonable efforts to deliver Ad Hoc items to SVCEA in a timely manner. Any Ad Hoc Request may be subject to the fee schedule set forth in Exhibit B, Section 4.

“Agreement Holidays” refers to SVCEA Holidays and PG&E Holidays and Calpine Holidays.

“Billing Window” refers to the period starting on the meter read date and ending 10 calendar days later. Submission of bill data must occur during this period for the CCA charges to appear on the consolidated PG&E bill.

“Billing Determinants” are used in the Rate Schedule to calculate the charge or credit due. Billing Determinants can define a time period, as in the case of Time-Of-Use rates that have various significance periods such as on-peak, off-peak, mid-peak, etc., or can be defined as factors that are to be considered when calculating the final customer charge such as discount services or additional charges that deviate from the Rate Schedule’s standard structure, among others.

“Billing Error” refers to the incorrect billing of an account due to an error by Calpine. This does not include errors caused by incorrect or incomplete data provided by PG&E.

“Budget Billing” refers to averaging annual energy costs over the previous 12 months to determine a monthly payment amount and is re-balanced every three months, adjusting the bill up or down based on the previous four months’ usage.

“Business Day” means all calendar days other than those days on which the Federal Reserve member banks in New York City are authorized or required by law to be closed, and shall be between the hours of 8:00 a.m. and 5:00 p.m. Pacific Prevailing Time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

“Calpine Holidays” refers to those days in a calendar year that Contractor observes as holidays, which includes the following twelve (12) days: New Year’s Day, Martin Luther King Jr. Day, President’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve, Christmas Day, and New Year’s Eve. Any changes to this schedule must be approved in advance by SVCEA.

“CARE” refers to the California Alternate Rates for Energy program administered by PG&E which provides discounts on energy bills for income qualified households designated by PG&E.

“Customer Data Acquisition” refers to acquisition of customer electricity usage data from PG&E.
“Community Choice Aggregation/Aggregator” or (“CCA”) refers to local government entities or joint powers agencies whose governing boards have elected to acquire and provide electric power and energy services to utility end-use customers located within their service area(s), as set forth in California Public Utilities Code Section 366.2 and other California Public Utilities Commission (CPUC) directives.

“CCA Service” means the sale of retail electric power by a Community Choice Aggregator, to utility end-use customers located within its service area(s), as set forth in California Public Utilities Code Section 366.2 and other California Public Utilities Commission (CPUC) directives.

“CCA Service Customer” means a PG&E customer taking CCA Service from SVCEA.

“CCA Service Request” or (“CCASR”) means a request in a form approved by PG&E to change a CCA customer’s or utility customer’s choice of services, which could include returning a CCA customer to bundled utility service or direct access service.

“Customer Information System” or (“CIS”) refers to the systems used by Calpine to store SVCEA customer-specific information, including account enrollment status, rate tariff, payment history, collection status, correspondence and other information that is necessary for Calpine to effectively administer Data Manager Services.

“Customer Relationship Manager” or (“CRM”) refers to an online software platform populated by a database and designed to manage and analyze customer interactions and data through the customer lifecycle with the goal of improving business relationships with customers, assisting in customer retention and driving customer participation.

“Direct Access Customer” refers to a PG&E customer purchasing retail power from an Electric Service Provider.

“Electronic Data Interchange” or (“EDI”) refers to the transfer of data between PG&E and Calpine related to CCA Service Customers of. The EDI transaction sets used for Data Manager Services are as follows:

- 248 – Daily Billing Files
- 810 – CCA invoice information that appears on customer’s PG&E bill
- 814 – CCA enrollments, changes, opt outs and disconnects
- 820 – Remittance advice identifying the detail needed to perform cash application to accounts receivable by customer
- 824 – Application Advice for Invoices, used to reject invoice transactions
- 867 – Electric meter usage data by customer account
- 997 - Functional Acknowledgement

“FERA” refers to the Family Electric Rate Assistance Program which is a statewide program in which families whose household income slightly exceeds the CARE allowance can qualify to receive FERA discounts on their electricity bill.

“First-Contact or First Call Resolution” refers to addressing a customer’s need the first time they contact or call for assistance, thereby eliminating the need for the customer to follow up with a second call.
“Interactive Voice Response” or (“IVR”) refers to the call center voice-recorded system that enables customers, through keypad input, to select options related to their account or access a live call center agent.

“Local Distribution Company” or “Utility Distribution Company” (“LDC” or “UDC”) refers to the relevant electric utility (such as Pacific Gas and Electric Company).

“Mass Enrollment” refers to the phase-in of a group of new customers (who have not opted out prior to receiving CCASR) onto CCA Service over one billing cycle beginning with each customer’s regularly scheduled meter read date, as further defined in PG&E’s Electric Schedule E-CCA.

“Medical Baseline” refers to the Medical Baseline Allowance program administered by PG&E which provides a higher baseline quantity on energy bills for eligible customers designated by PG&E.

“Meter Data Management Agent” or (“MDMA”) Services include: reading customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SVCEA and PG&E standards.

“Net Energy Metering” refers to one of the various Net Energy Metering programs administered by PG&E as described in its Electric Schedules, for which SVCEA may provide bill credits for qualifying self-generation to participating CCA Service customers.

“North American Industry Classification System” or (“NAICS”) refers to the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data.

“Non-Enrollment Period” refers to any other period that is not a Statutory Enrollment Period.

“On Bill Repayment” refers to a financing option in which a utility or private lender supplies capital to a customer to fund energy efficiency, renewable energy, or other projects and is repaid through regular payments on an existing utility bill.

“PG&E Holidays” refers to those days in a calendar year that PG&E observes as holidays.

“Qualified Reporting Entity” or (“QRE”) refers to an entity authorized by WREGIS to submit meter data associated with renewable energy on behalf of the generator owner using the WREGIS application.

“Rate Schedule” refers to the rate buildout, or formula, that includes all the necessary Billing Determinants, and the values applied to each, used to calculate charges or credits per unit of electricity consumed (kWh) or per unit of demand (kW).

“Rate Template” refers to a predefined format used to communicate Rate Schedule(s) from SVCEA to Calpine. A Rate Template is considered valid once Calpine has reviewed the information it contains to ensure it meets the expected formatting requirements and the Rate Schedule(s) it contains align with published SVCEA tariffs.
“Self Service” refers to data that SVCEA can obtain and access through the Data Tools, upon its implementation, or to processes or actions which SVCEA can perform without the assistance of Calpine staff. Should SVCEA request data from Calpine that is available via Self Service or request Calpine perform a process or action that SVCEA can perform via Self Service, this shall be considered an Ad Hoc Request and is subject to the fees listed in Exhibit B, Section 4.

“Service Agreement” refers to the agreement between customers and PG&E documenting the customer’s billing arrangement, including rate plan, used to calculate PG&E charges.

“Settlement Quality Meter Data” or (“SQMD”) refers to meter data gathered, edited, validated, and stored in a settlement-ready format, for settlement and auditing purposes.

“SVCEA-Designated Third Party” refers to any third party that acts in the place or stead of SVCEA under the terms of the Agreement. For the avoidance of doubt, any such SVCEA-Designated Third Party shall abide by and be bound by the terms of the Agreement, in the same way as SVCEA.

“SVCEA Data” refers to all data and information provided, collected, or produced on SVCEA’s behalf in connection with the services provided under this Agreement; including, but not limited to, confidential personally identifiable information or utility customer data protected under state privacy laws, billing data, usage data, Settlement Quality Meter Data, enrollment information, contact history, and any other confidential or proprietary information that relates to current, prospective, or former SVCEA customers.

“SVCEA Holidays” refers to those days in a calendar year that SVCEA observes as holidays.

“SVCEA Service Area” refers to all cities, towns, counties, and unincorporated areas that have selected electric generation service from SVCEA.

“Statutory Enrollment Period” refers to the three-month period prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and the two months following Mass Enrollment. The Statutory Enrollment Period takes place over a six-month period.

“Structural Rate Change” refers to a rate change that alters one or more Billing Determinants within a Rate Schedule buildout by changing the definition of the Billing Determinant itself and/or adding and/or removing one or more Billing Determinants to an existing buildout.

“Value Only Rate Change” refers to a rate change that alters only the values applied to each of the Billing Determinants in a given Rate Schedule buildout, keeping the existing buildout intact.

“Western Region Energy Generation Information System” or (“WREGIS”) refers to the independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC).

II. **In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:**

1. **Electronic Data Exchange Services:**
   a. Process CCA Service Requests (CCASRs) from/to PG&E which specify the changes to a customer’s choice of services such as enrollment in CCA programs,
customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).

b. Obtain all customer usage data from PG&E’s Metered Data Management Agent (MDMA) server to allow for timely billing (according to PG&E requirements) of each customer (867 Electronic Data Interchange Files).

c. Maintain and communicate the amount to be billed by PG&E for services provided by SVCEA (810 Electronic Data Interchange Files).

d. Receive and maintain all data related to payment transactions toward CCA charges from PG&E after payment is received by PG&E from customers (820 Electronic Data Interchange Files).

e. Process CCASRs with PG&E when customer status changes.

2. Qualified Reporting Entity (QRE) Services:

   a. Consistent with terms and conditions included in the QRE Services Agreement(s) between SVCEA and Contractor, serve as QRE for up to thirty (30) locally situated, small-scale renewable generators or other distributed energy resources supplying electric energy to SVCEA through a feed-in tariff (FIT) or other mechanism. In the event the number of such resources exceeds that allowed herein, both Parties agree to jointly discuss and determine a mutually agreeable solution to address the excess number of resources.

   b. Submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on SVCEA’s behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.

   c. Contractor shall receive applicable electric meter data from PG&E for SVCEA distributed energy resource projects, consistent with PG&E’s applicable meter servicing agreement, and shall provide such data to SVCEA for purposes of performance tracking and invoice creation.

3. Customer Information System:

   a. Maintain an accurate database of all eligible accounts who are located in the SVCEA service area and identify each account’s enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer SVCEA as mutually agreed to by parties from time to time.
b. Allow SVCEA to have functional access to the online database to add customer interactions and other account notes.

c. Allow SVCEA to view customer email or written letter correspondence within online database.

d. Maintain historical usage data on all customers for a time period equal to the lesser of either (a) the start of customer service to present or (b) five years. Maintain viewing access, available to appropriate SVCEA staff, to view PG&E bills for SVCEA customers, including supporting the intuitive parsing and labeling of PG&E provided files. Maintain accessible archive of billing records for all SVCEA customers from the start of SVCEA Service or a period of no less than five years.

e. Maintain and communicate as needed record of customers who have been offered service with SVCEA but have elected to opt out, either before or after starting service with SVCEA.

f. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled as per SVCEA’s Net Energy Metering policy.

g. When requested by SVCEA, place program charges on the relevant customer account, referenced by its unique identifier.

h. Identify customers participating in various SVCEA programs in database.

i. Include various program payment information in all relevant reports.

j. Perform quarterly SVCEA program reviews to assess appropriate customer charge level.

k. Maintain all customer data according to SVCEA’s customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process.

l. Maintain a Data Management Provider Security Breach Policy.

4. Customer Call Center:

a. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.

   1. In the event third party services are required to translate prompts or scripts into languages specified by SVCEA, any charges incurred by Contractor as a result of these will be passed by Contractor onto SVCEA in accordance with Exhibit B, Section 3.
b. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.

c. Staff a call center between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding Agreement Holidays.
   1. No less than 2 client service representatives will be dedicated to SVCEA unless both Parties mutually agree to adjust staffing levels after reviewing call volumes and related call center statistics.
   2. Any remaining call center representatives needed to support call volumes are to be shared among SVCEA, Peninsula Clean Energy, and San Jose Clean Energy.

d. At SVCEA’s written request, subject to the corresponding price set forth in Exhibit B and with three (3) months’ notice prior to taking effect, staff a call center between the hours of 7 AM and 8 AM PPT, and 5 PM and 7 PM PPT, Monday through Friday, excluding Agreement Holidays.

e. At SVCEA’s written request, subject to the corresponding price set forth in Exhibit B and with three (3) months’ notice prior to taking effect, staff a call center using only client service representatives dedicated to SVCEA, except for cases in which Contractor personnel may, from time to time, support the call center client service representatives.

f. Provide sufficient number of Contractor staff available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding Agreement Holidays.

g. Contractor will adhere to the following performance standards during Non-Enrollment Periods:
   1. Ensure that a minimum of 80% of all calls will be answered within 45 seconds.
   2. Ensure that a minimum of 90% of all calls will be answered within 3 minutes.
   3. Achieve a no greater than 5% abandon rate for all calls.
   4. 100% of voicemail messages answered within one (1) Business Day and provide report to SVCEA upon request that substantiates this requirement has been met.
   5. 100% of emails receive an immediate automated acknowledgement and provide report upon request to SVCEA that substantiates this requirement has been met.
   6. 95% of emails receive a customized response within one (1) Business
Day and provide report to SVCEA upon request that substantiates this requirement has been met.

7. 100% of emails receive a customized response within three (3) Business Days and provide report to SVCEA upon request that substantiates this requirement has been met.

h. Contractor will adhere to the following performance standards during Statutory Enrollment Periods:

1. Ensure that a minimum of 75% of all calls will be answered within 60 seconds.

2. 100% of voicemail messages answered within one (1) Business Day and provide report to SVCEA upon request that substantiates this requirement has been met.

3. 100% of emails receive an immediate automated acknowledgement and provide report upon request to SVCEA that substantiates this requirement has been met.

4. 95% of emails receive a customized response within one (1) Business Day and provide report to SVCEA upon request that substantiates this requirement has been met.

5. 100% of emails receive a customized response within three (3) Business Days and provide report to SVCEA upon request that substantiates this requirement has been met.

6. Achieve a no greater than 10% abandon rate for all calls.

i. Provide sufficient call center staffing to meet the requirements set forth herein.

j. Provide callers with the estimated hold time, if applicable. Provide an automated ‘call back’ option for callers who will be put on hold for an estimated five minutes or longer.

k. Record all inbound calls and make recordings available to SVCEA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.

l. Track call center contact quality with criteria including:

1. Use of appropriate greetings and other call center scripts

2. Courtesy and professionalism

3. Capturing key customer data

4. Providing customers with correct and relevant information
5. First-contact resolution

6. Accuracy in data entry and call coding

7. Grammar and spelling in written communications (email and chat)

m. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.

n. Respond to customer emails.

o. Receive calls from SVCEA customers referred to Contractor by PG&E and receive calls from SVCEA customers choosing to contact Contractor directly without referral from PG&E.

p. Provide the call center number on PG&E invoice allowing SVCEA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.

q. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.

r. Respond to telephone inquiries from SVCEA customers using a script developed and updated quarterly by SVCEA. For questions not addressed within the script, refer inquiries either back to PG&E or to SVCEA.

s. Respond to customer inquiries received through telephone calls, email, fax and/or web-portal within the times and guidelines in Exhibit A, Section II.4.

t. Upon request, coordinate with PG&E and other PG&E territory CCAs to participate in call center reviews up to twice per calendar year.

u. Ensure monthly statistics reports are provided in a timely and consistent manner as mutually agreed upon by Parties.

v. Provide recurring statistics reports focused on Call Center activities in a timely and consistent manner as mutually agreed upon by Parties.

w. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.

x. Provide translation services for inbound calls for the following languages: Spanish, Cantonese, Mandarin, Tagalog, and Vietnamese.

y. Create and maintain online forms for the SVCEA website so that customers may perform program related tasks including, but not limited to, opt-up, opt-down, or opt-out from the Silicon Valley Clean Energy website. These program changes will be integrated into the Customer Relationship Management system on a
daily or more frequent basis.

z. Participate in periodic meetings with SVCEA to review operations on a schedule mutually agreed upon by Parties.

5. Billing Administration:

a. Apply PG&E account usage for all SVCEA customers against applicable Rate Schedules to allow for customer billing.

b. Review application of SVCEA Rate Schedules to PG&E accounts to ensure that the proper rates are applied to the accounts.

c. Timely submit billing information for each customer to PG&E to meet PG&E’s billing window.

d. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.

e. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.

f. Provide customer mailing list to SVCEA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.

g. Provide customer mailing list to SVCEA designated printer for customers with overdue payments and return customers to PG&E bundled service in accordance with SVCEA’s late payment and collections policies.

h. Send certain SVCEA program charges for non-SVCEA customers, when supported by PG&E, based on information provided to Contractor by SVCEA.

i. Send certain SVCEA program charges as a separate line item to PG&E for placement on monthly bill during term of repayment.

j. Intentionally Omitted.

k. Contractor will adhere to the following performance standards for this service:

1. 99% of SVCEA charges sent to PG&E free of Contractor error and within PG&E Billing Window, on a rolling 12 month basis (current month and preceding 11 months).

6. Rate Schedule Maintenance
Maintain a table of Rate Schedules, offered by SVCEA to its customers, within Contractor’s billing system.

1. Complete Value Only Rate Changes within 10 Business Days once Contractor has confirmed it is in receipt of a valid Rate Template.

2. Complete Structural Rate Changes within 40 Business Days once Contractor has confirmed it is in receipt of a valid Rate Template.

3. A Rate Template will be considered valid if it meets the expected formatting requirements as set forth by Contractor and acknowledged by SVCEA, and the Rate Schedules it contains align with published SVCEA tariffs. Upon receipt of a Rate Template, Contractor will review it per these guidelines and after SVCEA has corrected any errors, if present, Contractor will communicate to SVCEA that a valid Rate Template has been received and work will commence as per the timelines indicated above.

4. Should SVCEA submit updates after Contractor has begun work on a valid Rate Template, SVCEA understands this may be considered a new Rate Change.

   ii. Conduct no more than three Value Only Rate Changes within Contractor’s billing system at no additional cost to SVCEA within each calendar year.

   iii. Conduct no more than one Structural Rate Change within Contractor’s billing system at no additional cost to SVCEA within each calendar year.

   iv. At SVCEA’s direction and for the corresponding price as indicated in Exhibit B, conduct additional Value Only or Structural Rate Changes beyond those included as noted above.

7. Reporting:

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<tr>
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<td>Utility User Tax (UUT) where applicable</td>
<td>Monthly</td>
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8. Settlement Quality Meter Data:
   a. Contractor shall provide SVCEA or SVCEA’s designated Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from SC’s by the California Independent System Operator (CAISO).
   
   b. Upon SVCEA’s request, Contractor shall submit the SQMD directly to the CAISO on behalf of SVCEA or SVCEA’s designated SC.
   
   c. Contractor will use, when available, AMI usage data as provided by PG&E through its Share My Data platform in its SQMD aggregation methodology.

9. Data Tools
   a. Establish a data warehouse environment comprised of data related to the services provided by Contractor under this Agreement.
   
   b. Provide access for SVCEA staff to query the data warehouse environment.
   
   c. Data made available in the data warehouse shall include:
      
      1. AMI usage data provided by PG&E through their Share My Data (SMD) platform
         
         a. Prior to loading this data into the data warehouse, Contractor will make commercially reasonable efforts to process the raw SMD data and associate usage data with customer accounts in Contractor’s CIS
         
         b. Contractor will query PG&E systems for updated usage data and make
reasonable efforts to update the data warehouse on a daily basis.

c. Contractor and SVCE will establish mutually-agreed service level metrics and protocols for daily processing and loading of SMD data.

2. Customer account information and characteristics from the customer list provided by PG&E and supplemented by the following data from CRM and CIS:
   a. SVCEA participation history
   b. Product elections (e.g. GreenStart and GreenPrime)
   c. Opt-out activity
   d. SVCEA rate schedule
   e. Contractor will make reasonable efforts to provide additional characteristics requested by SVCEA

3. Billing data from Contractor’s CIS

4. SQMD submission data.

   d. Contractor may, from time to time and at its sole discretion, update the functionality available in the data warehouse which may include, among others, adding or maintaining data visualizations, self-service reporting tools, self-service analytical tools, and Application Program Interface (API) points.

   e. Contractor may, at its sole discretion, engage with SVCEA and other Contractor clients to elicit their input on required functionality, data elements, and system design as it pertains to the development, maintenance, and evolution of its data environment.

   f. In the absence of the data warehouse or adequate data within the data warehouse for SVCEA to Self Service, Contractor shall assist SVCEA in compiling Ad Hoc sales, customer, and usage reports from time to time as may be requested by SVCEA, with each such request being accompanied by mutually agreed upon requirements and proper notice.

   g. Contractor will provide technical support to access the data warehouse and documentation describing the data. SVCEA will provide staff with technical database expertise to engage with Contractor in the implementation and use of the data warehouse.

   h. Data warehouse environment availability expected by end of Q3 2020.
**Exhibit B**

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, SVCEA shall pay Contractor based on the following fee schedule and terms:

Contractor’s cost for the services listed in Exhibit A is $25,000 per month plus $0.85 per active meter per active account per month (“Cost for the Services”). Travel and all start-up costs are included in this price.

1. **Rate Change Pricing**

Additional Rate Changes beyond those included in the per meter per active account pricing noted above will be provided to SVCEA per the following price schedule:

<table>
<thead>
<tr>
<th>Billing Determinants</th>
<th>Up to 50</th>
<th>51 to 250</th>
<th>251 to 500</th>
<th>501 to 1,000</th>
<th>1,001 to 1,500</th>
<th>1,501 to 3,000</th>
<th>3,001 to 4,500</th>
<th>4,501+</th>
<th>Hourly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value Only Change</td>
<td>$1,000</td>
<td>$2,000</td>
<td>$3,000</td>
<td>$5,000</td>
<td>$7,500</td>
<td>$10,000</td>
<td>$13,000</td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>Structural Rate Change</td>
<td>$1,000</td>
<td>$2,500</td>
<td>$5,000</td>
<td>$7,500</td>
<td>$10,000</td>
<td>$15,000</td>
<td>$20,000</td>
<td>$30,000</td>
<td></td>
</tr>
<tr>
<td>Custom Rates (2 hours included of preliminary consultation)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$150 / hr</td>
<td></td>
</tr>
</tbody>
</table>

2. **Service Option Pricing**

<table>
<thead>
<tr>
<th>Service Option</th>
<th>Per meter per month fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extended Contact Center hours (7am – 7pm PPT)</td>
<td>$0.04</td>
</tr>
<tr>
<td>Dedicated Contact Center agents</td>
<td>$0.01</td>
</tr>
</tbody>
</table>

3. **Script Translation Services**

Charges incurred by Calpine from engaging with vendors to translate scripts or other documents from English into other language(s) will be passed by Calpine to SVCEA at cost.

4. **Additional Deliverable Pricing**

The Fees defined in Exhibit B include only those service and items expressly set forth in Exhibit A of this Agreement. Unless otherwise agreed to by SVCEA and the Contractor, the cost of additional deliverables provided by Contractor to SVCEA, including Ad Hoc requests, shall be passed through directly to SVCEA without mark-up using a labor rate of $150.00 per hour, (“Labor Rate”).

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AMENDMENT to the
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND CALPINE ENERGY SOLUTIONS, LLC
As of November 1, 2018
Amendment Effective Date: April 3, 2018

This Amendment is made and entered into by and between Contractor and SVCEA. Effective upon the Amendment Effective Date, SVCEA and Contractor hereby agree to amend that certain Agreement Between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions, LLC dated as of November 1, 2016, as may be amended through such Amendment Effective Date (the “Original Agreement”).

For good and sufficient consideration, including the mutual covenants set forth in this Amendment, all of the following terms, conditions, covenants, and representations set forth in this Amendment are hereby incorporated by reference as part of the Original Agreement, which together shall hereafter constitute the "Agreement."

I. The Original Agreement is hereby amended by deleting Section 4 of Exhibit A in its entirety and replacing it with the following:

"4. Customer Call Center:
   a. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.
   b. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
   c. Through July 1, 2018, staff a call center 24 hours a day 7 days a week to process opt out requests only.
   d. Staff a call center between the hours of 7 AM and 7 PM PPT Monday through Friday, excepting SVCEA and PG&E holidays. Provide data on call volumes by day of week, time of day, and nature of request, with a summary of percentage of calls received during various times of day in order to evaluate potential call center hours of operation. Upon request by SVCEA, Contractor agrees to discuss in good faith an increase in the operating hours of the call center and any resulting increase in costs to SVCEA. Any mutually agreed upon changes in the operating hours and costs shall be set forth in an amendment to this Agreement.
   e. Provide sufficient call center staffing to meet the requirements set forth herein, including designating SVCEA specific agents to the extent needed to provide for full functionality and a customer call center supervisor that will serve as the main point of contact between SVCEA and customer call center staff.
   f. Provide sufficient number of Data Manager Experts available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding SVCEA and PG&E holidays (“Regular Business Hours”). For the purpose of Exhibit A, Data Manager Experts are designated analysts trained to resolved escalated CCA customer-specific questions related to metered usage, CCA rates including NEM, account status, payments, and program participation.
   g. [Reserved]
   h. Contractor will adhere to the following performance standards:
      i. A minimum of 80% of all calls will be answered within 45 seconds.
      ii. A minimum of 90% of calls will be answered within 3 minutes.
      iii. 100% of voicemail messages requiring response receive an acknowledgment response within one (1) business day.
      iv. 95% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.
      v. 100% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.
      vi. 100% of emails receive an immediate automated acknowledgement.
      vii. 95% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.
      viii. 100% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.
      ix. Achieve a no greater than 6% abandon rate for all calls.
   i. Contractor shall provide monthly reports, which will demonstrate whether these performance standards have been met.

Amendment to Agreement Between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions, LLC
j. Provide callers with the estimated hold time, if applicable. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.

k. Record all inbound calls and make recordings available to SVCEA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.

l. Track call center contact quality with criteria including:
   i. Use of appropriate greetings and other call center scripts
   ii. Courtesy and professionalism
   iii. Capturing key customer data
   iv. Providing customers with correct and relevant information
   v. First-contact resolution
   vi. Accuracy in data entry and call coding
   vii. Grammar and spelling in text communication (email and chat)

m. Evaluate customer satisfaction through randomized voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.

n. Receive calls from SVCEA customers referred to Contractor by PG&E and receive calls from SVCEA customers choosing to contact Contractor directly without referral from PG&E.

o. Provide the call center number on PG&E invoice allowing SVCEA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.

p. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.

q. Respond to telephone inquiries from SVCEA customers using a script developed and updated quarterly by SVCEA. For questions not addressed within the script, refer inquiries either back to PG&E or to SVCEA.

r. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.

s. Offer bi-annual cross training to PG&E call center in coordination with SVCEA.

t. Participate in co-ordinative meetings, at SVCEA's request, to promote the resolution of any customer service issues. Such meetings may include SVCEA's management/staff and may require on-site participation by contractor's management/staff.

u. Provide monthly status reports during the first week of each month.

v. Provide weekly status reports during Statutory Enrollment Periods.

w. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.

x. Provide translation services for inbound calls for the following languages: Spanish, Cantonese, Mandarin, Tagalog, and Vietnamese.

y. Create and maintain online forms for the SVCEA website so that customers may perform program related tasks including, but not limited to, opt-up, opt-down, or opt-out from the Silicon Valley Clean Energy website. These program changes will be integrated into the Customer Relationship Management system on a daily or more frequent basis.

z. At SVCEA's request, host SVCEA meetings with call center management and representatives on a bi-monthly basis.

aa. Forward inbound calls regarding matters under the control of SVCEA, to SVCEA. Forward inbound calls regarding matters under the control of PG&E, to PG&E.

bb. Capture customer communication in CRM in accordance with a protocol for receiving and responding to customer complaints, including a tracking and reporting program. Contractor shall provide said protocol to SVCEA for its review within sixty (60) calendar days of execution of this Agreement.*

II. All capitalized terms used, but not defined, in this Amendment shall have the meanings set forth in the Agreement. As modified by this Amendment, the Agreement shall remain in full force and effect.

III. This Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Amendment is
executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Amendment as of the Amendment Effective Date.

For CONTRACTOR:
CALPINE ENERGY SOLUTIONS, LLC

By: James M. Wood
Title: President

For SVCEA:
SILICON VALLEY CLEAN ENERGY AUTHORITY

By: [Signature]
Title: CEO

Calpine Energy Solutions Agreement
SECOND AMENDMENT to the
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND CALPINE ENERGY SOLUTIONS, LLC
As of November 1, 2016
Amendment Effective Date: August 14, 2019

This Second Amendment is made and entered into by and between Calpine Energy Solutions, LLC ("Contractor") and Silicon Valley Clean Energy Authority ("SVCEA"). Effective upon the Amendment Effective Date, SVCEA and Contractor hereby agree to amend that certain Agreement Between the Silicon Valley Clean Energy Authority and Calpine Energy Solutions, LLC dated as of November 1, 2016, to extend the term of such Agreement (the "Original Agreement").

For good and sufficient consideration, including the mutual covenants set forth in this Amendment, all of the following terms, conditions, covenants, and representations set forth in this Amendment are hereby incorporated by reference as part of the Original Agreement, which together shall hereafter constitute the "Agreement."

I. The Original Agreement is hereby amended by deleting Item 4 in its entirety and replacing it with the following:

"4. Term
Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be from November 1, 2016 through June 30, 2020. Thereafter, the term of this Agreement shall automatically renew for successive one (1) year terms unless one party provides written notice to the other party at least one hundred eighty (180) calendar days in advance of the end of the then existing term that it does not wish to renew the term of this Agreement."

II. All capitalized terms used, but not defined, in this Amendment shall have the meanings set forth in the Agreement. As modified by this Amendment, the Agreement shall remain in full force and effect.

III. This Amendment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. The Parties agree that, if a copy of this Amendment is executed by a Party and transmitted to the other Party by facsimile, the copy received shall be deemed for all legal purposes to be an original executed by the transmitting Party.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Second Amendment as of the Amendment Effective Date.

For CONTRACTOR:
CALPINE ENERGY SOLUTIONS, LLC

By: [Signature]
Title: President

For SVCEA:
SILICON VALLEY CLEAN ENERGY AUTHORITY

By: [Signature]
Title: [Title]
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND NOBLE AMERICAS ENERGY SOLUTIONS LLC

This Agreement is entered into this 1st day of November, 2016, by and between the Silicon Valley Clean Energy Authority, a joint powers authority, hereinafter called "SVCEA" and Noble America Energy Solutions LLC, hereinafter called "Contractor." SVCEA and Contractor may be referred to hereinafter individually as "Party" and collectively as "Parties".

Whereas, SVCEA may contract with independent contractors for the furnishing of such services to or for SVCEA; and

Whereas, it is necessary and desirable that a Contractor be retained for the purpose of providing data management and establishing a customer call center for SVCEA, as further described in Exhibit A hereto;

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – NES Security Breach Policy

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for SVCEA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A. As provided by Exhibit B, Contractor will perform the services described in Exhibit A but will not invoice SVCEA nor will SVCEA owe payments to Contractor sooner than sixty (60) calendar days following the date on which the first SVCEA customer meter becomes active.

3. Payments

a) In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, SVCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. In the event that the SVCEA, in its sole discretion, makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the SVCEA at the time of contract termination or expiration. Contractor will not invoice SVCEA nor will SVCEA owe payments to Contractor sooner than sixty (60) calendar days following the date on which the first SVCEA customer meter becomes active.

b) Unless otherwise indicated in Exhibit B, Contractor shall invoice SVCEA monthly for all payments related to service performed during the previous month, or two months in the case of the first and second months' invoices. Payments shall be due within thirty (30) calendar days after the date of invoice. All payments must be made in U.S. dollars.

c) For any month in which SVCEA believes Contractor has failed to meet the performance standards specified in Exhibit A, Sections 4(g), 4(h) and 5(k), SVCEA shall have the right to reduce payment
of any invoice by $10,000 as liquidated damages as provided in this section. Prior to exercising this right, SVCEA shall provide written notice to Contractor that identifies the performance standard(s) that have not been met and states SCVEA’s intent to invoke this subsection if the failure(s) to achieve such performance standard(s) are not remedied within thirty (30) calendar days. The Parties shall then confer to establish a plan to remedy such failure, which plan may provide a different deadline for remedying the failure(s) at the mutual agreement of the Parties. In the event that Contractor is unable to achieve such remedy within the 30 calendar days of notification, or within the deadline established by the Parties, SCVEA may exercise its rights under this subsection to reduce payment of each subsequent invoice by $10,000 until the failure(s) is remedied. The foregoing liquidated damages payment shall be limited to $10,000 per month regardless of how many performance standards are not met. SVCEA and Contractor agree that Contractor’s failure to comply with these standards will cause SVCEA to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by SVCEA of actual damages, including increased opt-out rates, reputational harm and general customer dissatisfaction, and these liquidated damages represent a fair, reasonable and appropriate estimate thereof. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty and Contractor agrees to pay such liquidated damages in the form of a reduction in invoice payment if it fails to meet the performance standards without limiting SVCEA’s right to terminate this Agreement for default as provided by Section 5(b) of this Agreement.

4. Term

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be from November 1, 2016 through March 1, 2020. Thereafter, the term of this Agreement shall automatically renew for successive one (1) year terms unless one party provides written notice to the other party at least one hundred eighty (180) calendar days in advance of the end of the then existing term that it does not wish to renew the term of this Agreement.

5. Termination

a) Early Termination Due to Cancellation of Community Choice Aggregation (CCA) program. If SVCEA determines on or before January 15, 2017, in its sole and absolute discretion, not to proceed with the CCA program, SVCEA may terminate this Agreement by giving written notice to Contractor as provided in Section 19 of this Agreement. In that event, no payments will be owed or paid.

b) Termination for Default. Either SVCEA or Contractor may terminate this Agreement if any one of the following events (each a “Default”) occurs with respect to the other Party: (i) with respect to SVCEA, SVCEA fails to pay amounts due hereunder and such failure continues for twenty-one (21) business days after written notice from Contractor; in accordance with Section 3 of Agreement, (ii) a Party defaults in the observance or performance by a Party of any such Party’s material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for thirty (30) Business Days after written notice is given to such Party failing to perform its covenants or agreements under this Agreement, provided, however, that for such events which require more than thirty (30) business days, to cure, then the defaulting Party shall have such additional time as may reasonably be required to effect such cure provided that the defaulting Party diligently and continuously pursues such cure; or; (iii) either Party makes an assignment or any general arrangement for the benefit of creditors or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any

Page 2
bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced) or is unable to pay its debts as they fall due.

c) **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing services hereunder; and (b) any and all payment obligations of SVCEA under this agreement will become due immediately. Upon such expiration of termination, and upon request of SVCEA, Contractor shall reasonably cooperate with SVCEA to ensure a prompt and efficient transfer of all data, documents and other materials to SVCEA or a new service provider in a manner such as to minimize the impact of expiration or termination on SVCEA’s customers. SVCEA agrees to pay Contractor compensation for services performed in connection of such transfer, to the extent not contemplated in the Agreement.

d) SVCEA reserves the right to transition all call center duties from Contractor to SVCEA, with at least ninety (90) calendar days’ notice to Contractor. SVCEA shall be responsible for any additional actual infrastructural or actual programming costs incurred by Contractor to facilitate this transition in accordance with the rates identified in Exhibit B. Contractor will invoice the actual costs to SVCEA without any added charges.

e) Notwithstanding any other provision of this Agreement, SVCEA reserves the right to transition call center duties from Contractor to SVCEA in phases, according to all needs and demands related to all tiers, overflow call center options, and third-party translation services. SVCEA shall be responsible for any additional actual infrastructural or actual programming costs incurred by Contractor to facilitate this transition. Contractor will invoice the actual costs to SVCEA in accordance with the rates identified in Exhibit B and without any added charges.

5.5 **Transition At Time Of Termination Or Expiry**

a) In the event of termination or expiry of this Agreement, in whole or in part, Contractor and SVCEA shall take commercially reasonable steps sufficient to ensure the orderly and effective transition of the services to SVCEA and/or a successor contractor (“Transition Assistance”).

b) All references in this Section to termination or expiry shall include partial and complete termination or expiry, cancellation or cessation unless the context otherwise requires.

c) In relation to any partial termination or expiry the provisions of this Section shall apply only to those parts of the services subject to such partial termination or expiry.

d) Each reference to an obligation of Contractor under this Section shall be deemed to include an obligation on Contractor to require all relevant sub-contractors to comply with such obligation.

5.5.1 **Transition Assistance Period**

The Transition Assistance Period means a period of such duration as is determined by SVCEA but in no event longer than one hundred eighty (180) calendar days commencing on the earlier of:

a) service of notice to terminate this Agreement;

b) in case of a repuditory breach of this Agreement, the date on which the non-defaulting party accepts such repuditory breach as terminating this Agreement; or

c) the expiry of the initial term or any extended term (as the case may be).
5.5.2 Transition Assistance Election

During the Transition Assistance Period, the services will be discontinued or transitioned to a Successor Contractor at SVCEA's discretion and such transition shall then be performed in accordance with the Transition Plan required by subsection 5.5.3 below and with this Section. All the terms and conditions of this Agreement will remain unchanged during the Transition Assistance Period (including but not limited to rates and charges, discounts, credits, waivers, service levels and key personnel).

5.5.3 Transition Assistance Planning

Promptly following the commencement of the Transition Assistance Period (and in any event within fourteen (14) calendar days of notice by either Party), or earlier at the request of SVCEA, Contractor shall develop, with reasonable assistance from SVCEA, a written transition assistance plan specifying in detail all activities, and the corresponding timing of such activities, necessary to facilitate an orderly and effective transition of the Services ("Transition Plan"). The Transition Plan shall include sections setting out in detail how Contractor will satisfy the specific obligations described in paragraph 5.5.4 below.

5.5.4 Transition Assistance Obligations for Call Center Services (Exhibit A, Section 4)

The Transition Assistance provided by Contractor during the Transition Assistance Period shall include the following services at no additional charge to SVCEA:

a) providing SVCEA or its designees with documentation relating to the services that are necessary or useful to enable the orderly and effective transition of the services to SVCEA and/or a successor contractor;

b) allowing SVCEA to observe Contractor's provision of the services;

c) providing SVCEA and/or a successor contractor with reasonable access to relevant Contractor staff in order to facilitate knowledge transfer, which shall include explanations from such staff of the services, the manner of their provision and reasonably related documentation and providing answers to reasonable questions from SVCEA on the same, provided that Contractor shall not be required to disclose any of commercially sensitive information as part of this process unless such information is necessary for performance of the services by SVCEA or a successor contractor following the expiry of the Transition Assistance Period;

d) Contractor shall provide Transition Assistance in such a manner as to ensure the uninterrupted performance of the services, with no degradation in quality, and avoid disruption in the operation until the successor begins providing services.

5.5.5 Transition Assistance Obligations for Data Manager Services (Exhibit A, Sections 1, 2, 3, 5, 6 and 7)

a) Contractor shall provide to SVCEA data and documentation, in a format or formats acceptable to SVCEA, and other information reasonably requested by SVCEA in connection with the transition that is sufficient to enable successor contractor to fully assume the provision of the transitioning services.

b) The processes, systems, and people related to the Data Manager Services within this agreement that are unique to Contractor, will not be included in the Transition Assistance Planning.

6. Contract Materials

Upon the expiration of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") provided by SVCEA to Contractor under this Agreement shall remain the property of SVCEA.
and shall be promptly returned to SVCEA. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. **Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of SVCEA and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of SVCEA employees. Contractor understands that SVCEA is a Joint Powers Authority made up of the County of Santa Clara and eleven towns and cities within the County. Contractor further understands that this Agreement is made solely with SVCEA and not with any member jurisdiction of the JPA. Contractor further understands and agrees that, pursuant to the Joint Powers Authority Agreement and California law, the debts, liabilities and obligations of SVCEA are its sole responsibility and not the responsibility of its constituent member jurisdictions.

Contractor further agrees that it will not seek to recover, or cooperate with any other person or entity to seek to recover, any debt, liability or obligation related to this Agreement from any constituent member jurisdiction of SVCEA. Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); and (v) it is not a party to or subject to any commitment that may restrict or interfere with this Agreement.

8. **Hold Harmless**

   a. **General Hold Harmless**

To the extent permitted by law, Contractor shall indemnify and save harmless SVCEA and its board members, officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from or arising out of this Agreement, the performance of any work or services or actions taken under this Agreement, or payments made pursuant to this Agreement, including any claim, suit, or action brought for, or on account of, any of the following, provided that they arise out of acts or omission of the Contractor, Contractor's employees or subcontractors:

(A) Injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) Damage to any property of any kind whatsoever and to whomsoever belonging;

(C) Any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) Any other loss or cost. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which SVCEA has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct, or under a strict liability theory.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
This provision shall apply only to the extent of the Contractor's acts and omissions, which shall be deemed to include any contractor, subcontractor, and/or employee of the Contractor, including any person or entity under Contractor's direction and control.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise expressly provided by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless SVCEA from and against all claims, actions, liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this subsection applies only provided that: (a) SVCEA notifies Contractor promptly in writing of any notice of any such third-party claim; (b) SVCEA cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without SVCEA's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on SVCEA, impair any right of SVCEA, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of SVCEA without SVCEA's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes SVCEA's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's expense, either: (i) procure for SVCEA the right to continue using the services without infringement or (ii) replace or modify, subject to SVCEA's prior approval which shall not be unreasonably withheld, conditioned or delayed, the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to SVCEA under this subsection to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for SVCEA (other than modification performed by, or at the direction of, Contractor or performed without the prior, express notification to SVCEA) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by SVCEA in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this subsection shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

a) Except as otherwise provided in subsection (b), below Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of SVCEA, which shall not be unreasonably be withheld, conditioned or delayed. Any such
assignment or subcontract without SVCEA’s prior written consent shall give SVCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice.

b) SVCEA consents to Contractor subcontracting with AnswerNet for the purposes of providing the services described in Exhibit A to this Agreement.

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor’s own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by SVCEA’s Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish SVCEA with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor’s coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Contractor shall provide notice in writing, to SVCEA of any pending material change in the limits of liability or of any cancellation or material modification of the policy. Such notice shall be provided to SVCEA within thirty (30) calendar days of Contractor receiving such notice. Such insurance and certificates, which do not limit Contractor’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) calendar days’ advance written notice to Silicon Valley Clean Energy Authority, Attention: Chief Executive Officer.”

b. Workers’ Compensation and Employer’s Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement commercial general liability insurance that shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall include, at a minimum, the following:
Coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

- $1,000,000 each occurrence (combined single limit);
- $2,000,000 general aggregate

In addition, Contractor shall take out and maintain during the term of this Agreement, a professional liability policy that shall cover any and all damages, liabilities, financial losses and costs incurred as a result of Contractor's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One Million Dollars ($1,000,000) per claim and Two Million Dollars ($2,000,000) annual aggregate for all claims.

Except for the professional liability insurance policy described above, SVCEA and its officers, agents, employees, and servants shall be named as additional insured on any policies of insurance required by this Agreement. All insurance policies required by this Agreement, including the professional liability insurance policy, shall also contain a provision that (a) the insurance afforded thereby to SVCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the SVCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, SVCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

d. **Subrogation Waiver**

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to SVCEA, on behalf of any insurer providing comprehensive general or automotive liability insurance to either Contractor or SVCEA with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of Contractor may acquire against SVCEA by virtue of the payment of any loss under such insurance.

12. **Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall, to the extent applicable to Contractor or Contractor's performance, be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or other governmental financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.
Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination

Contractor agrees that it shall not harass or discriminate against a job applicant, a Contractor's employee or subcontractor, a SVCEA employee, or any customers of SVCEA, nor shall any person be denied any services provided pursuant to this Agreement on the basis of race, religion, color, national origin, ancestry, disability, marital status, pregnancy, sex, age, sexual orientation, or any other legally protected class. In the event that Contractor has been found to have engaged in any discriminatory conduct prohibited by this Section or Section 12 of this Agreement, by a court or other governmental body with jurisdiction over such matter, from which all appeals have been exhausted, such violation be considered a Default under this Agreement. Contractor shall notify SVCEA of such findings as soon as reasonably possible upon Contractor receiving such notice itself.

14. Retention of Records; Right to Monitor and Audit

a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after SVCEA makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by SVCEA, a Federal grantor agency, and the State of California.

b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by SVCEA.

c) Contractor agrees upon reasonable notice to provide to SVCEA, to any Federal or State department having monitoring or review authority, to SVCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine and make and retain copies of all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

d) Contractor agrees to maintain and make available to SVCEA, during regular business hours, accurate books and accounting records relating to its work under this Agreement. SVCEA and Contractor agree that, insofar as Contractor maintains an active trading floor, any such audit, examination, or review, will be conducted off-site at a location mutually acceptable to the Parties, off of Contractor's premises. SVCEA and Contractor agree to work to minimize the impact of any such audit on Contractor's operations. Contractor will, upon request, provide SVCEA with copies to audit, examine and make excerpts and transcripts from such books and records, and to make audits thereof of data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon SVCEA by this Section.

15. Entire Agreement; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights,
duties, and obligations of each party as of this document’s date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. **Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the Santa Clara County Superior Court.

17. **Mediation Prior to Filing a Lawsuit**

Except as provided in this Section, the Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, or any other mutually agreed mediator for mediation prior to the filing of a lawsuit.

Either Party may commence such mediation by providing the other Party a written request for mediation-setting forth the subject of the dispute and the relief requested. Such mediation will conclude no later than forty-five (45) calendar days from the date that such written request was received by the other Party, unless such date should fall on a Saturday, Sunday or recognized holiday, in which case the mediation will conclude by 6 PM, Pacific Prevailing Time on the next business day.

The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs, provided, however, that each Party will bear the cost of its own attorneys.

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any of the mediators, are confidential, privileged and inadmissible for any purpose, including impeachment, in any other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Either Party to this Agreement may: (1) seek judicial equitable relief, or other equitable relief available to it under applicable statutory and/or case law including but not limited to injunctive relief; (2) exercise any self-help rights; and/or (3) any other rights or remedies available to it by contract or applicable statutory or case law, whether such occurs before, during or after the pendency of any negotiation or mediation, provided, however, in the case of (3) that (i) the Party availing itself of its rights and remedies so described will take only such actions as are necessary to preserve its rights during the pendency of the mediation, and (ii) all applicable statutes of limitation and defenses based upon the passage of time shall be tolled during the pendency of the mediation. The Parties will take such action, if any, required to effectuate such tolling.

The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary rights or remedies or exercise of self-help remedies, all as provided herein, and the pursuit of any such rights or
remedies, shall not constitute a waiver of the right or obligation of any Party, including the plaintiff seeking judicial relief or remedies, to engage in the mediation pursuant to this Article.

18. Information Security

a) General Information Security. All facilities, devices, and methods used by Contractor to store and process SVCEA data will adhere to industry standard best practices, including appropriate administrative, technical, and physical security measures, to protect against threats or hazards to the security or integrity of SVCEA data and to protect against the unauthorized access, disclosure, alteration, use, encryption, corruption, destruction, and loss of SVCEA data. Such measures will include industry standard and up-to-date security tools and technologies such as antivirus protections and intrusion detection methods designed to prevent all manner of breach including but not limited to hacking, phishing, and ransomware. SVCEA data includes customer information, including that provided to Contractor by PG&E.

b) Network Security. Contractor agrees at all times to maintain network security that (at a minimum) includes network firewall provisioning, intrusion detection, and regular vulnerability assessments. Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices.

c) Application Security. Contractor agrees at all times to provide, maintain, and support its software and subsequent updates, upgrades, and bug fixes according to generally recognized industry standards and best practices such that the software is, and remains secure from known and reasonably anticipated vulnerabilities.

d) Data Security. Contractor agrees to preserve the confidentiality, integrity, and accessibility of SVCEA data with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices. Maintenance of a data security includes but is not limited to the timely application of patches, fixes, and updates to operating systems and applications as provided by vendor or open source support. Data backups should be stored on a separate server and network to insure if a data breach occurs, data can be easily restored. If possible, data backups should be stored in a separate location.

e) Data Storage. Contractor agrees that any and all SVCEA data will be stored, processed, and maintained according to generally recognized industry standards and best practices.

f) Data Transmission. Contractor agrees that any and all electronic transmission or exchange of system and application data with SVCEA and/or any other parties expressly designated by SVCEA shall take place via industry standard secure means.

g) Data Encryption. Contractor agrees to store all SVCEA backup data as part of its designated backup and recovery process in encrypted form, using a commercially supported encryption solution.

h) Data Re-Use. Unless otherwise specifically authorized by SVCEA by writing and in advance of such use, Contractor shall not use any SVCEA data for any purpose other than those required or specifically permitted by the Agreement.
i) Data Ownership. All SVCEA data shall continue to be the property of and under the control of SVCEA.

j) End of Agreement Data Handling. Contractor certifies that SVCEA data shall not be retained or available to Contractor upon completion of the term of the Agreement. Within ninety (90) calendar days of completion of the term of the Agreement, unless this timeline is extended by mutual written agreement, SVCEA data in the possession of Contractor shall be returned and/or destroyed. Where reasonably feasible, Contractor shall, upon request of SVCEA, return all SVCEA data to SVCEA in a format acceptable to SVCEA or if return is not feasible as determined by SVCEA in advance written notice to Contractor, destroy any and all SVCEA data within the timelines specified within this section.

k) Security Breach Notification to SVCEA. Contractor shall report, orally and in writing, to SVCEA any use, disclosure, and/or breach of SVCEA data not authorized by this Agreement or otherwise authorized in writing by SVCEA, including any reasonable belief that an unauthorized individual has accessed SVCEA data and any episode within which SVCEA data has been breached or subjected to a cyber-extortion threat. Contractor shall make the report to SVCEA immediately upon discovery of the event, but in no case more than one (1) business day after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor’s notice shall identify the nature of the unauthorized use or disclosure, the data used, disclosed, or held for ransom, who made the unauthorized use or received the data if known, what Contractor has done to or shall do to mitigate any effect of the unauthorized use and/or breach, and what corrective action Contractor will take to prevent future similar unauthorized uses, disclosures, or breaches. Contractor shall provide such other information, including a written report, as reasonably requested by SVCEA.

l) Security Breach Notification to Impacted Persons. Contractor agrees to comply with all applicable laws that require the notification of individuals, businesses, and entities, in the event of the unauthorized release, acquisition, or other event requiring notification. Contractor further agrees to assume full responsibility of informing such individuals, businesses, and/or entities of such events in accordance with applicable law.

m) Data Segregation. Contractor agrees to store and maintain all SVCEA data in a manner that preserves its integrity and separation from any data that Contractor may obtain and store for its other clients. Contractor shall not commingle SVCEA data with data obtained from other sources.

n) Contractor and its employees, contractors, officers, agents or successors shall comply with all applicable data security laws and regulations.

o) Contractor shall maintain customer data in compliance with CPUC Decision D.12-08-045, the PG&E Non-Disclosure Agreement, and any customer privacy policy adopted by SVCEA, including a daily backup.

p) Contractor shall maintain NES Security Breach Policy attached hereto as Exhibit C and provide any updates to the Policy within 7 calendar days, excluding changes to the Covered Information Users Lists.
19. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of SVCEA, to:

<table>
<thead>
<tr>
<th>Name/Title</th>
<th>Tom Habashi, Chief Executive Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087</td>
</tr>
<tr>
<td>Telephone</td>
<td>408-730-7742</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:tomh@svcleanenergy.org">tomh@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

In the case of Contractor, to:

<table>
<thead>
<tr>
<th>Name/Title</th>
<th>Drake Welch, Vice President – Customer Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>401 West A Street, Suite 500, San Diego, CA 92101</td>
</tr>
<tr>
<td>Telephone</td>
<td>619-684-8039</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:dwelch@noblesolutions.com">dwelch@noblesolutions.com</a></td>
</tr>
</tbody>
</table>

*Remainder of this page intentionally left blank.*
21. **Signatures**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities on whose behalf they are signing.

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

**Silicon Valley Clean Energy Authority**

By: 

Tom Habashi  
Chief Executive Officer

Date:  

**Noble Americas Energy Solutions LLC**

By: 

Name:  

Date:  

APPROVED AS TO FORM:

ATTEST:

Authority Clerk
Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. Electronic Data Exchange Services:
   a. Process Community Choice Aggregation Service Requests (CCASRs) from/to PG&E which specify the changes to a customer’s choice of services such as enrollment in Community Choice Aggregation (CCA) programs, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
   b. Obtain all customer usage data from PG&E’s Metered Data Management Agent (MDMA) server to allow for timely billing (according to PG&E requirements) of each customer (887 Electronic Data Interchange Files).
   c. Maintain and communicate the amount to be billed by PG&E for services provided by SVCEA (810 Electronic Data Interchange Files).
   d. Receive and maintain all data related to payment transactions toward CCA charges from PG&E after payment is received by PG&E from customers (820 Electronic Data Interchange Files).
   e. Process CCASRs with PG&E when customer status changes.
   f. Participate in the Customer Data Acquisition Program (CDA) beta testing for SmartMeter data sharing as SVCEA’s Data Manager.
   g. Obtain customer usage data that would allow SVCEA to bill customers using generation rate structures (e.g., time-of-use periods) that are different from those reflected in the applicable PG&E rate schedule, or provide a comparable solution within 18 months of execution of this agreement.

2. Qualified Reporting Entity (QRE) Services:
   a. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between SVCEA and Contractor, serve as QRE for up to twenty locally situated, small-scale renewable generators supplying electric energy to SVCEA through its feed-in tariff (FIT). In addition to the above, Contractor will perform QRE Services for an additional ten renewable generators under a one-time upfront charge of $2,000 per generator to SVCEA, payable the month after the first month of QRE Service.
   b. Submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on SVCEA’s behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
   c. Receive applicable electric meter data from PG&E for SVCEA FIT projects, consistent with PG&E’s applicable meter servicing agreement, and provide such data to SVCEA for purposes of performance tracking and invoice creation.

3. Customer Information System:
   a. Establish an operational Customer Relationship Management System (“CRM”) within sixty (60) calendar days of contract execution. Establish an operational Customer Information System within sixty (60) calendar days of contract execution.
   b. Maintain an accurate database of all eligible accounts that are located in the SVCEA service area and identify each account’s enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer SVCEA as mutually agreed to by parties from time to time.
   c. Allow SVCEA to have functional access to the online database to add customer interactions and other account notes.
   d. Allow SVCEA to view customer email or written letter correspondence within CRM.
   e. Maintain and provide as-needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of customer service to present or (b) five (5) years.
f. Until a cloud-based storage solutions for SmartMeter historical usage data is implemented, store SmartMeter historical usage data, as received by the MDMA, for a 45 hour window.

g. Maintain viewing access, available to appropriate SVCEA staff, to view PG&E bills for SVCEA customers, including supporting the intuitive parsing and labeling of PG&E provided files. Maintain accessible archive of billing records for all SVCEA customers from the start of SVCEA service or a period of no less than five (5) years.

h. Maintain and communicate as needed records of customers who have been offered service with SVCEA but have elected to opt out, either before or after starting service with SVCEA.

i. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.

j. When requested by SVCEA, place program charges on the relevant customer account, identified by Service Agreement ID (SAID).

k. Identify customers participating in various SVCEA programs in database.

l. Include various program payment information in all relevant reports.

m. Perform quarterly SVCEA program reviews to assess appropriate customer charge level.

n. Maintain all customer data according to SVCEA’s customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process.

4. Customer Call Center:

a. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.

b. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.

c. Staff a call center, during any CCA Statutory Enrollment Period, 24 hours a day 7 days a week to process opt out requests.

d. Staff a call center during Non-Enrollment Period between the hours of 8 AM and 5 PM PST Monday through Friday, excluding SVCEA and PG&E holidays. Provide data on call volumes by day of week, time of day, and nature of request, with a summary of percentage of calls received during various times of day in order to evaluate potential call center hours of operation. Upon request by SVCEA, Contractor agrees to discuss in good faith any increase in the operating hours of the call center and any resulting increase in costs to SVCEA. Any mutually agreed upon changes in the operating hours and costs shall be set forth in an amendment to this Agreement.

e. Provide sufficient call center staffing to meet the requirements set forth herein, including designating SVCEA specific agents to the extent needed to provide full functionality and a customer call center supervisor that will serve as the main point of contact between SVCEA and customer call center staff.

f. Provide sufficient number of Data Manager Experts available to manage escalated calls between the hours of 8 AM and 5 PM PST Monday through Friday, excluding SVCEA and PG&E holidays ("Regular Business Hours"). For the purpose of Exhibit A, Data Manager Experts are designated analyst trained to resolved escalated CCA customer-specific questions related to metered usage, CCA rates including NEM, account status, payments, and program participation.

g. Contractor will adhere to the following performance standards during Non-Enrollment Periods:

i. A minimum of 80% of all calls will be answered within 45 seconds. For the purpose of Exhibit A, the time to answer begins the IVR system transfers the call to call queue and ends once a live agent takes the call.

ii. A minimum of 98% of calls will be answered within 3 minutes.

iii. 100% of voicemail messages requiring response receive an acknowledgment response within one (1) business day.

iv. 95% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.

v. 100% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.
vi. 100% of emails receive an immediate automated acknowledgment.

vii. 95% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.

viii. 100% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.

ix. Achieve a no greater than 5% abandon rate for all calls.

h. Contractor will adhere to the following performance standards during Enrollment Periods:
   i. A minimum of 75% of all calls will be answered within 60 seconds.
   ii. A minimum of 85% of calls will be answered within 3 minutes.
   iii. 100% of voicemail messages requiring response receive an acknowledgment response within one (1) business day.
   iv. 95% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.
   v. 100% of voicemail messages requiring response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.
   vi. 100% of emails receive an immediate automated acknowledgement.
   vii. 95% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within one (1) business day.
   viii. 100% of emails requiring customized response answered or sent to SVCEA (as directed by SVCEA) within three (3) business days.
   ix. Achieve a no greater than 10% abandon rate for all calls.

i. Contractor shall provide monthly reports, which will demonstrate whether these performance standards have been met.

j. Provide callers with the estimated hold time, if applicable. Provide an automated ‘call back’ option for callers who will be put on hold for an estimated five minutes or longer.

k. Record all inbound calls and make recordings available to SVCEA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.

l. Track call center contact quality with criteria including:
   i. Use of appropriate greetings and other call center scripts
   ii. Courtesy and professionalism
   iii. Capturing key customer data
   iv. Providing customers with correct and relevant information
   v. First-contact resolution
   vi. Accuracy in data entry and call coding
   vii. Grammar and spelling in text communication (email and chat)

m. Evaluate customer satisfaction through randomized voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.

n. Receive calls from SVCEA customers referred to Contractor by PG&E and receive calls from SVCEA customers choosing to contact Contractor directly without referral from PG&E.

o. Provide the call center number on PG&E invoice allowing SVCEA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.

p. Collect permission (via voice recording, email request, or electronic form submit/al) from customers to send electronic correspondence instead of printed mail.

q. Respond to telephone inquiries from SVCEA customers using a script developed and updated quarterly by SVCEA. For questions not addressed within the script, refer inquiries either back to PG&E or to SVCEA.

r. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.

s. Offer bi-annual cross training to PG&E call center in coordination with SVCEA.

t. Participate in conference meetings, at SVCEA’s request, to promote the resolution of any customer service issues. Such meetings may include SVCEA’s management/staff and may require on-site participation by contractor’s management/staff.

u. Provide monthly status reports during the first week of each month.
v. Provide weekly status reports during Statutory Enrollment Periods.
w. Use commercially reasonable efforts to make Spanish speaking call center staff available to
customers during Regular Business Hours.
x. Provide translation services for inbound calls for the following languages: Spanish, Cantonese,
Mandarin, Tagalog, and Vietnamese.
y. Create and maintain online forms for the SVCEA website so that customers may perform
program related tasks including, but not limited to, opt-up, opt-down, or opt-out from the Silicon
Valley Clean Energy website. These program changes will be integrated into the Customer
Relationship Management system on a daily or more frequent basis.
z. At SVCEA’s request, host SVCEA meetings with call center management and representatives
on a bi-monthly basis.

aa. Forward inbound calls regarding matters under the control of SVCEA, to SVCEA. Forward
inbound calls regarding matters under the control of PG&E, to PG&E.

bb. Capture customer communication in CRM in accordance with a protocol for receiving and
responding to customer complaints, including a tracking and reporting program. Contractor
shall provide said protocol to SVCEA for its review within sixty (60) calendar days of execution
of this Agreement.

5. Billing Administration:
   a. Maintain a table of rate schedules offered by SVCEA to its customers.
   b. Send certain SVCEA program charges for non-SVCEA customers, when supported by PG&E,
based on information provided to Contractor by SVCEA.
   c. Send certain SVCEA program charges as a separate line item to PG&E for placement on:
monthly bill during term of repayment.
   d. Apply PG&E account usage for all SVCEA customers against applicable rate to allow for
customer billing.
   e. Review application of SVCEA rates to PG&E accounts to ensure that the proper rates are
applied to the accounts.
   f. Timely submit billing information for each customer to PG&E to meet PG&E’s billing window.
   g. Use commercially reasonable efforts to remedy billing errors for any customer in a timely
manner, no more than two billing cycles.
   h. Assist with annual settlement process for Net Energy Metering customers by identifying eligible
customers, providing accrued charges and credits, and providing mailing list to CCA
designated printer.
   i. Provide customer mailing list to SVCEA designated printer for new move-in customer notices
and opt out confirmation letters routinely within 7 calendar days of enrollment or opt out.
   j. Send a SVCEA provided letter to customers that are overdue. If no payment is received from
the customer after a certain amount of time, issue a CCASR to return customer to PG&E.
   k. Contractor will adhere to the following performance standards for this service:
      i. 99% of SVCEA charges sent to PG&E free of Contractor error on a monthly basis.
      ii. 99.6% of SVCEA charges sent to PG&E free of Contractor error on a rolling 12 month
      basis.
      iii. 99% of SVCEA charges sent to PG&E will be processed within 3 business days of
Contractor loading validated usage data from PG&E EDI files.

6. Settlement Quality Meter Data (SQMD):
   a. For each meter, receive either interval meter reads (usage per fifteen minutes) or a monthly
read for scalar meters and SmartMeters. If a scalar meter or SmartMeter, apply the
appropriate PG&E dynamic profiles to shape the usage, quantifying usage for each hourly
interval.
   b. After hourly reads (fifteen minute interval reads are summed to the hourly interval) for each
meter are quantified, loss adjust the usage, per meter and interval, with the appropriate PG&E
dynamic loss factor based on voltage level of the account. If after performing quality control
and working with PG&E to remedy missing or incorrect usage, there remains any missing
reads or reads deemed inaccurate, estimate usage for the respective meter based on historical
usage.
c. Aggregate usage for all meters by hour and trade date and provide to Silicon Valley Clean Energy’s designated Scheduling Coordinator or directly to CAISO for T+8 and T+48 submissions.
d. Submissions for T+172B (Resettlement) are performed as needed per an agreed upon threshold and process between SVCEA, designated Scheduling Coordinator, and contractor.
e. SVCEA agrees that Contractor shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an indemnity or otherwise.
f. Contractor shall prepare the SQMD using the same level of care that Contractor would use if preparing the SQMD for its own account as a Load Serving Entity (LSE) however, Contractor hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete, or free from error.

7. Reporting

<table>
<thead>
<tr>
<th>Report</th>
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<td>SFTP</td>
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<td>Weekly, Monthly</td>
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<td>100% Opt Up with Address</td>
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<td>Utility User Tax (UUT) Where Applicable</td>
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<td>Email</td>
</tr>
<tr>
<td>Invoice Summary Report</td>
<td>Weekly, Monthly</td>
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<td>Invoice Summary Report-Mid Month</td>
<td>Monthly</td>
<td>SFTP</td>
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<td>Monthly Transaction Summary</td>
<td>Monthly</td>
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<td>Opt Out with Rate Class</td>
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<td>Retroactive Returns</td>
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<td>Snapshot</td>
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<td>Snapshot with Addresses</td>
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<td>Performance Standards</td>
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i. Ensure monthly status reports are provided during the first week of each month.
ii. Ensure weekly status reports are provided during all other enrollment periods.

8. Call Center Location
Contractor will ensure that the majority of baseload calls will be answered by personnel physically located within the nine county San Francisco Bay Area. Complex calls and call escalations may be routed to Data Manager Experts located in San Diego. Overflow and after-hour support will be located in Northern California. In no event, will any other services required by this Agreement be performed by employees or agents located outside of the United States.

9. Deliverables
Contractor understands that SVCEA has a strict timeline for launch of its program. Attached as Attachment 1 to Exhibit A is a flow chart version of that timeline. Contractor is ready and able and agrees to perform the services under this Agreement in a manner that will allow SVCEA to meet its timeline, which includes program launch (delivery of power to customers) in April 2017. As the parties agree that time is of the
essence, both Contractor and SVCEA understand that each has deliverables and dependencies on each other to meet the program launch date. Contractor agrees that a failure to perform services in a manner that allows SVCEA to meet its timeline, unless such delay is caused by SVCEA, shall constitute a material breach of this agreement.

10. Definitions
   a. Enrollment Period shall be defined as the three months prior to an automatic mass enrollment of customers into the SVCEA program, the month in which the mass enrollment occurs, and the two months following the mass enrollment. The Enrollment Period takes place over a six month period, beginning with the first Opt-out notice and ending with the completion of the 60-day follow-up notification period.

   b. Non-Enrollment Period shall be defined as any period outside of an Enrollment Period.
### SVCEA Projected Implementation Timeline

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<td>PG&amp;E Account setup</td>
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<td>4/3 - 4/28</td>
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<td>4/17 - 4/30</td>
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<td>6/1 - 6/30</td>
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<td>Jul-17</td>
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<td>9/1 - 9/30</td>
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<td>Réact programming (if needed)</td>
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<td>PG&amp;E Account setup</td>
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<td>Nov-17</td>
<td>11/1 - 11/10</td>
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<td>Phase 3 ramp-on month, first full cycle bills begin</td>
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<td>11/13 - 11/30</td>
<td>Third opt out notice period</td>
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<tr>
<td></td>
<td>12/8</td>
<td></td>
<td>Enrollment period ends</td>
</tr>
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</table>
Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, SVCEA shall pay Contractor based on the following fee schedule and terms:

Contractor’s payment for the services listed in Exhibit A shall be $1.15 per active meter per month for a period of one year following the date on which the first SVCEA customer meter becomes active, and, thereafter, shall be $1.10 per active meter per month. Travel and all start-up costs are included in this price. Contractor will not invoice SVCEA nor will SVCEA owe payments to Contractor sooner than sixty (60) calendar days following the date on which the first SVCEA customer meter becomes active.

Contractor’s payment in effect for the services listed in Exhibit A shall escalate annually beginning on April 1, 2020 by the Consumer Price Index for the San Francisco-Oakland-San Jose Area or 3%, whichever is lower.

Notwithstanding any other provision contained in this Agreement, in the event that Contractor enters into an agreement with any other party to provide substantially all of the services listed in Exhibit A at a lower rate per active meter per month than provided herein, Contractor’s active meter per month rate provided under this Agreement shall be reduced to match said lower rate. Contractor shall notify SVCEA within five business days of execution of any such agreement and the same reduced rate shall be applicable to SVCEA under this Agreement one month following such rate being charged to the other party. The matched rate shall take precedence over the rate escalation described above and shall not be applied retroactively to any months preceding such rate change.

In the event that SVCEA elects to remove full call center services, the fee shall be reduced by $0.15 per active meter per month.

The Fees defined herein include only those service and items expressly set forth in Exhibit A of this Agreement. Unless otherwise agreed to by SVCEA and the Contractor, any additional deliverable provided by Contractor to SVCEA, at SCVEA’s express written request, shall be billed at a labor rate of $150.00 per hour plus any out-of-pocket costs incurred by Contractor without mark-up.
EXHIBIT C

Noble Americas Energy Solutions

Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators

Updated September 29, 2016
# Table of Contents

**Introduction**
- Scope
- Related Documents
- Terms and Definitions
- Responsible Parties

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- Detecting and Reporting of Security Breaches
- Security Breach Handling Procedure

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- Covered Information Users List (Revenue Manager)
- Covered Information Users List (Microsoft Dynamics CRM)
Scope

This document outlines the Procedure for detecting and reporting security breaches that impact Community Choice Aggregation ("CCA") clients in regard to their customers' Covered Information.

The Procedure applies to the below listed activities, which constitute a Security Breach of Covered Information:

1) Unauthorized access
2) Unauthorized destruction
3) Unauthorized use
4) Unauthorized modification
5) Disclosure to third parties for Secondary Purposes (see below)

The aforementioned activities pertain to residential and small commercial usage data at the service account level ("Covered Information").

Aggregated usage data that cannot be used to identify an individual account falls outside the scope and is not Covered Information.

Related Documents

<table>
<thead>
<tr>
<th>Attachment</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Covered Information Users List (Revenue Manager)</td>
</tr>
<tr>
<td>2</td>
<td>Covered Information Users List (Microsoft Dynamics CRM)</td>
</tr>
<tr>
<td>3</td>
<td>CCA Privacy Policy</td>
</tr>
</tbody>
</table>

Terms and Definitions

**Covered Entity**

A “covered entity” is (1) and Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers), or any third party that provides services to a Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) under contract, (2) any third party who accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers).
**Covered Information**

"Covered information" is any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or non-residential customer, except that covered information does not include information from which identifying information has been removed such that an individual, family, household, or residence, or non-residential customer cannot reasonably be identified or re-identified. Covered information, however, does not include information provided to the Commission pursuant to its oversight responsibilities.

**Primary Purposes**

The "primary purposes" for the collection, storage, use or disclosure of covered information are to:

1. Provide or bill electrical power or gas,
2. Provide for system, grid, or operational needs,
3. Provide services as required by state or federal law or as specifically authorized by an order of the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

**Secondary Purpose**

"Secondary purpose" means any purpose that is not a primary purpose.

**Non-Covered Entity**

"Non-Covered Entity" means any entity not defined as a Covered Entity.

**Revenue Manager**

Nexant RevenueManager® is a fully integrated, customer care, billing, and contract management software platform for retail energy markets. Billing agents can support multiple commodities through the entire customer lifecycle—from prospecting, to customer acquisition, customer service, and billing—in residential, commercial, and industrial markets.

**CRM**

Microsoft Dynamics CRM is a customer relationship management solution that helps companies improve marketing, sales, and service engagement with their customers to drive organizational efficiency, while helping to improve customer experience.

**Responsible Parties**

- **Noble CCA Team**: CCA Operations, CCA Services
- **AnswerNet CSR**: Customer Service Representatives, Supervisors
- **Application Support**: System Administrators
- **Noble IT Operations**: Noble Americas Energy Solutions IT Support Organization
- **CCA**: Community Choice Aggregator Staff and Third Parties contracted by CCA

**Procedure**

1. **Detecting and Reporting of Security Breaches**
a. All Responsible Parties are required to protect Covered Information from unauthorized access, unauthorized destruction, unauthorized use, unauthorized modification, or disclosure to non-Covered Entities for Secondary Purposes.

b. Any requests by non-Covered Entities, for access to CCA’s customer usage data must be reviewed and approved by a manager level Noble Americas Energy Solutions employee or higher to ensure no inadvertent release of Covered Information.

c. All authorized releases of Covered Information to non-Covered Entities shall be logged and reported to affected CCAs on an annual basis for CCA’s reporting purposes.

d. Any discovery of a security breach of Covered Information must be reported to the affected CCA within one (1) week of detection.

e. Any Security Breach affecting 1,000 or more accounts associated with the same CCA must also be reported to the California Public Utilities Commission’s Executive Director.

(2) Security Breach Handling Procedure

a. The discovering party, after receiving complaint/notification email from an external source, or having detected/discovered any Security Breaches of Covered Information contained in Revenue Manager, must contact the Noble Americas Energy Solutions CCA Operations Manager immediately. If the CCA Operations Manager is unavailable, the discovering party must notify the Vice President of Customer Care.

b. The CCA Operations Manager will quantify and validate the type and extent of the Security Breach and report to the affected CCA in writing. The report will contain enough information, if available, for the affected CCA to quantify the extent and the impact of the Security Breach and will identify a contact at Noble Americas Energy Solutions that will be responsible as primary contact for the CCA in regards to the Security Breach.

i. A Security Breach that affects 1,000 or more accounts are to be reported in writing to the California Public Utilities Commission’s Executive Director in addition to the affected CCA.

c. Within sixty (60) days of the end of a calendar year, the CCA Operations Manager will review all annual discoveries of a Security Breach of Covered Information and prepare a summary report to the CCA.

(3) Review of the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators

a. At least annually, the CCA Operations Manager will review the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators documentation to update the material for any changes, revisions or modifications based on experience(s). This includes reviewing and updating Attachment 1 and confirming that the policy documentation has the most current version of Attachment 2.
b. Any proposed changes to the Covered Information Security Breach Policy and Procedure as Agent for Community Choice Aggregators documentation shall be reviewed and approved by the Vice President, Customer Care.
# Attachment 1

Covered Information Users List (Revenue Manager)

Updated Quarterly

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<th>Noble CCA Team</th>
<th>Noble Settlements</th>
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### Covered Information Users List (CRM)

#### Updated Quarterly

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Staff Report – Item 5

Item 5: Discuss Options for Board Input on Legislative and Regulatory Matters

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 12/11/2019

RECOMMENDATION
Discuss and give direction on the preferred approach for staff obtaining Board member input on legislative and regulatory matters affecting SVCE.

BACKGROUND
On January 10, 2018, the Board appointed a Legislative Ad Hoc Committee to provide input to staff on several legislative and regulatory matters pending at that time. Although the Board annually adopts a legislative platform to guide SVCE’s legislative and regulatory advocacy, there are times during the year where decisions need to be made with respect to positions to be taken and tactics to be deployed on specific pending measures. The Legislative Ad Hoc Committee has met from time to time as needed to discuss and provide advice on these and other urgent legislative and regulatory matters. The Legislative Ad Hoc Committee periodically provides reports to the full Board. Under the Brown Act, ad hoc committees appointed by the Board are not required to hold noticed meetings open to the public provided that the committee does not have continuing jurisdiction over a subject matter, its duration is limited rather than on-going, and it does not have a fixed meeting schedule. A Board Committee that has continuing and on-going subject matter jurisdiction will be considered a standing committee under the Brown Act and its meetings must be noticed and open to the public such as the Executive Committee.

The legislative and regulatory challenges faced by SVCE and other CCAs are increasing and will be on-going. Further, it is valuable for there to be input from Board members on a confidential basis with respect to SVCE’s legislative and regulatory efforts due to the tactical and coalition building decisions that need to be made.

Due to the desirability of having the continued and on-going advice and input of Board members on the above matters, staff recommends the Board review how a Board committee can be structured in a way that does not at some point make the committee a standing committee of the Board.

ANALYSIS & DISCUSSION
The following are two approaches that should allow a committee of less than a quorum of Board members to meet privately with staff to provide confidential input on pending legislative and regulatory matters:

Focused and Time-Limited Committee

The Board could appoint a new ad hoc committee to focus on a specified and limited number of current legislative and regulatory matters and be given a relatively short time frame to make its report to the Board. The number of topics should be limited, such as 3 to 5 topics. Although this is somewhat arbitrary, if the committee is established to review all pending legislative and regulatory matters in 2020, the committee starts looking like a standing committee charged with providing advice to the Board on an on-going basis. After this
committee makes its report to the Board, it should be discharged and a subsequent committee addressing legislative and regulatory matters should be assigned different legislative or regulatory topics. If the subsequent committees work on the same topics on an on-going basis, then the committee starts appearing to be a standing committee. The topics for the Ad Hoc Committee to study and monitor can be chosen from the most recent legislative platform adopted each year.

The duration of the Committee would be limited to the approximate time frame of the current session of the State Legislature. At the end of the State Legislature session in August, the Committee would provide its final report to the full Board.

**CEO Appointed Committee**

When a committee is a standing committee it is considered a legislative body under the Brown Act. A legislative body, other than the Board of Directors, is a body appointed by the Board to provide advice or reports to the Board. For this reason, a committee appointed by the CEO whose charge is to advise the CEO and staff is not a legislative body and is therefore not subject to the Brown Act. The CEO could appoint a committee made up of less than a quorum of the Board to provide advice to the CEO and staff on legislative and regulatory matters. This advice would then be used by the CEO and staff in communicating with our lobbyists and CalCCA or taking other appropriate action. This Committee would not report to the Board. This does not limit the CEO or staff, however, from providing their own legislative or regulatory reports and recommendations to the Board. A CEO appointed committee does not need to be limited in duration and can have a continuing membership.

**STRATEGIC PLAN**

Establishing a committee to provide input to the CEO and staff on legislative and regulatory matters directly supports the Board-approved Strategic Plan as follows:

- Goal 8: “Engage regulators and legislators in developing policy that protects CCA rights and facilitates CCA contributions to decarbonization, grid reliability, affordability, and social equity.”

**ALTERNATIVE**

Not have a legislative committee.

**FISCAL IMPACT**

Staff time to support a committee.
RECOMMENDATION
This item is being brought to the board for discussion and direction on board director succession planning.

BACKGROUND
Since its inception in 2016, the growth of SVCE and CCAs has shown that having a board of directors familiar with the organization and the challenges it faces is beneficial to day-to-day operations.

Encouraging director terms to be a minimum of two years, as well as preparing alternate directors to step into the director role once the primary director’s term is ending, would create consistency and allow for a smooth transition when current members step down from the board.

ANALYSIS & DISCUSSION
Staff has developed a list of best practices to begin the discussion of how SVCE can invest in its current board members and plan for their successors.

These include:

**Preference for new board appointments made in each member agency to be a minimum of two years**
SVCE’s JPA (Article 4, Section 4.2) states the governing body of each Party shall appoint and designate in writing one regular director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. There is nothing prohibiting the governing body of member agencies appointing their representative longer than one year.

**Orientation meetings for newly appointed board members**
Meet with incoming board members one-on-one to give background information on SVCE and answer any questions they may have about who we are and what we do.

**Staff hosted workshops which focus on various departments within the agency throughout the year (open to Directors and Alternates)**
Workshops for directors and alternates on departments within SVCE (for example: Power Supply and Regulatory/Legislative) allows both members to stay apprised of current events within the organization.

**Educational opportunities for Directors and Alternates on topics relating to SVCE business**
Conferences, trainings, and education courses will be offered to directors/alternates as they become available.
Encouraged engagement of Alternate Directors.
Engaging alternate directors by offering workshops, one-on-one meetings, and any additional support to keep them involved.

Staff hopes to add to this list following discussion with the board.

**STRATEGIC PLAN**
Creating a plan for the future of SVCE’s board supports the mission and goals of the Strategic Plan.

**ALTERNATIVE**
N/A

**FISCAL IMPACT**
N/A
### Staff Report – Item 7

**Item 7: Executive Committee Report**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 12/11/2019

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The Executive Committee met on November 22, 2019 and this item will be addressed as an oral report to the Board.
Staff Report – Item 8

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<tr>
<th>Item 8:</th>
<th>Audit Committee Report</th>
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<td>To:</td>
<td>Silicon Valley Clean Energy Board of Directors</td>
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<tr>
<td>Prepared by:</td>
<td>Andrea Pizano, Board Clerk/Executive Assistant</td>
</tr>
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<td>Date:</td>
<td>12/11/2019</td>
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The Audit Committee met on December 4, 2019 and this item will be addressed as an oral report to the Board.
Staff Report – Item 9

Item 9: Authorize the Chief Executive Officer to Negotiate and Execute an Office Lease Agreement

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 12/11/2019

RECOMMENDATION
Staff recommends the Board authorize the CEO to negotiate and execute a lease agreement for office space consistent with parameters provided by the Board in closed session.

BACKGROUND
SVCE took possession of its current office space in November 2016. The current lease will expire January 2022. SVCE was in start-up phase at the time of the lease signing and the current location was sufficient. As the agency has matured and employee headcount has adjusted in response to the needs of the business, the current facility space will soon become inadequate.

ANALYSIS & DISCUSSION
Staff commissioned a real estate broker to evaluate several options, including:
   a) Configure the current space to accommodate the agency’s needs
   b) Purchasing a facility
   c) Lease a larger space within our current location or at another building within the service territory.

Over the past six months, staff has been working to identify potential properties and discuss lease terms.

Staff has scheduled a closed session for the December 11, 2019 meeting as a follow up to the closed session discussion at the November board meeting. Following this meeting, staff will either move forward with negotiating and executing an office lease or will take alternative action if requested by the Board.

STRATEGIC PLAN
Expanding the office falls under the Workplace goal of SVCE’s Strategic Plan.

ALTERNATIVE
Staff is open to suggestions from the Board regarding negotiating and executing an office lease.

FISCAL IMPACT
To be determined.
Silicon Valley Clean Energy
Board of Directors Meeting

December 11, 2019

Appendix A

Power Resource Contracts Executed by CEO
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINCE 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 28, 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, 06-06-084, 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, 15-06-033, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-028, 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 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.

"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.
1.59 "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: Gilroy Cogen Aggregate
Location: Gilroy, CA
CAISO Resource ID: GILROY_1_UNIT
Resource Type: I_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of Interconnection with the CAISO Controlled Grid ("Substation"): Llagas
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): Bay Area
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 (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 [BLACKED OUT] 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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<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
(i) 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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<th>RA CAPACITY PRICE TABLE</th>
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<td>Contract Year/Month</td>
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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 upon 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: ____________________________
Name: Girish Balachandran
Title: CEO
Import Resource Adequacy Capacity Product
Confirmation Agreement
Between
Sempra Gas & Power Marketing, LLC
and
Silicon Valley Clean Energy Authority

This confirmation agreement ("Confirmation") dated October 25, 2019 (the "Confirmation Effective Date"), shall document the negotiated transaction between Sempra Gas & Power Marketing, LLC ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), together the "Parties", in which Seller agrees to provide to Buyer the right to import Resource Adequacy ("RA") Capacity as specified herein. This Transaction is governed by the Western Systems Power Pool Agreement (Effective June 21, 2018) to which both Seller and Buyer are members, along with any amendments and annexes thereto (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). The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), 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 this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions:

1.1 "Contract Quantity" means the amount of Import RA Capacity stated in megawatts ("MW"), made available 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 on a firm basis as set forth in this Confirmation.

1.2 "Import RA Capacity Product", or "Import RA Capacity" means the qualified and deliverable capacity from the System Resource that can be counted toward Buyer'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 Buyer any right to the Contract Quantity of Seller's System Resource other than the right to count such Contract Quantity toward Buyer's RAR during the Delivery Term. Specifically, no energy associated with Seller's System Resource is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.

1.3 "Product" means Import RA Capacity as defined herein.

1.4 "RA Capacity Delivery Point" means the CAISO Scheduling Point PVWEST which maps to the CAISO Branch Group PALOVRDE_ITC where Buyer holds intertie import capability. The RA Capacity Delivery Point is firm and may not be modified without the consent of Buyer (i.e., the RA Capacity Delivery Point is not Seller's choice).

1.6 "System Resource" means a group of resources, single resource, or a portion of a resource located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point.

2. **Representations and Warranties:**

2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall 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, consistent with the Tariff and RA Rules. Such commercially reasonable actions may include but are not limited to the following:

a) Meeting requirements established by the 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 Seller’s Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by Buyer’s Scheduling Coordinator (as such terms are defined in the Tariff);

b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Confirmation 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 struck by the Parties; and

c) At all times using “Good Utility Practice” as defined in the Tariff.

2.2 Seller represents and warrants that throughout the Delivery Term:

a) Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity Product from Seller’s System Resource toward Buyer’s RAR;

b) No portion of the Contract Quantity of Import RA Capacity Product is curtailable for economic reasons or has been committed by Seller to any third party in order to satisfy RAR or analogous capacity obligations in other markets; and

c) Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as they apply to the Import RA Capacity Product.
3. **CAISO Dispatch Requirements:**

During the Delivery Period, 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, Seller shall commit the full Contract Quantity to the CAISO in compliance with the applicable section of the Tariff implementing the RA Rules.

In compliance with section 40.6 of the Tariff, Seller shall submit a bid or self-schedule or have a bid submitted on the Seller’s behalf by the CAISO into the CAISO Day Ahead Integrated Forward Market ("IFM") at the RA Capacity Delivery Point of the Import RA Capacity in all hours of the Delivery Term for an amount of the Contract Quantity, adjusted for any outages or reductions in Contract Quantity reported to the CAISO in accordance with the Tariff, except for any hours in which the Seller was prohibited by section 30.8 from bidding across an out-of-service transmission path at the RA Capacity Delivery Point.

In compliance with section 40.6 of the Tariff, Seller shall submit a bid into the CAISO Day Ahead Residual Unit Commitment ("RUC") Procedure at the RA Capacity Delivery Point of the Import RA Capacity for the amount of the Contract Quantity.

Seller shall submit self-schedules in the CAISO’s Hour Ahead Scheduling Procedure at the RA Capacity Delivery Point of the Import RA Capacity for the amount of the Contract Quantity for a minimum of 384 hours during the Delivery Period.

4. **Contract Quantity and Delivery Term** (full capacity of the System Resource) are as follows:

   Delivery Term:

   Contract Quantity:

   Intertie Resource ID:

   MCC Bucket:

5. **Contract Price and Payment:** Buyer shall pay the following Contract Price to Seller in accordance with the Master Agreement:

   Contract Price: 

   Buyer shall make a payment to Seller with respect to each month during the Delivery Term equal to the product of (1) the applicable Contract Price for that month (in $/kW-month), (2) the amount of Contract Quantity of import RA Capacity for such month delivered to Buyer (in kW), and (3) 1,000 kW/MW. Each payment calculation hereunder shall be rounded to two decimal places.

6. **CAISO Revenues:** Seller shall retain any and all revenues received from the CAISO in relation to this Confirmation.

7. **Indemnity Against Penalties and Replacement:** Seller agrees to indemnify Buyer for:
a) any monetary penalties assessed by the CPUC for failure to meet the requirements 
with respect to annual or monthly supply plans and Seller further agrees not to pass 
on to Buyer any penalties assessed to Seller by the CAISO for Seller's failure to meet 
the requirements of the RA Rules or Tariff as a result of Seller not fulfilling any of its 
obligations under this Confirmation and to the extent Seller has not provided Buyer 
with sufficient notice to take action necessary to avoid such monetary penalties being 
assessed; and

b) costs incurred, using reasonable efforts, by Buyer to replace, if required, any RA 
Capacity to bring the total volume back to Contract Quantity and Delivery Term 
specified in Section 4.

8. Confidentiality: Notwithstanding the Master Agreement, the Parties agree that Buyer 
may disclose this Confirmation to the CPUC, the CAISO or any other governmental body
having jurisdiction as necessary to support its RAR showings, as applicable, and Seller 
may disclose the transfer of the Import RA Capacity under this Confirmation to the 
Scheduling Coordinator in order for such Scheduling Coordinator to timely submit accurate 
Supply Plans (as such terms are defined in the Tariff).

9. 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.

10. 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.

11. 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.

12. 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.

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 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.
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

Sempra Gas & Power Marketing, LLC

By: Danphy Wong
Name: Danphy Wong
Title: Marketing and Policy Manager

Silicon Valley Clean Energy, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
(EDFTNA Sells Generic RA)

EDF Draft 10/28/19

CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
EDF TRADING NORTH AMERICA, LLC
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between, EDF Trading North America, LLC a Texas limited liability company ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 1, 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, but excluding all schedules thereto (the Service Schedules and Schedule Q being excluded), and as modified by this Confirmation (the "WSPP Agreement"). To the extent that there is any conflict between the WSPP Agreement and this Confirmation, this Confirmation shall control. 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 (and subject to the restrictions specified therein).

1.2 "Applicable Laws" means (i) 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, and (ii) the Tariff.

1.3 "Availability Incentive Payments" has the meaning specified in the Tariff.

1.4 "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" has the meaning specified in the introductory paragraph hereof, and is "Purchaser" within the meaning of the WSPP Agreement.

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 and expenses 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 "Competitive Solicitation Process" or "CSP" has the meaning set forth in the Tariff.

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" means the Product with the terms and conditions specified in Section 3.2 hereof.

1.12 "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.

1.13 "Contract Quantity" means, with respect to each day of each 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.
1.14 "CPUC" means the California Public Utilities Commission.

1.15 "CPUC Decisions" means, to the extent applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-08-031, 09-06-028, 10-06-036, 11-03-022, 12-05-025, 13-06-024, 14-06-050, 15-06-063, and 16-06-045 and subsequent decisions related to resource adequacy as issued from time to time by the CPUC.

1.16 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs 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 in accordance with the terms of this Confirmation, minus any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity.

1.20 "Excusable Event" means (a) any event that is an excuse to Seller's performance under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that (b) causes Seller to fail to perform its obligations under this Confirmation.

1.21 "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.

1.22 "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.

1.23 "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.

1.24 "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.

1.25 "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.

1.26 "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.

1.27 "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.

1.28 "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
Appendix A

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.

1.29  "LRA" means Local Regulatory Authority as defined in the Tariff.

1.30  "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).

1.31  "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.32  "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.33  "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.34  "Notification Deadline" has the meaning specified in Section 4.5 hereof.

1.35  "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.

1.36  "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 (i) carrying out routine repair or maintenance of such Unit, or (ii) new construction work for such Unit.

1.37  "Product" has the meaning specified in Article 3 hereof.

1.38  "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.

1.39  "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

1.40  "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.

1.41  "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.

1.42  "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.43  "Replacement Unit" has the meaning specified in Section 4.5.

1.44  "Resold Product" has the meaning specified in Section 9 hereof.

1.45  "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.46  "RMR Agreement" has the meaning set forth in the Tariff.

1.47  "Scheduling Coordinator" has the same meaning as in the Tariff.

1.48  "Seller" has the meaning specified in the introductory paragraph hereof.

1.49  "Shortfall Capacity" has the meaning specified in Section 4.11 hereof.

1.50  "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.

1.51 “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.

1.52 “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.

1.53 “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.

1.54 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof, as well as any Replacement Units, from which RA Capacity is provided by Seller to Buyer.

1.55 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.56 “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.

1.57 “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

<table>
<thead>
<tr>
<th>Name:</th>
<th>Kern Front Limited</th>
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<tbody>
<tr>
<td>Location:</td>
<td>Kern</td>
</tr>
<tr>
<td>CAISO Resource ID:</td>
<td>KERNFT_1_UNITS</td>
</tr>
<tr>
<td>Unit NQC (as of the Confirmation Effective Date):</td>
<td>52.4</td>
</tr>
<tr>
<td>Unit EFC (as of the Confirmation Effective Date):</td>
<td>NA</td>
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<tr>
<td>LAR Attributes (Yes/No):</td>
<td>Yes</td>
</tr>
<tr>
<td>Resource Type:</td>
<td>Natural Gas Turbine</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3 or 4):</td>
<td>4</td>
</tr>
<tr>
<td>Flexible Capacity Category (Base Ramping (1), Peak Ramping (2), or Super-Peak Ramping (3)):</td>
<td>NA</td>
</tr>
<tr>
<td>Point of Interconnection with CAISO Controlled Grid (“Substation”):</td>
<td>The Point of Interconnection of the Generating Facility is located where the Kern-Kern Front (PSE) 115 kV gen-tie connects to the 115kV bus at the Kern Power Plant substation POD_KERNFT_1_UNITS-APND</td>
</tr>
<tr>
<td>Path 26 (North, South or None):</td>
<td>North</td>
</tr>
<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date):</td>
<td>Kern</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:</td>
<td>NA</td>
</tr>
<tr>
<td>Run Hour Restrictions:</td>
<td>2 starts per day; 24 hour consecutive run</td>
</tr>
</tbody>
</table>
ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

For each day of each Showing Month that is part of the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the "Product"). 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.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Designated RA Capacity. If the Units are not capable of providing the full amount of the Contract Quantity for any Monthly Delivery Period due to an Excusable Event or an adjustment in Contract Quantity made in accordance with Section 4.4, then Seller shall have the option to notify Buyer in writing not later than the applicable Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of, and to the extent of, such non-availability (which period shall be specified in such notice); 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 Designated RA Capacity or 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 specified herein, then Seller shall be liable for damages and required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. For the avoidance of doubt, to the extent Seller provides less than the full amount of the Contract Quantity to Buyer due to an Excusable Event or an adjustment in Contract Quantity made in accordance with Section 4.4, then Seller shall not be liable for damages or required to indemnify Buyer for costs, penalties, and fines pursuant to the terms of Sections 4.7 and 4.8 hereof. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, to the extent not inconsistent with this Confirmation, "Contingent Firm" shall have the same meaning as "Service Schedule B UNIT Commitment Service" in the WSPP Agreement.

3.3 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amounts set forth in Section 4.3.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be

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 Month</th>
<th>RAR 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 each day of each Showing Month may be reduced by the amount of any Planned Outage which exists during the applicable Showing Month for the applicable days of such Planned Outage; provided that 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 portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall, upon written notice to Buyer by the Notification Deadline, either (a) notify Buyer of the unavailability of the Unit, including the duration of the Planned Outage and the amount of the Contract Quantity that Seller is excused from delivering due to the Planned Outage for such portion of the Showing Month; or (b) in lieu of excusing the delivery of the applicable portion of the Contract Quantity for the Showing Month, provide Alternate Capacity, which when combined with any Product from the Unit, shall not exceed the Contract Quantity for the affected portion of such Showing Month.

(b) **Invoice Adjustment**: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, Section 4.4.(c) below, or an Excusable Event, 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 (A) Seller shall notify Buyer as soon as reasonably possible, and (B) 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.
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 Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event shall Seller provide Alternate Capacity that is supplied by or from generating units that utilize coal or coal materials as a source of fuel to generate electricity and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. Any Alternate Capacity must have the same or comparable characteristics to the Product. If Seller notifies Buyer in writing as to the particular Replacement Units and such Replacement Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party.

(d) Notwithstanding anything to the contrary contained herein, and for avoidance of doubt, Section 10 of the WSPP Agreement (Uncontrollable Forces) shall apply to the Parties' obligations under this Confirmation and the Parties shall not be liable for any damages or penalties hereunder if a breach or failure to perform is due to an Uncontrollable Force (as defined therein).

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
(b) Seller shall pay to Buyer at the time set forth in Section 9 of the WSPP Agreement, the following damages in lieu of damages specified in Section 21.3(a) of the WSPP 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 (including costs and expenses reasonably incurred by Buyer in purchasing such 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, in addition to any other rights or remedies available to Buyer, offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this, Confirmation pursuant to Section 28 of the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any applicable adjustments pursuant to Section 4.4 and due to requests from Buyer pursuant to Section 4.6(b), 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 for any portion of the Delivery Period for which notice is not timely provided in accordance with Sections 3.2, 4.4, and 4.5;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity for any portion of the Delivery Period 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 for each Showing Month of the Delivery Period.

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, in addition to any other rights or remedies available to Buyer, 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 by the later of (i) ten (10) Calendar Days after Buyer’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Designated RA Capacity that was not delivered at the time of the CAISO filing for such 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 or payments made under a successor program to the Residual Unit Commitment program, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer. 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 Scheduling Coordinator, owner, or operator (as applicable) 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, in addition to any other rights or remedies available to Buyer, offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement 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 that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.
ARTICLE 6. OTHER BUYER AND SELLER COVENANTS

6.1 Further Assurances

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.

(b) The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation, to conform to 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 benefits of the bargain struck by the Parties on the Confirmation Effective Date. The Parties acknowledge that the CPUC and CAISO are considering changes to RAR and/ or LAR in various proceedings which may necessitate such amendments. Therefore, in the event that subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR materially change the Product’s ability to count toward CAISO or CPUC local or system RA requirements and the Parties are unable to reach agreement on amendments as contemplated by this Section 6.1, Seller or Buyer may terminate this Agreement and the Parties shall have no further obligations to each other except with respect to invoices and payments for deliveries of the Product prior to such termination.

For avoidance of doubt, “commercially reasonable actions” or “good faith” under this Section 6.1 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.

6.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) 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.

(l) No portion of the Designated RA Capacity or any Alternate Capacity provided under this
Confirmation is or will be from Units that utilize coal or coal materials as a source of fuel. Seller
understands and acknowledges that it is Buyer’s policy to not purchase or accept products from
generators that utilize coal or coal materials as a source of fuel. Any future replacement of the
Units or the Designated RA Capacity, if necessary, shall not be from generators that utilize coal or
coal materials as a source of fuel.

ARTICLE 7. CONFIDENTIALITY

In addition to the rights and obligations under Section 30 of the WSPP Agreement, the Parties agree that Buyer
may disclose this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent
jurisdiction as necessary to support its applicable LAR, RAR or Flexible RAR Showings, If applicable, or to a
subsequent purchaser, and Seller may disclose this Transaction to the Scheduling Coordinator of each Unit as
necessary for such Scheduling Coordinator to timely submit accurate Supply Plans. Notwithstanding anything
to the contrary contained herein or the WSPP Agreement, neither party is prohibited from disclosing the terms of this
Transaction to any rating agency or its representatives, so long as such receiving party is subject to a confidentiality
agreement or non-disclosure agreement with the Party disclosing such information that requires the receiving party
to maintain the confidentiality of such information, or is otherwise subject to a professional duty to maintain the
confidentiality of such information.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act
(Cal. Gov. Code section 6250 et seq.). Buyer acknowledges that Seller may submit to Buyer information that Seller
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 Agreement ("Requestor") pursuant to the California Public Records Act for production, inspection
and/or copying of this Agreement 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 thirty (30) 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.

ARTICLE 8. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder and any associated rights, in each case, acquired under this Confirmation. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Confirmation ("Resold Product"). If Buyer re-sells Resold Product, Seller agrees, and agrees to cause each Unit's SC, to follow Buyer's instructions and the Tariff 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 each Unit's SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or a Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 4.7 and 4.8, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

If Buyer exercises its right to re-sell the Resold Product, Buyer shall notify Seller in writing that such sale has occurred and provide Seller with the information described in Appendix A no later than five (5) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, by providing Seller with written updates to the information in Appendix A in accordance with the deadlines described in this Section 4.8.

ARTICLE 9. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 10. WSPP AGREEMENT AMENDMENTS

For purposes of this Transaction only, 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) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"

c) 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."

d) Section 24 of the WSPP Agreement is deleted and replaced with the following:

"This Agreement and any Confirmation 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."

e) The netting provisions of Section 28, NETTING, of the WSPP Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the WSPP Agreement. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

f) 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".

g) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

"34.1 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 ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY) AND HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

"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."

h) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

i) The following shall be inserted as a new Section 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER'S RIGHT TO RECOVER FROM
SELLER, OR SELLER'S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

"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 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."

j) 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."

k) 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:

For purposes of this Section, the term "Transaction" means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. 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."
ARTICLE 11. [INTENTIONALLY OMITTED]

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 is and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no recourse to, 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 page.

ARTICLE 14. ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and (together with the WSPP Agreement, as revised by this Confirmation) 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.

ARTICLE 15. NOTICES

All notices required by this Agreement are to be sent to the Parties at the addresses indicated below:

<table>
<thead>
<tr>
<th>Buyer Contact Information</th>
<th>Seller Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silicon Valley Clean Energy Authority</td>
<td>EDF Trading North America, LLC</td>
</tr>
<tr>
<td>333 W. El Camino Real, Suite 320</td>
<td>601 Travis Street, Suite 1700</td>
</tr>
<tr>
<td>Sunnyvale, CA 94087</td>
<td>Houston, Texas 77002</td>
</tr>
<tr>
<td>Attention: Girish Balachandran</td>
<td>Attention: Contract Administration</td>
</tr>
<tr>
<td>Phone No.: 408-721-5301</td>
<td>Phone No.: 281-781-0333</td>
</tr>
<tr>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
<td>Email: <a href="mailto:Hou_Contract_Admin@edftrading.com">Hou_Contract_Admin@edftrading.com</a></td>
</tr>
</tbody>
</table>

With a copy to:

<table>
<thead>
<tr>
<th>Hall Energy Law PC</th>
<th>EDF Trading North America, LLC Attn: General Counsel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attention: Stephen Hall</td>
<td>601 Travis Street, Suite 1700</td>
</tr>
<tr>
<td>Phone No.: 503-313-0755</td>
<td>Houston, Texas 77002</td>
</tr>
<tr>
<td>Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
<td>Facsimile: (281) 653-1454</td>
</tr>
</tbody>
</table>

[Remainder of Page Intentionally Left Blank]
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

EDF TRADING NORTH AMERICA, LLC

By: __________
Name: __________
Title: __________

Signature Page to RA Confirmation Letter
EXHIBIT “A”

SUBSEQUENT SALE INFORMATION

Contract Key ID:________________________________________________________

Benefiting LSE SCID:____________________________________________________

Generic Volume (in MW):_______________________________________________

Local Volume (in MW):___________________________________________________

Flexible Volume (in MW):_______________________________________________

Term:________________________________________________________________

Exhibit A
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
EDF TRADING NORTH AMERICA, LCC
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between, EDF Trading North America, LLC a Texas limited liability company ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 8, 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, but excluding all schedules thereto (the Service Schedules and Schedule Q being excluded), and as modified by this Confirmation (the "WSPP Agreement"). To the extent that there is any conflict between the WSPP Agreement and this Confirmation, this Confirmation shall control. 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 (and subject to the restrictions specified therein).

1.2 "Applicable Laws" means (i) 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, and (ii) the Tariff.

1.3 "Availability Incentive Payments" has the meaning specified in the Tariff.

1.4 "Availability Standards" means the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" has the meaning specified in the introductory paragraph hereof, and is "Purchaser" within the meaning of the WSPP Agreement.

1.6 "CAISO" means the California Independent System Operator Corporation or its successor.

1.7 "Capacity Replacement Price" means (a) the price actually paid by Buyer pursuant to Section 4.7 hereof, plus costs and expenses 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 "Competitive Solicitation Process" or "CSP" has the meaning set forth in the Tariff.

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" means the Product with the terms and conditions specified in Section 3.2 hereof.

1.12 "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.

1.13 "Contract Quantity" means, with respect to each day of each 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.
1.14 "CPUC" means the California Public Utilities Commission.

1.16 "CPUC Decisions" means, to the extent applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-054, 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, and 16-06-045 and subsequent decisions related to resource adequacy as issued from time to time by the CPUC.

1.16 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs 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 in accordance with the terms of this Confirmation, minus any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity.

1.20 "Excusable Event" means (a) any event that is an excuse to Seller's performance under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that (b) causes Seller to fail to perform its obligations under this Confirmation.

1.21 "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.

1.22 "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.

1.23 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) of 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.

1.24 "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.

1.25 "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.

1.26 "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.

1.27 "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.

1.28 "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.

1.29 "LRA" means Local Regulatory Authority as defined in the Tariff.

1.30 "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).

1.31 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.32 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.33 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.34 "Notification Deadline" has the meaning specified in Section 4.5 hereof.

1.35 "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.

1.36 "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 (i) carrying out routine repair or maintenance of such Unit, or (ii) new construction work for such Unit.

1.37 "Product* has the meaning specified in Article 3 hereof.

1.38 "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.

1.39 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

1.40 "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.

1.41 "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.

1.42 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.43 "Replacement Unit" has the meaning specified in Section 4.5.

1.44 "Resold Product" has the meaning specified in Section 9 hereof.

1.46 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.46 "RMR Agreement" has the meaning set forth in the Tariff.

1.47 "Scheduling Coordinator" has the same meaning as in the Tariff.

1.48 "Seller" has the meaning specified in the introductory paragraph hereof.

1.49 "Shortfall Capacity" has the meaning specified in Section 4.11 hereof.

1.60 "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.

1.51 "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.

1.52 "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.

1.53 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.

1.54 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof, as well as any Replacement Units, from which RA Capacity is provided by Seller to Buyer.

1.55 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.56 "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.

1.57 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

**ARTICLE 2. UNIT INFORMATION**

<table>
<thead>
<tr>
<th>Name:</th>
<th>High Sierra Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location:</td>
<td>Kern</td>
</tr>
<tr>
<td>CAISO Resource ID:</td>
<td>SIERRA_1_UNIT</td>
</tr>
<tr>
<td>Unit NQC (as of the Confirmation Effective Date):</td>
<td>52.4</td>
</tr>
<tr>
<td>Unit EFC (as of the Confirmation Effective Date):</td>
<td>NA</td>
</tr>
<tr>
<td>LAR Attributes (Yes/No):</td>
<td>Yes</td>
</tr>
<tr>
<td>Resource Type:</td>
<td>Natural Gas Turbine</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3 or 4):</td>
<td>4</td>
</tr>
<tr>
<td>Flexible Capacity Category (Base Ramping (1), Peak Ramping (2), or Super-Peak Ramping (3)):</td>
<td>NA</td>
</tr>
<tr>
<td>Point of interconnection with CAISO Controlled Grid (&quot;Substation&quot;):</td>
<td>The Point of Interconnection of the Generating Facility is located where the Kern-High Sierra (PSE) 115 kV gen-tie connects to the 115kV bus at the High Sierra Power Plant substation POD_SIERRA_1_UNITS-APND</td>
</tr>
<tr>
<td>Path 26 (North, South or None):</td>
<td>North</td>
</tr>
<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date):</td>
<td>Kern</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>NA</td>
</tr>
<tr>
<td>Run Hour Restrictions:</td>
<td>2 starts per day; 24 hour consecutive run</td>
</tr>
</tbody>
</table>
ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

For each day of each Showing Month that is part of the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the "Product"). 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.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Designated RA Capacity. If the Units are not capable of providing the full amount of the Contract Quantity for any Monthly Delivery Period due to an Excusable Event or an adjustment in Contract Quantity made in accordance with Section 4.4, then Seller shall have the option to notify Buyer in writing not later than the applicable Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of, and to the extent of, such non-availability (which period shall be specified in such notice), 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 Designated RA Capacity or 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 specified herein, then Seller shall be liable for damages and required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. For the avoidance of doubt, to the extent Seller provides less than the full amount of the Contract Quantity to Buyer due to an Excusable Event or an adjustment in Contract Quantity made in accordance with Section 4.4, then Seller shall not be liable for damages or required to indemnify Buyer for costs, penalties, and fines pursuant to the terms of Sections 4.7 and 4.8 hereof. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, to the extent not inconsistent with this Confirmation, "Contingent Firm" shall have the same meaning as "Service Schedule B UNIT Commitment Service" in the WSPP Agreement.

3.3 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amounts set forth in Section 4.3.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be [insert 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 for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>RAR Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4.4 Adjustments to Contract Quantity

(a) **Planned Outages:** Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced by the amount of any Planned Outage which exists during the applicable Showing Month for the applicable days of such Planned Outage; provided that 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 portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall, upon written notice to Buyer by the Notification Deadline, either (a) notify Buyer of the unavailability of the Unit, including the duration of the Planned Outage and the amount of the Contract Quantity that Seller is excused from delivering due to the Planned Outage for such portion of the Showing Month; or (b) in lieu of excusing the delivery of the applicable portion of the Contract Quantity for the Showing Month, provide Alternate Capacity, which when combined with any Product from the Unit, shall not exceed the Contract Quantity for the affected portion of such Showing Month.

(b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, Section 4.4(c) below, or an Excusable Event, 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 (A) Seller shall notify Buyer as soon as reasonably possible, and (B) 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.
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 Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event shall Seller provide Alternate Capacity that is supplied by or from generating units that utilize coal or coal materials as a source of fuel to generate electricity and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. Any Alternate Capacity must have the same or comparable characteristics to the Product. If Seller notifies Buyer in writing as to the particular Replacement Units and such Replacement Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party.

(d) Notwithstanding anything to the contrary contained herein, and for avoidance of doubt, Section 10 of the WSPP Agreement (Uncontrollable Forces) shall apply to the Parties' obligations under this Confirmation and the Parties shall not be liable for any damages or penalties hereunder if a breach or failure to perform is due to an Uncontrollable Force (as defined therein).

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
Seller shall pay to Buyer at the time set forth in Section 9 of the WSPP Agreement, the following damages in lieu of damages specified in Section 21.3(a) of the WSPP 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 (including costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity), and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity not 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, in addition to any other rights or remedies available to Buyer, offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this, Confirmation pursuant to Section 28 of the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any applicable adjustments pursuant to Section 4.4 and due to requests from Buyer pursuant to Section 4.6(b), 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 for any portion of the Delivery Period for which notice is not timely provided in accordance with Sections 3.2, 4.4, and 4.5;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity for any portion of the Delivery Period 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 for each Showing Month of the Delivery Period.

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, in addition to any other rights or remedies available to Buyer, 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 by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentyieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Designated RA Capacity that was not delivered at the time of the CAISO filing for such Showing Month.

<table>
<thead>
<tr>
<th>RA Capacity Price Table</th>
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<tbody>
<tr>
<td>Contract Month</td>
</tr>
<tr>
<td>------------------------</td>
</tr>
<tr>
<td></td>
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</table>

11411549.4
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 or payments made under a successor program to the Residual Unit Commitment program, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, 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 Scheduling Coordinator, owner, or operator (as applicable) 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, in addition to any other rights or remedies available to Buyer, offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement 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 that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.
ARTICLE 6. OTHER BUYER AND SELLER COVENANTS

6.1 Further Assurances

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.

(b) The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date. The Parties acknowledge that the CPUC and CAISO are considering changes to RAR and LAR in various proceedings which may necessitate such amendments. Therefore, in the event that subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR materially change the Product's ability to count toward CAISO or CPUC local or system RA requirements and the Parties are unable to reach agreement on amendments as contemplated by this Section 6.1, Seller or Buyer may terminate this Agreement and the Parties shall have no further obligations to each other except with respect to invoices and payments for deliveries of the Product prior to such termination.

For avoidance of doubt, “commercially reasonable actions” or “good faith” under this Section 6.1 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.

6.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) 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.
Appendix A

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.

(i) No portion of the Designated RA Capacity or any Alternate Capacity provided under this Confirmation is or will be from Units that utilize coal or coal materials as a source of fuel. Seller understands and acknowledges that it is Buyer's policy to not purchase or accept products from generators that utilize coal or coal materials as a source of fuel. Any future replacement of the Units or the Designated RA Capacity, if necessary, shall not be from generators that utilize coal or coal materials as a source of fuel.

ARTICLE 7. CONFIDENTIALITY

In addition to the rights and obligations under Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction as necessary to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, or to a subsequent purchaser, and Seller may disclose this Transaction to the Scheduling Coordinator of each Unit as necessary for such Scheduling Coordinator to timely submit accurate Supply Plans. Notwithstanding anything to the contrary contained herein or the WSPP Agreement, neither party is prohibited from disclosing the terms of this Transaction to any rating agency or its representatives, so long as such receiving party is subject to a confidentiality agreement or non-disclosure agreement with the Party disclosing such information that requires the receiving party to maintain the confidentiality of such information, or is otherwise subject to a professional duty to maintain the confidentiality of such information.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Buyer acknowledges that Seller may submit to Buyer information that Seller 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 Agreement ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Agreement 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
ARTICLE 8. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder and any associated rights, in each case, acquired under this Confirmation. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Confirmation (“Resold Product”). If Buyer re-sells Resold Product, Seller agrees, and agrees to cause each Unit’s SC, to follow Buyer’s instructions and the Tariff 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 each Unit’s SC, to take all commercially reasonable actions and execute any and all instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Confirmation. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or a Unit’s SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 4.7 and 4.8, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

If Buyer exercises its right to re-sell the Resold Product, Buyer shall notify Seller in writing that such sale has occurred and provide Seller with the information described in Appendix A no later than five (5) Business Days before the deadline for the Compliance Showings applicable to the relevant Showing Month. Buyer shall notify Seller of any subsequent changes or further resale of the Resold Product, by providing Seller with written updates to the information in Appendix A in accordance with the deadlines described in this Section 4.8.

ARTICLE 9. MARKET BASED RATE AUTHORITY

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 687, 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 687, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 10. WSPP AGREEMENT AMENDMENTS

For purposes of this Transaction only, 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) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[intentionally omitted]"

c) 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.”

d) Section 24 of the WSPP Agreement is deleted and replaced with the following:

“This Agreement and any Confirmation 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.”

e) The netting provisions of Section 28, NETTING, of the WSPP Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the WSPP Agreement. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

f) 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”.

g) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

*34.1 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 arising out of or relating to this Agreement (whether based in contract, tort or any other theory) and hereby (i) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that it and the other party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.”

*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.

h) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.

i) The following shall be inserted as a new Section 34.5: PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER’S RIGHT TO RECOVER FROM
SELLER, OR SELLER’S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:

*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 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."

j) 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.”.

k) 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:

For purposes of this Section, the term "Transaction" means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. 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. 185 (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."
ARTICLE 11. [INTENTIONALLY OMITTED]

ARTICLE 12. NO RECOVERY 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 is and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no recourse to, 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 page.

ARTICLE 14. ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and (together with the WSPP Agreement, as revised by this Confirmation) 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.

ARTICLE 15. NOTICES

All notices required by this Agreement are to be sent to the Parties at the addresses indicated below:

Buyer Contact Information

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 320
Sunnyvale, CA 94087

Attention: Girish Balachandran
Phone No.: 408-721-5301
Email: girish@svcleanenergy.org

With a copy to:

Hall Energy Law PC
Attention: Stephen Hall
Phone No.: 503-313-0755
Email: steve@hallenergylaw.com

Seller Contact Information

EDF Trading North America, LLC
601 Travis Street, Suite 1700
Houston, Texas 77002

Attention: Contract Administration
Phone No.: 281-781-0333
Email: Hou_Contract_Admin@edftrading.com

With additional Notices of an Event of Default to
Contract Manager:

EDF Trading North America, LLC Attn:
General Counsel
601 Travis Street, Suite 1700
Houston, Texas 77002
Facsimile: (281) 653-1454

[Remainder of Page Intentionally Left Blank]
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

EDF TRADING NORTH AMERICA, LLC

By: 
Name: 
Title: 

Signature Page to RA Confirmation Letter
EXHIBIT "A"

SUBSEQUENT SALE INFORMATION

Contract Key ID: ____________________________

Benefiting LSE SCID: ____________________________

Generic Volume (in MW): ____________________________

Local Volume (in MW): ____________________________

Flexible Volume (in MW): ____________________________

Term: ____________________________

Exhibit A
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority ("Purchaser" or "SVCE") and Peninsula Clean Energy Authority, a California joint powers authority ("Seller" or "PCE"), and each individually a "Party" and together the "Parties", dated as of October 30, 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, C, and D 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

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.

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

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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
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 setoff 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) 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

Purchaser 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. Purchaser 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.

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.”
Appendix A

(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 34.1.”

(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 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.”
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, 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.]
AGREED AS OF THE EFFECTIVE DATE:

PENINSULA CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: (Signature)
Name: Janis A. Pepper
Title: CEO

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: (Signature)
Name: Girish Balachandran
Title: CEO
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.

"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.

“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.

“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. 3

“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.

Appendix A - 3
“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.
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A

Delivery period:

Contract Quantity and Contract Price:

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Salinas River Cogeneration</th>
<th>Red Bluff Peaker Plant</th>
<th>Sunrise Power Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAR CONTRACT QUANTITY (MW)</td>
<td>Contract Price ($/kW-mo)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit #1 (System) Specific Information</td>
<td>Resource Name</td>
<td>Physical Location</td>
<td>CAISO Resource ID</td>
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<tr>
<td>---------------------------------------</td>
<td>---------------</td>
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<tr>
<td></td>
<td>Salinas River Cogeneration</td>
<td>San Ardo, CA</td>
<td>SALIRV_2_UNIT</td>
</tr>
</tbody>
</table>

<p>| Unit #2 (System) Specific Information | Resource Name | Physical Location | CAISO Resource ID | SCID of Resource | Unit NQC by month (e.g., Jan=50, Feb=65): | Unit EFC by month (e.g., Jan=30, Feb=50) | Resource Type (e.g., gas, hydro, solar, etc.) | Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3) | TAC Area (e.g., PG&amp;E, SCE) | Prorated Percentage of Unit Factor | 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) | Resource Category as defined by the CPUC (DR, 1, 2, 3, 4) |
|---------------------------------------|---------------|-------------------|------------------|-----------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|----------------|-----------------|-----------------|-------------------------------------------------|---------------------|
|                                       | Red Bluff Peaker Plant | Red Bluff, CA     | REDBLF_6_UNIT    | TSC2            | 44 MW                           | N/A                             | Natural Gas                     | N/A                             | PG&amp;E           | N/A             | N/A             | CAISO SYSTEM                                           | 4                   |</p>
<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Sunrise Power Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td>Fellows, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>SUNRIS_2_PL1X3</td>
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<tr>
<td>SCID of Resource</td>
<td>NRG1</td>
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<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Natural Gas</td>
</tr>
<tr>
<td>Minimum Qualified Flexible Capacity</td>
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<tr>
<td>Category (Flex 1, 2 or 3)</td>
<td>PG&amp;E</td>
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<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
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</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td>N/A</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</td>
</tr>
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<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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## APPENDIX D
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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<tbody>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority ("Seller" or "SVCE") and Peninsula Clean Energy Authority, a California joint powers authority ("Purchaser" or "PCE"), and each individually a "Party" and together the "Parties", dated as of October 30, 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, C, and D 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

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.

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

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
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 setoff 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) 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

Purchaser 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. Purchaser 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.

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.”

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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.

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."

In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"

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."

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.

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”.

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 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, ".

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(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. I 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, 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.]
AGREED AS OF THE EFFECTIVE DATE:

PENINSULA CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Janis C. Pepper
Title: CEO

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

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

“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.

“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.³

“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.
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: 4
CPUC Local Area (if applicable): Humboldt
Flexible Capacity Category (if applicable): N/A

Delivery period:

Contract Quantity and Contract Price:

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<th>Contract Price ($/kW-mo)</th>
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<td>SCID of Resource</td>
<td>PCG2</td>
<td></td>
</tr>
<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65)</td>
<td>65.08 MW</td>
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</tr>
<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Natural Gas</td>
<td></td>
</tr>
<tr>
<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>PG&amp;E</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td>N/A</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>Humboldt</td>
<td></td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Humboldt Bay Generating Station 1</th>
<th>Eureka, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td>Humboldt Bay Generating Station 1</td>
<td>Eureka, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>HUMBPP_6_UNITS</td>
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</tr>
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<td>SCID of Resource</td>
<td>PCG2</td>
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<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65)</td>
<td>97.62 MW</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Natural Gas</td>
<td></td>
</tr>
<tr>
<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>PG&amp;E</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td>N/A</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>Humboldt</td>
<td></td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 1

Delivery period:

**Contract Quantity and Contract Price:**

**SYSTEM RAR**

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/KWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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</table>
### Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>HIGH DESERT POWER PROJECT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AGGREGATE</td>
</tr>
<tr>
<td></td>
<td>Victorville, CA</td>
</tr>
<tr>
<td></td>
<td>HIDSRT_2_UNITS</td>
</tr>
<tr>
<td></td>
<td>EDF8</td>
</tr>
<tr>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>630 MW</td>
</tr>
<tr>
<td></td>
<td>Natural Gas</td>
</tr>
<tr>
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<td>1</td>
</tr>
<tr>
<td></td>
<td>CAISO SYSTEM</td>
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<tr>
<td></td>
<td>N/A</td>
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<tr>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>CAISO SYSTEM</td>
</tr>
<tr>
<td></td>
<td>4</td>
</tr>
</tbody>
</table>

**Physical Location**

**CAISO Resource ID**

**SCID of Resource**

Unit NQC by month (e.g., Jan=50, Feb=65):

Unit EFC by month (e.g., Jan=30, Feb=50)

Resource Type (e.g., gas, hydro, solar, etc.)

Minimum Qualified Flexible Capacity

Category (Flex 1, 2 or 3)

TAC Area (e.g., PG&E, SCE)

Prorated Percentage of Unit Factor

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)

Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)
Product:

- [ ] RAR
- [x] Local RAR
- [x] Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone:
MCC Bucket: 4
CPUC Local Area (if applicable): Fresno
Flexible Capacity Category (if applicable): 1

Delivery period:

Contract Quantity and Contract Price:

**SYSTEM RAR**

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($)</th>
<th>kW-mo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Physical Location</th>
<th>SCID of Resource</th>
<th>Unit NQC by month (e.g., Jan=50, Feb=65):</th>
<th>Unit EFC by month (e.g., Jan=30, Feb=50)</th>
<th>Resource Type (e.g., gas, hydro, solar, etc.)</th>
<th>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</th>
<th>TAC Area (e.g., PG&amp;E, SCE)</th>
<th>Prorated Percentage of Unit Factor</th>
<th>Prorated Percentage of Unit Flexible Factor</th>
<th>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</th>
<th>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>WELLHEAD POWER PANOCH</td>
<td>FRESNO, CA</td>
<td>PNOCHE_1_PL1X2</td>
<td></td>
<td></td>
<td>Natural Gas</td>
<td>1</td>
<td>PG&amp;E</td>
<td>N/A</td>
<td>N/A</td>
<td>FRESNO</td>
<td>4</td>
</tr>
</tbody>
</table>

(Repeat for additional Units)
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: 4
CPUC Local Area (if applicable): Stockton
Flexible Capacity Category (if applicable): 1

Delivery period:

Contract Quantity and Contract Price:

SYSTEM RAR

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-mo)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>TRACY COMBINED CYCLE POWER PLANT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td>TRACY, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>SCHLTEXE_1_PL1X3</td>
</tr>
<tr>
<td>SCID of Resource</td>
<td>PCG2</td>
</tr>
<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
<td>Varies by Month</td>
</tr>
<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50):</td>
<td>N/A</td>
</tr>
<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Natural Gas</td>
</tr>
<tr>
<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
<td>1</td>
</tr>
<tr>
<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>N/A</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierre, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>N/A</td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>STOCKTON</td>
</tr>
</tbody>
</table>

Appendix C - 6
[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
## APPENDIX D
### 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>
</tr>
</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>
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between East Bay Community Energy Authority, a California joint powers authority ("Purchaser" or "EBCE") and Silicon Valley Clean Energy, a California joint powers authority ("Seller" or "SVCE"), and each individually a "Party" and together the "Parties", dated as of October 30, 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. 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

3
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 WSSPP 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) 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

The Parties are each 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. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party's 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(e), 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.
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: "... 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".

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."

The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

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 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,
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.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

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

EAST BAY COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Howard Chang
Title: COO
“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.

“Continent 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 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.

“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 EBCE dated concurrently herewith, in which SVCE is the buyer of the following: 2020) 61 MW - January, 60 MW - February, 49 MW - March, 33 MW - April, 88 MW - May, 2 MW - June, 9 MW - July, 12 MW - August, 104 MW - September, 75 MW - October and 74 MW - November of CAISO System Generic RAR.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).
“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.

“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.
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 1

Delivery period: [Redacted]

Contract Quantity and Contract Price:

RAR and Local RAR with Flexible Capacity as applicable

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<tr>
<th>Showing Month and Year</th>
<th>RAR Contract Quantity (MW)</th>
<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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Unit 1 (2020 System Flex)

Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>PANOCHE ENERGY CENTER</th>
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</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td>Firebaugh, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>PNCHEG_2_PL1X4</td>
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<tr>
<td>SCID of Resource</td>
<td>PCG5</td>
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<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<tr>
<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</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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<td>Prorated Percentage of Unit Flexible Factor Capacity Area</td>
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Unit 2 (2020 System Flex)

Unit Specific Information

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<thead>
<tr>
<th>Resource Name</th>
<th>HIGH DESERT POWER PROJECT</th>
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<tbody>
<tr>
<td>Physical Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<td>SCID of Resource</td>
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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<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>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area</td>
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### Unit 3 (2020 System Flex)

#### Unit Specific Information

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<tr>
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<td>CAISO Resource ID</td>
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<td>SCID of Resource</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<tr>
<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>
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<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>

[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>
</tr>
</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>
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between East Bay Community Energy, a California joint powers authority ("Purchaser" or "EBCE") and Silicon Valley Clean Energy, a California joint powers authority ("Seller" or "SVCE"), and each individually a "Party" and together the "Parties", dated as of October 31, 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. 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, (j) 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) 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 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**

The Parties are each 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. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party's constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party's 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.
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".

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."

The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

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 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,”.

(i) 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,
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.]
AGREED AS OF THE EFFECTIVE DATE:

<table>
<thead>
<tr>
<th>SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY</th>
<th>EAST BAY COMMUNITIY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: Girish Balachandran</td>
<td>By: Howard Chang</td>
</tr>
<tr>
<td>Name: Girish Balachandran</td>
<td>Name: Howard Chang</td>
</tr>
<tr>
<td>Title: CEO</td>
<td>Title: CCO</td>
</tr>
</tbody>
</table>

DocuSign Envelope ID: 88C40BAC-5DEF-4C7E-AB7F-6F1D34815581
“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.

“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.

"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 Reduction Option" has the meaning specified in Section 2.2(b).

"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.

"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.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

- [x] RAR
- [ ] Local RAR
- [x] Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
- CAISO Zone:
- MCC Bucket: 4
- CPUC Local Area (if applicable): N/A
- Flexible Capacity Category (if applicable): 1

Delivery period: [Redacted]

Contract Quantity and Contract Price:

RAR and Local RAR with Flexible Capacity as applicable

<table>
<thead>
<tr>
<th>Showing Month and</th>
<th>RAR Contract Quantity (M)</th>
<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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## Unit 1 (2020 System Flex)

### Unit Specific Information

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<th>Resource Category as defined by the CPUC</th>
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<td>Physical Location</td>
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<td>CAISO Resource ID</td>
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<tr>
<td>SCID of Resource</td>
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<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65);</td>
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<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<tr>
<td>Resource Type (e.g., gas, hydu, solar, etc.)</td>
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<tr>
<td>Minimum Qualified Flexible Capacity</td>
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<tr>
<td>Category (Flex 1, 2 or 3)</td>
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<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>CAISO System</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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</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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<td>PCG5</td>
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<tr>
<td>PNCHEG_2_PL1X4</td>
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<tr>
<td>PANOCHE ENERGY CENTER (Aggregated)</td>
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<td>Variates By Month</td>
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<td>Natural Gas</td>
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<tr>
<td>PG&amp;E</td>
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<tr>
<td>SCID of Resource</td>
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<tr>
<td>CAISO System</td>
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</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>
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<td>N/A</td>
<td>N/A</td>
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</tr>
</tbody>
</table>
WSPP IMPORT RESOURCE ADEQUACY CAPACITY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller") and Monterey Bay Community Power Authority, a California joint powers authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of October 30th, 2019 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Import RA Capacity 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

Delivery Period, Contract Quantity, and Contract Price are in Appendix B. Appendices A, B and C are incorporated into this Confirmation.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Import RA Capacity 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 Import RA Capacity Product at the RA Capacity Delivery Point. 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.

(b) Seller will deliver the Contract Quantity by causing the Upstream Seller to submit to CAISO in its Supply Plan the System Resource and the Import RA Capacity 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 Seller's Upstream Seller 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 Import RA Capacity Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Import RA Capacity Product identified and confirmed for each day of such Showing Month will equal the Contract Quantity.
Notwithstanding anything else to the contrary herein, in no event shall the Import RA Capacity Product be provided from a nuclear generating facility or a resource using coal or coal materials as a source of fuel.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity 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.

(e) The Import RA Capacity 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 Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period has been accepted for the Import RA Capacity Product from the System Resource by CAISO. Seller has failed to deliver the Import RA Capacity Product if (i) Purchaser has elected to submit the Import RA Capacity Product from the System Resource 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. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the System Resource and the Import RA Capacity Product in its Resource Adequacy Plan with the CPUC or CAISO.

(f) The System Resource 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

(g) Subject to any limitations of the Upstream Confirmation, Seller is transferring to Purchaser all of Seller’s rights under the Upstream Confirmation. Notwithstanding any other provision of this Confirmation to the contrary, Seller’s obligations under this Confirmation are not greater than the obligations of Upstream Seller under the Upstream Confirmation. In the event of a conflict between the provisions of this Confirmation and the provisions of the Upstream Confirmation, the provisions of the Upstream Confirmation will control.

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

(a) If Seller fails to deliver any part of the 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.

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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.
(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 Import RA Capacity 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 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.

(c) Notwithstanding any other provision of this Confirmation to the contrary, Seller’s liability under this Confirmation for failure to deliver the Contract Quantity, including Sections 2.2(a) and (b) above is expressly limited to Seller’s remedies against the Upstream Seller under the Upstream Confirmation.

2.3 **Purchaser’s Re-Sale of Product**

(a) Purchaser may re-sell all or part of the Import RA Capacity Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.3(a). For any such resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause Seller’s SC, to follow Purchaser’s instructions with respect to providing such resold Import RA Capacity Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause Seller’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 Import RA Capacity 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 Seller’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 Import RA Capacity Product.

(b) Purchaser will notify Seller in writing of any resale of Import RA Capacity and the Subsequent Purchaser no later than two (2) 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 (2) Business Days before the Notification Deadline for the Showing Month.
Appendix A

(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 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 Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser must pay for the Import RA Capacity 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 Import 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 Import RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the amount of Import RA Capacity Product delivered for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.2 Allocation of Other Payments and Costs

Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party in relation to this Transaction. 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 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.

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule, or cause Seller’s SC to schedule, or make available to CAISO the Contract Quantity of the Import RA Capacity Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause Seller’s SC to perform all, obligations under applicable law and the Tariff relating to the Import RA Capacity Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or Seller’s SC to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or Seller’s SC 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 Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Contract Quantity to meet its RAR. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing Seller's Scheduling Coordinator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the RAR under Applicable Laws, including to demonstrate that the Contract Quantity qualifies 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, to the best of its knowledge:

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

(b) the System Resource qualifies under the Tariff for the Import RA Capacity Product, and the System Resource and Seller are capable of delivering the Import RA Capacity Product; and

(c) if applicable, Seller has notified Seller's SC or the entity from which Seller purchased the Import RA Capacity Product that Seller has transferred the Contract Quantity of Import RA Capacity Product for the Delivery Period to Purchaser.

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 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 RAR; (ii) Seller may disclose as necessary to Seller'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) The Parties acknowledge that each is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that each Party may be required to make public this Confirmation (which may be partially redacted) 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 requirements for Import RA Capacity 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 and, as applicable, the Upstream 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 of the Parties under this Confirmation.

5.5 Governing Law

To the extent not inconsistent with the Upstream Confirmation, 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, neither Party shall be required to post collateral or other security for this Transaction.

5.7 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(c), 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) the Parties shall act 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 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.”

5.8 **No Recourse to Members**

Purchaser and Seller are each 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 are public entities separate from their constituent members. Each Party agrees it will have no rights and will not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

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, 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.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

MONTEREY BAY COMMUNITY POWER AUTHORITY, a California joint powers authority

By: Tom Habashi
Name: Tom Habashi
Title: CEO
APPENDIX A
DEFINED TERMS

“CAISO” means the California ISO.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“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.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Import RA Capacity Product, (ii) the Import RA Capacity 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 Import RA Capacity 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.

“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.

“Import RA Capacity Product” or “Import RA Capacity” means the qualified and deliverable capacity from the System Resource that can be counted toward Purchaser's RAR, 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 shall be 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. Import RA Capacity does not confer to Purchaser any right to the Contract Quantity of Seller’s System Resource other than the right to count such Contract Quantity toward Purchaser's RAR during the Delivery Term. Specifically, no energy associated with Seller’s System Resource is required to be made available to Purchaser as part of this Confirmation, and Purchaser shall in no way be responsible to compensate Seller for any commitments made or owed by Seller to CAISO in connection with the Import RA Capacity Product sold under this Confirmation.
“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.

“RA Capacity Delivery Point” or “Delivery Point” means the CAISO Scheduling Point Malin 500 (COB) which maps to the CAISO Branch Group PACI_MSL where Purchaser holds intertie import capability, or another location as agreed to in writing by the Parties.

“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 resource adequacy requirements.

“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.

“Subsequent Purchaser” means the purchaser of Import RA Capacity Product from Purchaser in a re-sale of Import RA Capacity Product by Purchaser.

“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.

“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.

“Upstream Confirmation” means that certain confirmation between Seller and Upstream Seller, dated October 18, 2019, and attached as Appendix D.

“Upstream Seller” means the Bonneville Power Administration.
APPENDIX B  
ADDITIONAL INFORMATION

**Purchaser’s SCID:** LMBCP

**Seller’s SCID:** LSVCE

**Intertie Resource ID:** TSC7 MALIN500 1P BPARA

**Delivery Point:** MALIN500 (Malin_5_N101)(COB N-S)

**Delivery Period:**

**Maximum Cumulative Contribution (MCC) Category:** 4

**Contract Quantity and Contract Price:**

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Appendix B - 1
### APPENDIX C
#### NOTICE INFORMATION

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<tr>
<td>Attn:</td>
<td>Attn: Robert Shaw</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: 831-641-7211</td>
</tr>
<tr>
<td>Facsimile:</td>
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| Invoices: | Invoices: |
| Attn: | Attn: Accounts Payable |
| Phone: | Phone: 831-641-7202 |
| Facsimile: | Facsimile: |
| E-mail: | E-mail: APPS@mbcommunitypower.org |

| Scheduling: | Scheduling: |
| Attn: | Attn: The Energy Authority |
| Tel: (DA CAISO Desk) | Tel: (DA CAISO Desk) 425-460-1118 |
| Tel: (Real Time Desk) | Tel: (Real Time Desk) 425-460-1124 |
| Email: | Email: Group-Corp-TradingCaiso@teainc.org |

| Wire Transfer: | Wire Transfer: |
| BNK: | BNK: River City Bank |
| ABA: | ABA: |
| ACCT: | ACCT: |

| Credit and Collections: | Credit and Collections: |
| Attn: | Attn: Tiffany Law |
| Phone: | Director of Finance and Administrative Services |
| Facsimile: | Phone: 831-641-7202 |
| E-mail: | E-mail: tlaw@mbcommunitypower.org |

| Defaults: | Defaults: |
| Attn: | Attn: Robert Shaw |
| Phone: | Phone: 831-41-7211 |
| Facsimile: | E-mail: rshaw@mbcp.org |
| E-mail: | |

Additional notices of an Event of Default to:

Address:

Attn:

Email:
APPENDIX D
UPSTREAM CONFIRMATION
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.") 04-10-038, E. 06-10-042 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 the 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

**Point of Delivery:** MALIN500 (Malin_6_N101)(COB N-S)
**Resource ID:** TSC7_MALIN500_1F_BPARA

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</table>

**Deal:** 696049  
**Page:** 1 of 4  
**SVCE:** 20PM-16085  
**10/18/2019**

**Definitions:**

1. "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 reclamable 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 Main (COR) 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 4.6 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 SPA 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
Appendix A

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 5500, 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

---
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PIONEER COMMUNITY ENERGY

This Confirmation Letter ("Confirmation") confirms the Transaction between 
Authority, a California joint powers authority ("Seller") and Pioneer Community Energy, a California 
joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of 
October 31, 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 (excluding 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 WSSP 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

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ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this
Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 **Product Type**

- **Flexible RA Product**
  
The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:
  
  - [ ] FCR Attributes with LAR Attributes
  - [ ] FCR Attributes with RAR Attributes

- **Generic RA Product**
  
The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:
  
  - [ ] RAR Attributes
  - [X] 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: [REDACTED]
4.2 **Delivery Point**

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 **Contract Quantity**

The Contract Quantity for each Monthly Delivery Period shall be:

| Contract Month | Total LAR Contract Quantity (MWs) |

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, 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 pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE 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 (c) 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 it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.
ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction,
or other Governmental Body with such evidence as may reasonably be requested to
demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in
order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous
obligations in CAISO markets, other than pursuant to an RMR Agreement between the
CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR,
LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or
is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using
Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined
by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric
Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable
Laws in operating such Unit; provided, that the owner or operator of any Unit is not
required to undertake capital improvements, facility enhancements, or the construction
of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including
the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR
Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or
transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each
Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the
Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the
Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver
the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause
each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline,
the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan
associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the
revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator
is obligated to promptly deliver those revenues to Buyer, along with appropriate
documentation supporting the amount of those revenues.
ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. 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 Buyer’s community choice aggregation program, or any of Buyer’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 counterparty 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.

PIONEER COMMUNITY ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: Executive Director

SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
WSPP AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
TURLOCK IRRIGATION DISTRICT

This confirmation letter ("Confirmation") confirms the transaction ("Transaction") between Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser") and Turlock Irrigation District, an irrigation district organized under the laws of the State of California, ("Seller"), each individually a "Party" and together the "Parties", dated as of October 28, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Purchaser the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Western Systems Power Pool Agreement effective as of June 21, 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). If there is a conflict between the provisions and definitions contained in the Confirmation with the provisions and definitions contained in the Master Agreement or the Tariff, the provisions and definitions of the Confirmation will prevail.

1. DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Purchaser 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 having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payment" shall mean as set forth in the Tariff.

1.4 "Availability Standards" shall mean availability standards set forth in Section 40.9 of the Tariff.

1.5 "CAISO" means the California Independent System Operator Corporation or its successor.

1.6 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Purchaser pursuant to Section 4.7 hereof, plus costs reasonably incurred by Purchaser 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 Capacity Replacement Price shall be expressed in $/kW-mo. The Purchaser shall determine such market prices in a commercially reasonable manner. For purposes of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.7 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.8 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.9 "Contingent Firm RA Product" has the meaning specified in Section 3.1 hereof.

1.10 [Redacted]

1.11 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount set forth in Section 4.3.
Appendix A

1.12 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-03-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025 13-06-024, 14-06-050, 15-06-063, and subsequent decisions related to resource adequacy issued from time to time by the CPUC, including CPUC Decisions.

1.13 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

1.14 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.15 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.16 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product 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 specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity. The Designated RA Capacity shall be expressed in MWs.

1.17 "EFC" means the flexible capacity of a resource that can be counted towards an LSE's FCR.

1.18 "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or Governmental Body having jurisdiction as of the Confirmation Effective Date.

1.19 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes, consistent with the operational limitations and physical characteristics of such Unit, that can be counted toward an LSE's FCR as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, or by an LRA or Governmental Body having jurisdiction. For clarity, it should be understood that if the CPUC Decisions, CAISO, LRA or Governmental Body having jurisdiction, defines new or re-defines the FCR Attributes of a Unit after the Confirmation Effective Date, then such change will not result in a change in payments made pursuant to this Transaction or construed as a non-performance by Seller.

1.20 "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 or Governmental Body having jurisdiction.

1.21 "Firm RA Product" has the meaning specified in the Section 3.1 hereof.

1.22 "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.

1.23 "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.24 "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.

1.25 "LAR" means 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.

1.26 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability) consistent with the operational limitations and physical characteristics of such Unit, 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, 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 CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, defines new or re-defines existing local areas after the Confirmation Effective Date, then such change will not result in a change in payments made pursuant to this Transaction or construed as a non-performance by Seller.

1.27 "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, or to a Governmental Body.

1.28 "LRA" has the meaning set forth in the Tariff.

1.29 "LSE" means a 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). For purposes of this Confirmation, Purchaser shall be an LSE.

1.30 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.31 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.32 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.33 "Non-Availability Charge" has the meaning set forth in the Tariff.

1.34 "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).

1.35 "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.

1.36 "Product" has the meaning specified in Article 3 hereof.

1.37 "Purchaser" has the meaning specified in the introductory paragraph hereof.

1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Showing Month, 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.
1.39 **"RAR"** means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or Governmental Body having jurisdiction.

1.40 **"RAR Attributes"** means, with respect to a Unit, any and all resource adequacy attributes, consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the CAISO, the CPUC Decisions, LRA, or Governmental Body having jurisdiction, that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

1.41 **"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, the CPUC Decisions or to an LRA or Governmental Body having jurisdiction.

1.42 **"Replacement Capacity"** has the meaning specified in Section 4.7 hereof.

1.43 **"Replacement Unit"** means a generating unit meeting the requirements specified in Section 4.5.

1.44 **"Resource Category"** shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.45 **"Scheduling Coordinator"** has the same meaning as in the Tariff.

1.46 **"Seller"** has the meaning specified in the introductory paragraph hereof.

1.47 **"Showing Month"** shall be the calendar month during the Delivery Period that is the subject of the applicable RAR Showings, LAR Showings, and/or FCR Showings, 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 Showings made in June is for the Showing Month of August.

1.48 **"Supply Plan"** means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity’s RAR Attributes, LAR Attributes, and/or FCR Attributes be used for RAR Showings, LAR Showings, and/or FCR Showings, as applicable.

1.49 **"Tariff"** means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

1.50 **"Transaction"** has the meaning specified in the introductory paragraph hereof.

1.51 **"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 Purchaser.

1.52 **"Unit NQC"** means the Net Qualifying Capacity set by the CAISO for the 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 to be the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit NQC for a Unit, the Unit NQC 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 NQC is consistent with the CAISC’s methodology for determining Unit NQC as of the Confirmation Effective Date. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit NQC, Seller shall not be liable for any costs or damages related to such reduction and the Unit NQC shall be reduced per Section 4.4 of this Confirmation.
1.53 “Unit EFC” means the EFC set by the CAISO for the Unit. If the CAISO adjusts the EFC of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed to be the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted EFC. 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. 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.

2. UNIT INFORMATION

See attached Exhibit A for Unit Information.

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Purchaser, pursuant to the terms of this Confirmation a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.1, the (i) RAR Attributes, LAR Attributes, if LAR Attributes is specified in Section 3.2, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, of the Designated RA Capacity (the “Product”). The Product does not confer to Purchaser 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 Purchaser as part of this Transaction and Purchaser 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 Purchaser under this Confirmation.

3.1 Firm or Contingent Firm RA Product

(a) Firm RA Product

Seller shall provide Purchaser with Designated RA Capacity from the Units in the amount equal to the applicable Contract Quantity. If one or more of the Units are not available to provide the full amount of the applicable 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 Purchaser with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof such that Designated RA Capacity provided to Purchaser equal the applicable Contract Quantity. If Seller fails to provide Purchaser with sufficient replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

(b) Contingent Firm RA Product

Seller shall provide Purchaser with Designated RA Capacity from the Units in the amount equal to the applicable Contract Quantity; provided, however, that if the Units are not available to provide the full amount of the Contract Quantity, then Seller may provide Purchaser with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Purchaser with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof; provided, however, that Seller shall not be
liable for any damages and/or required to indemnify Purchaser for any costs, including but not limited to the penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if i) Seller has provided Purchaser with timely notice pursuant to Section 4.5(b) of Seller’s intent not to provide Alternate Capacity, or ii) the failure to provide Purchaser with the Designated RA Capacity was due to an Outage or unavailability of all or a portion of the Units.

3.2 RAR, LAR, and FCR Attributes

Seller shall provide Purchaser with the RAR Attributes from each Unit comprising the Designated RA Capacity, as measured in MWs, in accordance with the terms and conditions of this Agreement.

(a) **LAR Attributes**

Seller shall provide Purchaser with the LAR Attributes from each Unit comprising the Designated RA Capacity, as measured in MWs, in accordance with the terms and conditions of this Agreement.

(b) **Flexible RA Product**

Seller shall provide Purchaser with the FCR Attributes from the Units of the Designated RA Capacity. If Flexible RA Product is not selected above, then Product is Generic RA Product.

4. DELIVERY AND PAYMENT

4.1 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

4.4 Adjustments to Contract Quantity

Notwithstanding anything herein to the contrary, the following Sections 4.4(a)-(c) do not apply to a Firm RA Product.

(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 Purchaser, no later than ten (10) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, of the amount of Product from the Unit Purchaser is permitted to include in Purchaser’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 Contingent Firm RA Product as specified under Section 3.1, 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) Contingent Firm RA Product as specified under Section 3.1, and (ii) Flexible RA Product specified under as Section 3.2, 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.

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 Purchaser, provide Purchaser with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Purchaser 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 Purchaser of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements in writing no later than ten (10) Business Days before that Showing Month's applicable deadlines for Purchaser's RAR Showings, LAR Showings, and/or FCR Showings. If Seller notifies Purchaser in writing as to the particular Replacement Units and such Replacement 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 Purchaser may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if Seller notified Purchaser, no later than ten (10) Business Days before that Showing Month's relevant deadlines for Purchaser's RAR
Showings, LAR Showings, and/or FCR Showings, as applicable, 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 Purchaser 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 Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Purchaser 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 Purchaser.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Purchaser, no later than ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Purchaser 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 Purchaser with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Purchaser 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 Purchaser 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 Purchaser may replace such portion of the Designated RA Capacity with 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 Purchaser pursuant to the Tariff. Purchaser may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Purchaser 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. Purchaser shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Purchaser at the time set forth in Section 21 of the Master Agreement, the following damages in lieu of damages specified in Section 21 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Purchaser for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity expressed in kW neither provided by Seller nor purchased by Purchaser pursuant to Section 4.7(a), and (ii) the Designated RA Capacity expressed in kW not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Purchaser may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.
4.8 Indemnities for 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, the CAISO, or Governmental Body (other than the Purchaser), 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; or
(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that accurately identify Purchaser’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 Purchaser 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 Purchaser for those penalties, fines or costs, then Purchaser 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 the terms of Section 9 of the Master Agreement, Purchaser shall make an upfront payment ("Pre-Payment") to Seller equal to the sum of all the Monthly RA Capacity Payments for all the Showing Months during the Delivery Period within three (3) Business Days after Purchaser’s execution of this Confirmation. Each Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Showing Month, (b) the Designated RA Capacity for the Showing Month, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Failure of Purchaser to pay Seller the Pre-Payment pursuant to this Section 4.9 shall release Seller from all of its obligations under this Confirmation and obligate Purchaser to pay damages to Seller in an amount reasonably calculated by Seller with such amount in no event can be less than the Monthly RA Capacity Payment For any Showing Month during the Delivery Period that Seller fails to deliver the Designated RA Capacity, Seller will refund to Purchaser an amount equal to the product of (a) the applicable Contract Price for that Showing Month, (b) portion of the Designated RA Capacity for the Showing Month that Seller did not deliver, and (c) 1,000.

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. Purchaser 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, Purchaser 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 Section 9 of the Master Agreement, all such revenues received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Purchaser, and Seller shall indemnify Purchaser for
any such revenues that Purchaser does not receive, and Seller shall pay such revenues to Purchaser if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Purchaser. If Seller fails to pay and a Unit’s Scheduling Coordinator, owner, or operator fails to remit such revenues to Purchaser, Purchaser may offset any amounts owing to it for such revenues pursuant to Section 9 of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Purchaser will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Purchaser pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

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. Purchaser 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. Seller agrees to indemnify, defend and hold harmless Purchaser from any such penalties, fines or costs incurred by Purchaser for Seller’s or any Unit’s Scheduling Coordinator, owner, or operator obligations under this Section 5.

6. GENERAL REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Purchaser and Seller represents and warrants to the other party that, as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

(c) the execution, delivery and performance of this Confirmation are within its powers, have been duly authorized by all necessary action;

(d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;

(e) it is acting for its own account, has made its own independent decision to enter into this Confirmation and as to whether this Confirmation is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in doing so, and is capable of assessing the merits of and understanding, and understands and accepts, the terms and conditions and risks of this Confirmation; and

(f) with respect to the Master Agreement and this Confirmation, the obligations to make payments hereunder do not constitute or create any kind of lien on, or security interest in, any property or revenues of Purchaser.
7. OTHER PURCHASER AND SELLER COVENANTS

7.1 Purchaser and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Purchaser's right to the use of the Contract Quantity for the sole benefit of Purchaser's RAR, LAR and/or FCR, as applicable. 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 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, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, and FCR, so as to maintain the purpose of the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Purchaser 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 Purchaser, 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, the Unit's Scheduling Coordinator, owner, or operator to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in the CAISO and/or non-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, the Unit's Scheduling Coordinator, owner, and/or operator in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any CAISO or 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) 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 Scheduling Coordinator, owner, and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Purchaser, 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 Purchaser, at least ten (10) 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 Scheduling Coordinator that Purchaser 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 Purchaser, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 30.1 of the Master Agreement, the Parties agree that Purchaser may disclose this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as 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.

9. PURCHASER’S RE-SALE OF PRODUCT

Purchaser may re-sell all or a portion of the Product hereunder.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Purchaser, 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 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 Purchaser.

11. MASTER AGREEMENT AMENDMENTS

For purposes of this Transaction only, the Master Agreement shall be amended as follows:
(a) Section 22.1 of the Master Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the quantities of capacity and/or energy due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within three (3) Business Days after written notice;

(g) 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;

(h) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(i) 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 Master Agreement is amended by inserting in Section 22.2(b), "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 Master Agreement is amended by:

1) In Section 22.3(c), replacing the word "rate" with "Rate", and deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary."

1) In Section 22.3(d), replacing "this Agreement and any Confirmation" in the third line thereof with "any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party";

3) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[intentionally omitted]";

(d) Section 37 of the Master Agreement is amended by inserting the following in the beginning of the section: "On the date of entering into this Confirmation."

(e) Section 24 of the Master Agreement is deleted and replaced with the following:

"This Master Agreement and any Confirmation 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."

(f) The netting provisions of Section 28, NETTING, of the Master Agreement shall apply to the transaction covered by this Confirmation as if Purchaser and Seller had both executed Exhibit A, NETTING, to the Master Agreement.

(g) Section 30.1 of the Master 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) The following shall be inserted as a new Section 34.5:

"34.5 LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS 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 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. 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. 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."

(i) Section 41 "Witness" of the Master 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 Master 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 Master 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, 171 L.Ed.2d 607 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 527 (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 Master 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."

(iii) In addition, and notwithstanding the foregoing subsection (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)."

12. COLLATERAL REQUIREMENTS

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.

13. GENERAL PROVISIONS

13.1 No Recourse to Members of Purchaser

Purchaser 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. Purchaser 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.

13.2 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.

13.3 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 written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.
14. NOTICE INFORMATION

<table>
<thead>
<tr>
<th>Purchaser</th>
<th>Seller</th>
</tr>
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<tbody>
<tr>
<td>All Notices</td>
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<tr>
<td>Attn: Girish Balachandran</td>
<td>Attn: Willie Manuel</td>
</tr>
<tr>
<td>Phone: 408-721-5301</td>
<td>Phone: 209-883-8348</td>
</tr>
<tr>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
<td>Fax: 209-656-2147</td>
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<td></td>
<td>Email: <a href="mailto:wgmanuel@tid.org">wgmanuel@tid.org</a></td>
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<tr>
<td>Attn: Power Supply Group</td>
<td>Attn: Leslie Bucheli</td>
</tr>
<tr>
<td>Phone: (408) 721-5301</td>
<td>Phone: 209-883-8387</td>
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<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
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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

Turlock Irrigation District

By: [Signature]
Name: Willie Manuel
Title: Resource Planning Department Manager

WSPP TID Prepaid RA Sales Confirmation - SVCE (Final) 16 of 18 11/4/2019
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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority ("Purchaser" or "SVCE") and East Bay Community Energy Authority, a California joint powers authority ("Seller" or "EBCE"), and each individually a "Party" and together the "Parties", dated as of October 30, 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, C, and D 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 (i) 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

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.

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

\(^2\) 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
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) 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

Purchaser 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. Purchaser 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.

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 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, ",

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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, 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 this 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.]
AGREED AS OF THE EFFECTIVE DATE:

EAST BAY COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Howard Choy
Title: [Title]

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: [Title]
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, 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 Showing" 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.

"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.

"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.¹

"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.
and all Capacity Attributes related to such Product.

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

Delivery period:

**Contract Quantity and Contract Price:**

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<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-mo)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
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<tr>
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<td></td>
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</table>
**Unit 1 (2020 System Generic)**

### Unit Specific Information

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Metcalf Energy Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Location</td>
<td>Metcalf Energy Center</td>
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<tr>
<td>CAISO Resource ID</td>
<td>San Jose, CA</td>
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<tr>
<td>SCID of Resource</td>
<td>METEC_2_PL1X3</td>
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<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
<td>Nat Gas</td>
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<tr>
<td>Minimum Qualified Flexible Capacity</td>
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<tr>
<td>Category (Flex 1, 2 or 3)</td>
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</tr>
<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>N/A</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td>N/A</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>Bay Area</td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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</tbody>
</table>

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
APPENDIX D
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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<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</table>

Appendix D - 1
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority ("Purchaser" or "SVCE") and East Bay Community Energy Authority, a California joint powers authority ("Seller" or "EBCE"), and each individually a "Party" and together the "Parties", dated as of October 30, 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. 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.

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’s 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 12-04-045
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 setoff 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.

(c) 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 aShown 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

The Parties are each 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. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party’s 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 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,
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.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY, 
A CALIFORNIA JOINT POWERS 
AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

EAST BAY COMMUNITY ENERGY 
AUTHORITY, A CALIFORNIA JOINT 
POWERS AUTHORITY

By: [Signature]
Name: Howard Chang
Title: COO
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 I 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.

“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 EBCE dated concurrently herewith, in which EBCE is the buyer of the following: 2020) 61 MW-January, 60MW - February, 49 MW - March, 33 MW - April, 88 MW - May, 2 MW - June, 9 MW - July, 12 MW - August, 104 MW - September, 75 MW - October and 74 MW - November of CAISO System RAR with Flexible attributes.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).
“**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.

“**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.
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 1

Contract Quantity and Contract Price:

RAR and Local RAR with Flexible Capacity as applicable

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<th>Showing Month and Year</th>
<th>RAR Contract Quantity</th>
<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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<tr>
<td></td>
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Unit 1 (2020 System Generic)

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<th>Metcalf Energy Center</th>
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<tbody>
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<td>Physical Location</td>
<td>San Jose, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
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<td>SCID of Resource</td>
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<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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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<td>Minimum Qualified Flexible Capacity</td>
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<td>Category (Flex 1, 2 or 3)</td>
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<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>CAISO System</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
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</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</td>
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<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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[Information for specific shown Units may be provided after the Effective Date pursuant to the Confirmation.]
## APPENDIX C
### PLANNED OUTAGE SCHEDULE

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<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
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</table>
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY
AND
CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF

This confirmation letter ("Confirmation") confirms the Transaction between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Seller") and Silicon Valley Clean Energy, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 30, 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 Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master 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 or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

ARTICLE 1
DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.2 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.3 "Availability Standards" has the meaning set forth in the Tariff.

1.4 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.5 "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.

1.6 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.8 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.9 "Contract Price" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

1.10 "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 Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.11 "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, 15-06-083, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.
1.12 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program.

1.13 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.14 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.15 “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, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.16 “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.

1.17 “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 payments or obligations made pursuant to this Transaction.

1.18 “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.

1.19 “Firm RA Product” has the meaning specified in Section 3.3 hereof.

1.20 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by an LRA or other Governmental Body having jurisdiction.

1.21 “Flexible RA Product” has the meaning specified in Section 3.2 hereof.

1.22 “GADS” means the Generating Availability Data System or its successor.

1.23 “Generic RA Product” means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.24 “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.

1.25 “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, the Tariff, 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.

1.26 “RAR 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 payments or obligations made pursuant to this Transaction.

1.27 “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.

1.28 “LRA” means Local Regulatory Authority, as defined in the Tariff.

1.29 “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).

1.30 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

1.31 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.32 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

1.33 “NERC” means the North American Electric Reliability Council, or its successor.

1.34 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

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

1.36 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.37 “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).

1.38 “Outage Schedule” has the meaning specified in Article 6 hereof.

1.39 “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known 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.

1.40 “Product” has the meaning specified in Article 3 hereof.

1.41 “RA Availability” means, for each Unit, expressed as a percentage, (a) the Unit’s Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit’s RA Availability shall not exceed 100%.

1.42 “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. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

1.43 “RA Capacity Flat Price” means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

1.44 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.45 “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, CAISO, 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.

1.46 "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, the CPUC Decisions or LRA having jurisdiction.

1.47 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.48 "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

1.49 "Resource Adequacy Plan" has the meaning set forth in the Tariff.

1.50 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.51 "RMR Agreement" has the meaning set forth in the Tariff.

1.52 "Seller" has the meaning specified in the introductory paragraph hereof.

1.53 "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.

1.54 "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.

1.55 "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.

1.56 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.57 "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.

1.58 "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. 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 limitations 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.

1.59 "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.
ARTICLE 2
UNIT INFORMATION

<table>
<thead>
<tr>
<th>Name</th>
<th>DELTA ENERGY CENTER AGGREGATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Pittsburg, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>DELTA_2_PL1X4</td>
</tr>
<tr>
<td>Resource Type</td>
<td>Natural Gas</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3, or 4)</td>
<td>4</td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO controlled grid (&quot;Substation&quot;)</td>
<td>N/A</td>
</tr>
<tr>
<td>Path 26 (North, South, or None)</td>
<td>North</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>None</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>None</td>
</tr>
<tr>
<td>LAR Attributes (Yes/No)</td>
<td>No</td>
</tr>
<tr>
<td>If yes: Local Capacity Area (as of the Confirmation Effective Date):</td>
<td>N/A</td>
</tr>
<tr>
<td>Product Type</td>
<td>Generic</td>
</tr>
<tr>
<td>If Generic: Unit NQC (as of the Confirmation Effective Date)</td>
<td>Varies By Month</td>
</tr>
<tr>
<td>If Flexible: Unit EFC (as of the Confirmation Effective Date):</td>
<td>N/A</td>
</tr>
<tr>
<td>Flexible Capacity Category (Base/Peak/Super-peak):</td>
<td>N/A</td>
</tr>
</tbody>
</table>

ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of 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, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit 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 the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

3.2 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.
3.3 **Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity 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 Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, 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; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**ARTICLE 4**

**DELIVERY AND PAYMENT**

4.1 **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 the Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Local RA Capacity</strong></td>
</tr>
<tr>
<td><strong>Quantity (MW)</strong></td>
</tr>
</tbody>
</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 fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month,
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 MWs) Unit NQC was reduced since the 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) 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 MWs) Unit EFC was reduced since the 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.

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 fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. 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 the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than fifteen (15) Business Days before that Showing Month’s relevant deadlines for Buyer’s RAR Showings, LAR Showings, and/or FCR Showings, as applicable, 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 CAISO 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 ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, 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.

(c) Once the Buyer’s Resource Adequacy Plan and Seller’s Supply Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for 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.

4.7 Damages for Failure to Provide or Receive 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 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 the Master Agreement, the following damages in lieu of damages specified in 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 the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

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 before delivery 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 amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.
4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY FLAT PRICE TABLE

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Local RA Capacity Flat Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

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 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 pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement 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 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.

ARTICLE 6
PLANNED OUTAGES

6.1 Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2019) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit’s Scheduling Coordinator to submit to Buyer the portion of the Unit’s schedule of proposed Planned Outages for the Delivery Period (“Outage Schedule”). Seller or a Unit’s Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

6.2 Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

ARTICLE 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 purpose of 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 comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) 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;

(g) 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;

(h) 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

(i) 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 Confirmation for the applicable period, and

(j) 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.

ARTICLE 8
CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, if Buyer becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to either Party under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of the other Party, the Party subject to the request may do so after providing the other Party with prompt notice so that such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

ARTICLE 9
BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.
ARTICLE 10
COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

ARTICLE 11
GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation 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 conflicts of laws.

ARTICLE 12
COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect the performance under this Confirmation and must at all times comply with all such laws, ordinances, or regulations as may be amended from time to time.

ARTICLE 13
ADDITIONAL TERMS AND CONDITIONS

13.1 No Recourse to Members of Seller

Seller 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. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Buyer 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 or Seller's constituent members, in connection with this Confirmation.

13.2 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterpart 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.

13.3 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 only be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

By: ______________________________
Name: Ramon Abueg
Title: Deputy Manager, Power Operations
Date: ______________________________

Silicon Valley Clean Energy, a California joint powers authority

By: ______________________________
Name: Girish Balachandran
Title: CEO
Date: 10/30/2019
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY
AND
CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF

This confirmation letter ("Confirmation") confirms the Transaction between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Buyer") and Silicon Valley Clean Energy, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of October 30, 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 Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master 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 or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

ARTICLE 1
DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.2 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.3 "Availability Standards" has the meaning set forth in the Tariff.

1.4 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.5 "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.

1.6 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.8 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.9 "Contract Price" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

1.10 "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 Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.11 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-028, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-083, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.
1.12 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program.

1.13 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.14 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.15 “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, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.16 “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.

1.17 “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 re-defines the FCR Attributes of a Unit, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

1.18 “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.

1.19 “Firm RA Product” has the meaning specified in Section 3.3 hereof.

1.20 “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.

1.21 “Flexible RA Product” has the meaning specified in Section 3.3 hereof.

1.22 “GADS” means the Generating Availability Data System or its successor.

1.23 “Generic RA Product” means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.24 “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.

1.25 “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, the Tariff, 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.

1.26 “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
Appendix A

Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

1.27 "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.

1.28 "LRA" means Local Regulatory Authority, as defined in the Tariff.

1.29 "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).

1.30 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.31 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.32 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.33 "NERC" means the North American Electric Reliability Council, or its successor.

1.34 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.35 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.36 "Non-Availability Charges" has the meaning set forth in the Tariff.

1.37 "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).

1.38 "Outage Schedule" has the meaning specified in Article 6 hereof.

1.39 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff ("Planned Outage", as the term is used in this Confirmation is known 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.

1.40 "Product" has the meaning specified in Article 3 hereof.

1.41 "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 100%.

1.42 "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. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

1.43 "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

1.44 "RAR" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.45 "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, CAISO, 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.

1.46 "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, the CPUC Decisions or LRA having jurisdiction.

1.47 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.48 "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

1.49 "Resource Adequacy Plan" has the meaning set forth in the Tariff.

1.50 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.51 "RMR Agreement" has the meaning set forth in the Tariff.

1.52 "Seller" has the meaning specified in the introductory paragraph hereof.

1.53 "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.

1.54 "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.

1.55 "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.

1.56 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.57 "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.

1.58 "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. 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 limitations 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.

1.59 "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.
ARTICLE 2
UNIT INFORMATION

<table>
<thead>
<tr>
<th>Name</th>
<th>DELTA ENERGY CENTER AGGREGATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Pittsburg, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>DELTA_2 PL1X4</td>
</tr>
<tr>
<td>Resource Type</td>
<td>Natural Gas</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3, or 4)</td>
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<tr>
<td>Point of Interconnection with the CAISO controlled grid (&quot;Substation&quot;)</td>
<td>N/A</td>
</tr>
<tr>
<td>Path 26 (North, South, or None)</td>
<td>North</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>None</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>None</td>
</tr>
<tr>
<td>LAR Attributes (Yes/No)</td>
<td>No</td>
</tr>
<tr>
<td>If yes: Local Capacity Area (as of the Confirmation Effective Date):</td>
<td>N/A</td>
</tr>
<tr>
<td>Product Type</td>
<td>Flexible</td>
</tr>
<tr>
<td>If Generic: Unit NOC (as of the Confirmation Effective Date):</td>
<td>N/A</td>
</tr>
<tr>
<td>If Flexible: Unit EFC (as of the Confirmation Effective Date): Flexible Capacity Category (Base/Peak/Super-peak):</td>
<td>Varies By Month</td>
</tr>
</tbody>
</table>

ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Article 2.3, 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, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit 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 the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

3.2 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.
3.3 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity 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 Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, 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; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

ARTICLE 4
DELIVERY AND PAYMENT

4.1 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 the Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local RA Capacity Quantity (MW)</td>
</tr>
<tr>
<td>Contract Month / Year</td>
</tr>
</tbody>
</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 fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month,
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 MWs) Unit NQC was reduced since the 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) 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 MWs) Unit EFC was reduced since the 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.

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 fifteen (15) Business Days before that Showing Month's applicable deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings. 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 the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller notified Buyer, no later than fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR Showings, LAR Showings, and/or FCR Showings, as applicable, 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 CAISO 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 ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, 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.

(c) Once the Buyer's Resource Adequacy Plan and Seller's Supply Plan with respect to the Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the Product and Designated RA Capacity will be deemed to have been delivered and provided in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for 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.

4.7 Damages for Failure to Provide or Receive 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 RA capacity is available, then Buyer may replace such portion of the Designated RA Capacity with 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 the Master Agreement, the following damages in lieu of damages specified in 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 the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

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 before delivery 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 amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.
4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

<table>
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<tr>
<th>Contract Year/Month</th>
<th>Local RA Capacity Flat Price ($/kW-month)</th>
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If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer’s RAR, then Seller shall be deemed to have provided Buyer the Product from the capacity of such Unit.

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 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 pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for resale in such market, and retain and receive any and all related revenues.

ARTICLE 5

CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event 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.

ARTICLE 6
PLANNED OUTAGES

6.1 Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2019) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit’s Scheduling Coordinator to submit to Buyer the portion of the Unit’s schedule of proposed Planned Outages for the Delivery Period (“Outage Schedule”). Seller or a Unit’s Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

6.2 Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

ARTICLE 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 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 purpose of 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 comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(f) 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;

(g) 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;

(h) 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

(i) 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 Confirmation in the applicable period; and

(j) 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.

ARTICLE 8
CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, if Buyer becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to either Party under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of the other Party, the Party subject to the request may do so after providing the other Party with prompt notice so that such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

ARTICLE 9
BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.
ARTICLE 10  
COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

ARTICLE 11  
GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation 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 conflicts of laws.

ARTICLE 12  
COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect the performance under this Confirmation and must at all times comply with all such laws, ordinances, or regulations as may be amended from time to time.

ARTICLE 13  
ADDITIONAL TERMS AND CONDITIONS

13.1 Limited Obligations

Buyer’s obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco (“City”) or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

13.2 Guaranteed Maximum Cost

(a) Controller Certification. Buyer’s obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

(b) Biannual Budget Process. For each City and County of San Francisco biannual budget cycle during the term of this Confirmation, Buyer agrees to take all necessary actions to include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City and County of San Francisco’s Board of Supervisors for each year of that budget cycle.

13.3 Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Buyer may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, “Political Activity”) in the performance of this Confirmation. Buyer agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by
the Controller. The terms and provisions of Chapter 12. G are incorporated herein by this reference. In the event Buyer violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Confirmation, and (ii) prohibit Buyer from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Buyer’s use of profit as a violation of this Section.

13.4 **No Recourse to Members of Seller**

Seller 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. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Buyer 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 or Seller’s constituent members, in connection with this Confirmation.

13.5 **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.

13.6 **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 only be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

By: __________________________
    ___________ g
Title: Deputy Manager, Power Operations
Date: __________________________

Silicon Valley Clean Energy, a California joint powers authority

By: __________________________
    __________________________
Name: Girish Balachandran
Title: CEO
Date: __________________________
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY
AND
CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION, CLEANPOWERSF

This confirmation letter ("Confirmation") confirms the Transaction between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Seller") and Silicon Valley Clean Energy, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 30, 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 Systems Power Pool Agreement, to which both Parties are members, in effect as of the Confirmation Effective Date and as amended from time to time (the "WSPP Agreement" or "Master 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 or the CPUC Decisions (each as defined herein). To the extent that this Confirmation is inconsistent with any provision of the WSPP Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Capitalized terms that are defined in both this Confirmation and the WSPP Agreement shall have the meanings ascribed to them in this Confirmation.

ARTICLE 1
DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.2 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.3 "Availability Standards" has the meaning set forth in the Tariff.

1.4 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.5 "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.

1.6 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.7 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.8 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

1.9 "Contract Price" means, for any Monthly Delivery Period, the RA Capacity Flat Price for such period.

1.10 "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 Table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.11 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-028, 08-06-031, 09-06-028, 10-06-038, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-083, 16-06-045, and 17-06-027 and subsequent decisions related to resource adequacy issued from time to time by the CPUC.
1.12 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program.

1.13 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.14 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.15 “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, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.16 “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.

1.17 “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 payments or obligations made pursuant to this Transaction.

1.18 “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.

1.19 “Firm RA Product” has the meaning specified in Section 3.3 hereof.

1.20 “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.

1.21 “Flexible RA Product” has the meaning specified in Section 3.2 hereof.

1.22 “GADS” means the Generating Availability Data System or its successor.

1.23 “Generic RA Product” means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.24 “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.

1.25 “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, the Tariff, 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.

1.26 “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 payments or obligations made pursuant to this Transaction.

1.27 “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.

1.28 “LRA” means Local Regulatory Authority, as defined in the Tariff.

1.29 “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).

1.30 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

1.31 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.32 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

1.33 “NERC” means the North American Electric Reliability Council, or its successor.

1.34 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

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

1.36 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.37 “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the obligation of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

1.38 “Outage Schedule” has the meaning specified in Article 6 hereof.

1.39 “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (“Planned Outage”, as the term is used in this Confirmation is known 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.

1.40 “Product” has the meaning specified in Article 3 hereof.

1.41 “RA Availability” means, for each Unit, expressed as a percentage, (a) the Unit’s Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit’s RA Availability shall not exceed 100%.

1.42 “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. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing northern or southern system areas, then such change will not result in a change in payments or obligations made pursuant to this Transaction.

1.43 “RA Capacity Flat Price” means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

1.44 “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC, pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.45 “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, CAISO, 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.

1.46 "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, the CPUC Decisions or LRA having jurisdiction.

1.47 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.48 "Replacement Unit" means a generating unit providing Replacement Capacity in accordance with Section 4.5 hereof.

1.49 "Resource Adequacy Plan" has the meaning set forth in the Tariff.

1.50 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.51 "RMR Agreement" has the meaning set forth in the Tariff.

1.52 "Seller" has the meaning specified in the introductory paragraph hereof.

1.53 "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.

1.54 "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.

1.55 "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.

1.56 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.57 "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.

1.58 "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 such 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. 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 limitations 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.

1.59 "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.
ARTICLE 2
UNIT INFORMATION

<table>
<thead>
<tr>
<th>Name</th>
<th>Geyser Unit 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Sonoma County</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>GEYS20_7_UNIT20</td>
</tr>
<tr>
<td>Resource Type</td>
<td>1_Phy_Res</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3, or 4)</td>
<td>4</td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO controlled grid (&quot;Substation&quot;)</td>
<td>N/A</td>
</tr>
<tr>
<td>Path 26 (North, South, or None)</td>
<td>North</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>None</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>None</td>
</tr>
<tr>
<td>LAR Attributes (Yes/No)</td>
<td>Yes</td>
</tr>
<tr>
<td>if yes: Local Capacity Area (as of the Confirmation Effective Date):</td>
<td>North Coast / North Bay</td>
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<tr>
<td>Product Type</td>
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<tr>
<td>If Generic: Unit NQC (as of the Confirmation Effective Date)</td>
<td>40 MW</td>
</tr>
<tr>
<td>If Flexible: Unit EFC (as of the Confirmation Effective Date):</td>
<td>N/A</td>
</tr>
<tr>
<td>Flexible Capacity Category (Base/Peak/Super-peak):</td>
<td>N/A</td>
</tr>
</tbody>
</table>

ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of 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, Seller shall not be required to make available to Buyer any energy or ancillary services associated with any Unit 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 the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Confirmation.

3.2 **Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.
3.3 Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity 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 Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit, 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, 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; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if the failure to deliver the full Contract Quantity is due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller has provided Buyer with timely notice pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

ARTICLE 4
DELIVERY AND PAYMENT

4.1 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 the Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month / Year</th>
<th>Local RA Capacity Quantity (MW)</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 fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, 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 MWs) Unit NQC was reduced since the 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) 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 MWs) Unit EFC was reduced since the 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.

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 fifteen (15) Business Days before that Showing Month’s applicable deadlines for Buyer’s RAR Showings, LAR Showings, and/or FCR Showings. 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 the failure to deliver the full Contract Quantity is due to Force
Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and Seller
notified Buyer, no later than fifteen (15) Business Days before that Showing Month’s
relevant deadlines for Buyer’s RAR Showings, LAR Showings, and/or FCR Showings, as
applicable, 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
CAISO 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 ten (10) Business Days before the applicable RAR Showings, LAR Showings
and/or FCR Showings deadlines for each Showing Month, 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.

(c) Once the Buyer’s Resource Adequacy Plan and Seller’s Supply Plan with respect to the
Contract Quantity from the Unit have been accepted by CAISO for the Showing Month, the
Product and Designated RA Capacity will be deemed to have been delivered and provided
in full by Seller to Buyer, and to have been received and accepted in full by Buyer.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any
part of the Contract Quantity for 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.

4.7 Damages for Failure to Provide or Receive 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
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 the Master Agreement, the following damages in lieu of damages specified in 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 the Master Agreement.

(c) Buyer shall pay to Seller the damages set forth in Section 21.3 of the Master Agreement for any Product not received and accepted by Buyer.

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 before delivery 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 amounts, or fails to reimburse Buyer for those amounts, then Buyer may offset those amounts against any future amounts it may owe to Seller under this Confirmation.
4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY FLAT PRICE TABLE

<table>
<thead>
<tr>
<th>Contract Month / Year</th>
<th>Local RA Capacity Flat Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
If the CPUC allows Buyer to apply the capacity of a Unit that is on, or is scheduled to be on, an Outage towards the Buyer's RAR, then Seller shall be deemed to have provided Buyer the Product form the capacity of such Unit.

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 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 pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to the Master Agreement 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 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.

ARTICLE 6

PLANNED OUTAGES

6.1 Notwithstanding Section 4.4(a) hereof, if Seller intends to take one or more Planned Outage(s) for the Unit during any calendar year of the Delivery Period and will not be providing Replacement Capacity during such Planned Outage(s), then no later than ten (10) Business Days following the Confirmation Effective Date (with respect to calendar year 2019) or no later than ten (10) Business Days following January 1 (with respect to each subsequent calendar year of the Delivery Period), Seller shall submit or cause the Unit's Scheduling Coordinator to submit to Buyer the portion of the Unit's schedule of proposed Planned Outages for the Delivery Period ("Outage
Schedule”). Seller or a Unit’s Scheduling Coordinator shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

6.2 Planned Outages shall not be scheduled from May 1 through September 30 during the Delivery Period, unless otherwise agreed by CAISO. In the event that Seller has a previously scheduled Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

ARTICLE 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 purpose of 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 comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
(f) 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;

(g) 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;

(h) 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

(i) 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 Confirmation for the applicable period; and

(j) 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.

ARTICLE 8
CONFIDENTIALITY

Notwithstanding anything to the contrary in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, if Buyer becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, or a request to either Party under the California Public Records Act (California Government Code Section 6250 et seq)) to disclose any confidential information of the other Party, the Party subject to the request may do so after providing the other Party with prompt notice so that such Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure.

ARTICLE 9
BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10
COLLATERAL REQUIREMENTS

Notwithstanding any other provision of the WSPP Agreement, credit support is not required for either Party under this Transaction.

ARTICLE 11
GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation 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 conflicts of laws.
ARTICLE 12
COMPLIANCE WITH LAWS

Each Party will comply with and shall keep itself fully informed of all applicable federal, state, regional, or local laws, ordinances, regulations, or rules that in any manner affect the performance under this Confirmation and must at all times comply with all such laws, ordinances, or regulations as may be amended from time to time.

ARTICLE 13
ADDITIONAL TERMS AND CONDITIONS

13.1 No Recourse to Members of Seller

Seller 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. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Buyer 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 or Seller’s constituent members, in connection with this Confirmation.

13.2 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.

13.3 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 only be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Silicon Valley Clean Energy, a California joint powers authority

By: ____________________________
  __________________
Title: Deputy Manager, Power Operations
Date: __________________________

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
Date: __________________________
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MARIN CLEAN ENERGY

This Confirmation Letter ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and Marin Clean Energy, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of October 30, 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>
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<th>Name</th>
<th>Tracy Combined Cycle Power Plant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
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</tr>
<tr>
<td>CAISO Resource ID</td>
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<tr>
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<tr>
<td>Path 26 (North or South)</td>
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</tr>
<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date)</td>
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<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>N/A</td>
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</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:

[X] FCR Attributes with LAR Attributes
[ ] FCR Attributes with RAR Attributes

☐ Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[ ] RAR Attributes
[ ] LAR Attributes

3.3 Delivery Obligation

☐ Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: November 1, 2022, through December 31, 2022, 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 QUANTITY (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contract Month</strong></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 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, 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 pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

<table>
<thead>
<tr>
<th>RA Capacity Price Table</th>
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<tr>
<td>Contract Month</td>
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4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such
revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit’s Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

**ARTICLE 5. CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

**ARTICLE 6. GOVERNING LAW**

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

**ARTICLE 7. OTHER BUYER AND SELLER COVENANTS**

7.1 **Further Assurances**

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required
to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party’s sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that “commercially reasonable actions” under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;
(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit’s Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit’s Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. 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 Buyer’s community choice aggregation program, or any of Buyer’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 counterparty 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.

MARIN CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Dawn Weisz
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: CEO
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY
AND
SACRAMENTO MUNICIPAL UTILITY DISTRICT

This confirmation letter ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority, ("Buyer" or "Purchaser") and Sacramento Municipal Utility District ("Seller"), each individually a "Party" and together the "Parties", dated as of November 14, 2019 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the WSPP Agreement (Effective Version: March 26, 2018) (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 are defined in in the Master Agreement or the Tariff (as defined herein). 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 this Transaction. Except as other specified, references to an "Article" or a "Section" mean an Article or Section of this Confirmation, as applicable.

ARTICLE 1
DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with 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 having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
1.3 "Availability Incentive Payments" is defined in the Tariff.
1.4 "Availability Standards" means availability standards set forth in Section 40.9 of the Tariff.
1.5 "Buyer" is defined in the introductory paragraph hereof.
1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section Four of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
1.8 "Confirmation" is defined in the introductory paragraph hereof.
1.9 "Confirmation Effective Date" is defined in the introductory paragraph hereof.
1.10 "Contingent Firm RA Product" is defined in Section 3.4.
1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).
1.13 "Controlled Grid" is defined in the Tariff.
1.14 "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, 10-08-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-08-027 and 18-02-022, and subsequent decisions related to resource adequacy issued from time to time by the CPUC.

1.15 "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.

1.16 "Credit Rating" shall mean, with respect to a party or entity on any date of determination, the higher of: (1) the respective rating then assigned to its unsecured and senior, long-term indebtedness by S&P, Moody's or Fitch or (2) the issuer or corporate rating then assigned, by S&P, Moody's or Fitch.

1.17 "Delivery Period" is defined in Section 4.1.

1.18 "Delivery Point" is defined in Section 4.2.

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 specified in 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, consistent with the operational limitations and physical characteristics of such Unit, that can be counted toward an LSE's FCR, as they are identified as of the Confirmation Effective Date by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction. If the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such changes will not change the obligations or payments hereunder.

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" is defined in the Section 3.3.

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" is defined in the Section 3.2.

1.26 "GADS" means the Generating Availability Data System or its successor.

1.27 "Generic RA Product" means Designated RA Capacity 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), consistent with the operational limitations and physical characteristics of such Unit, 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, 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. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not change the obligations or payments hereunder.

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" is defined in the Tariff.

1.33 "LSE" means load-serving entity.

1.34 "Master Agreement" is defined 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" is defined in Section 4.9.

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 updated from time to time.

1.39 "Net Qualifying Capacity" is defined in the Tariff.

1.40 "Non-Availability Charges" is defined in the Tariff.

1.41 "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves such Unit from all or part of the offer obligations of the Unit consistent with the Tariff. Outage includes Planned Outage.

1.42 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff, an "Approved Maintenance Outage" under the Tariff.

1.43 "Product" is defined in Article 3.

1.44 "Qualified Institution" means a major U.S. commercial bank or a U.S. branch office of a foreign bank having assets of at least $10 Billion and with a Credit Rating of at least "A-" by S&P or "A3" by Moody's.

1.45 "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 1.00.

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 Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.

1.48 "RAR" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
"RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes consistent with the operational limitations and physical characteristics of such Unit, 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, 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, the CPUC Decisions or LRA having jurisdiction.

"Replacement Capacity" is defined in Section 4.7.

"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" is defined in the Tariff.

"Seller" is defined in the introductory paragraph hereof.

"Seller's Collateral Requirement" means 20% of the notional value as of the date of such determination minus any amounts due and owing by the Buyer. With respect to netting of payments the terms in this confirmation shall supersede any prior confirmation.

"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.

"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, as applicable, for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

"Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

"Transaction" is defined in the introductory paragraph hereof.

"Unit" or "Units" means the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

"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, the 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 limitations 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 and FCR Attributes of the Unit for the purpose of this Agreement. The above notwithstanding, to the extent the CAISO reduces the applicable Unit EFC, Seller shall not be liable to Buyer for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

"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.

ARTICLE 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): North Coast/North Bay
Product Type (Flexible/Generic): Generic
   If Generic: Unit NQC (as of the Confirmation Effective Date): 60 MW
   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

ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of 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 requirements, markets or proceedings. 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 the Designated RA Capacity of 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 Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 **Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If 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 Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity 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 Designated RA Capacity from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit 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 Designated RA Capacity 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 Force Majeure, Planned Outage 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 be required to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

**ARTICLE 4**

**DELIVERY AND PAYMENT**

4.1 **Delivery Period**

The Delivery Period shall be ___________ 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:

**Contract Quantity (MWs)**

<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 ten (10) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to that Showing Month, 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 from and after such replacement Seller will convey the equivalent amount of qualifying capacity of such Unit on a pro rata basis (i.e. following such replacement, Seller’s delivery obligation will be obtained by calculating the product of (i) the Contract Quantity divided by the Unit NQC, multiplied by (ii) 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 ten (10) Business Days before that Showing Month’s applicable deadlines for Buyer’s RAR Showings, LAR Showings and/or FCR Showings. 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 and Seller shall not be liable for damages and/or required to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Section 4.7 and 4.8 hereof if the total amount of Product provided to Buyer from the Unit and/or Replacement Units is equal to the Contract Quantity for the applicable 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. If there is an adjustment to the Contract Quantity pursuant to Section 4.4 and Seller has given Buyer notice no later than ten (10) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings applicable to the Showing Month of such adjustment in Contract Quantity and of Seller’s intent not to provide Alternate Capacity in
an amount equal to the Contract Quantity of such Showing Month, then Seller shall not be liable for damages and/or required to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Section 4.7 or 4.8.

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 Scheduling Coordinator 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 ten (10) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, 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 each 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, 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 RAR Attributes, and if applicable, 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 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 21 of the Master Agreement, the following damages in lieu of damages specified in Section 21 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, without limiting its other remedies, offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 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 and such failure is not excused under the terms of the Agreement;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6; or

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that accurately 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, fines and costs. Seller will have no obligation to Buyer under this Section 4.8 in respect of the portion of Contract Quantity for which Seller has paid damages for Replacement Capacity pursuant to Section 4.7. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the Master Agreement, with respect to each Showing Month, 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. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

### RA CAPACITY FLAT PRICE TABLE

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<thead>
<tr>
<th>Contract Year/Month</th>
<th>RA Capacity Flat Price ($/kW-month)</th>
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</table>

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 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 (c) above). All such 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 Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay, and a Unit's Scheduling Coordinator, owner or operator fails to remit such revenues to Buyer, without limiting its other remedies, 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 CAISO, 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 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.

ARTICLE 6
GENERAL REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Buyer and Seller represents and warrants to the other party that, as of the Effective Date:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;

(c) the execution, delivery and performance of this Confirmation are within its powers, have been duly authorized by all necessary action;

(d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending; and
(e) it is acting for its own account, has made its own independent decision to enter into this Confirmation and as to whether this Confirmation is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in doing so, and is capable of assessing the merits of and understanding, and understands and accepts, the terms and conditions and risks of this Confirmation.

ARTICLE 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 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;
Appendix A

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 Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

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;

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, 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 Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10, 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

Notwithstanding Section 30.1 of the Master Agreement, Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings, and/or FCR Showings, as 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.

ARTICLE 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.

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
MASTER AGREEMENT AMENDMENTS

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

(a) The phrase "or arbitration" is hereby deleted from Section 21.2(ii).

(b) Section 22.1 of the Master Agreement is modified by inserting the following new text at the end thereof:

"(f) the failure of the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the quantities of capacity and/or energy due under this Agreement, the exclusive remedy for which is provided in Section 21.3) if such failure is not remedied within ten (10) Business Days after written notice;"

(g) 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 it is unable to generally pay its debts as they become due;

(c) Section 22.1(c) of the Master Agreement is deleted and replaced with the following:

"the institution, application for, consent to, or acquiescence to, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy; reorganization; general assignment for the benefit of creditors; appointment of a receiver, custodian, trustee, liquidator, or similar official for all or substantially all of its assets; moratorium; liquidation; or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights; or"

(d) Section 22.1(e)(iii) of the Master Agreement is deleted and replaced with the following:

"the institution, application for, consent to, or acquiescence to, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy; reorganization; general assignment for the benefit of creditors; appointment of a receiver, custodian, trustee, liquidator, or similar official for all or substantially all of its assets; moratorium; liquidation; or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights; or"

(e) Section 22.2(b) of the Master Agreement is amended by inserting in Section 22.2, "and is continuing" after "Event of Default occurs" in the first line thereof.

(f) Section 22.3 of the Master Agreement is amended by:

1) In Section 22.3(d), adding "and any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party" after "this Agreement and any Confirmation" in the third line thereof;

2) In Section 22.3(e)(i), deleting the last sentence thereof;

3) In Section 22.3(f), replacing "thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute", with "unless the Parties otherwise agree, the non-binding mediation shall be concluded within ten (10) Business Days;"

(g) Section 24 of the Master Agreement is deleted and replaced with the following:
"This Master Agreement and any Confirmation 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.

(h) The netting provisions of Section 28, NETTING, of the Master Agreement shall apply to the transaction covered by this Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the Master Agreement.

(i) Section 30.1 of the Master 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".

(j) Subsections 34.1 and 34.2 of the Master Agreement are hereby deleted and replaced with the following:

"34.1 INFORMAL DISPUTE RESOLUTION AND WAIVER OF JURY TRIAL. Before any form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to nonbinding mediation except for actions taken pursuant to Section 21.2. The Parties shall attempt to agree upon a mediator from a list of ten (10) candidates provided by the Chairman of the WSPP Operating Committee or his or her designee. If the Parties are unable to agree, then the Chairman or the designee shall appoint a mediator for the dispute. Neither the mediator nor the person involved on behalf of the WSPP in developing a list of mediators for the Parties to choose from or in selecting the mediator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the mediation. The WSPP shall establish procedures for the appointment of mediators and the conduct of mediation and those procedures shall apply to the mediation.

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 ARISING OUT OF OR RELATING TO THIS AGREEMENT."

(ii) The phrase "arbitrator or" is hereby deleted from the second sentence of Section 34.3.

(iii) The phrase "arbitration or" is hereby deleted from the first line of Section 34.4.

(iv) 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 IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR BREACH, LIABILITY FOR 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 WARRANTY 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 OR 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."

(v) The rest of Section 34 of the Master Agreement shall be re-numbered accordingly.

(k) The following "Standard of Review" Section substituted in its place as Section 40A.

"The Parties agree as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review
for changes to this Agreement 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" application of the

12. COUNTERPARTS

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

13. ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and
(together with the Master Agreement, as revised by this Confirmation) shall constitute the entire agreement
between the Parties relating to the purchase and sale of the Product. Notwithstanding any other provisions
of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by
both Parties, and this Transaction may only be amended or modified by a Documentary Writing executed
by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE
Sacramento Municipal Utility District

By: __

Name: Heather Wilson
Title: Commodity Settlements

Silicon Valley Clean Energy Authority

By: Girish Balachandran

Name: __________
Title: CEO
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MARIN CLEAN ENERGY

This Confirmation Letter ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and Marin Clean Energy, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of November 14, 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, 06-05-064, 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>Geysers Unit 13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Sonoma County, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>GEYS 13</td>
</tr>
<tr>
<td>Unit NQC</td>
<td>56 MW</td>
</tr>
<tr>
<td>Unit EFC</td>
<td>N/A</td>
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<tr>
<td>Resource Type</td>
<td>Geothermal</td>
</tr>
<tr>
<td>Resource Category (1, 2, 3 or 4)</td>
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</tr>
<tr>
<td>Flexible RAR Category (1, 2 or 3)</td>
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<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>North Coast North Bay / PG&amp;E Other</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>

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess
of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

☐ Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[ ] FCR Attributes with LAR Attributes
[ ] FCR Attributes with RAR Attributes

☑ Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[ ] RAR Attributes
[X ] 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: __________________________, 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 Month</th>
<th>Total LAR Contract Quantity (MWs)</th>
</tr>
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<tbody>
<tr>
<td></td>
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</table>

### Table: Contract Quantity (MWs)

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, 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 there 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 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>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 limiting, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.
7.2 **Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party’s applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit’s Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit’s Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator
is obligated to promptly deliver those revenues to Buyer, along with appropriate
documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may
disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the
CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR
Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this
Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to
timely submit accurate Supply Plans. 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 Buyer’s community choice aggregation program, or any of Buyer’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 counterparty 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.

MARIN CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]

Name: Dawn Weisz

Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]

Name: Girish Balachandran

Title: CEO
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between East Bay Community Energy Authority, a California joint powers authority ("Seller" or "EBCE") and Silicon Valley Clean Energy, a California joint powers authority ("Purchaser" or "SVCE"), and each individually a "Party" and together the "Parties", dated as of November 14, 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. 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 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) 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 to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). 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**

The Parties are each 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. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party’s 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 ATTEND 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 of” 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 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,
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.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY, A CALIFORNIA JOINT POWERS AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

EAST BAY COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

Name: Howard Chang
Title: COO
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.

“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.

“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 EBCE dated concurrently herewith, in which SVCE is the seller of the following: 13MW - March of CAISO System Flex RAR.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

“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.

"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.
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A

Delivery period:

Contract Quantity and Contract Price:

RAR and Local RAR with Flexible Capacity as applicable

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>RAR Contract Quantity (MW)</th>
<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Appendix B - 1
## Unit 1 (2020 System Generic)

### Unit Specific Information

| Resource Name | Metcalf Energy Center
| Physical Location | San Jose, CA
| CAISO Resource ID | METEC_2_PL1X3
| SCID of Resource | Calpine
| Unit NQC by month (e.g., Jan=50, Feb=65): | Varies by month
| Unit EFC by month (e.g., Jan=30, Feb=50) | N/A
| Resource Type (e.g., gas, hydro, solar, etc.) | 1_Phys_Ras
| Minimum Qualified Flexible Capacity | N/A
| Category (Flex 1, 2 or 3) | N/A
| TAC Area (e.g., PG&E, SCE) | N/A
| Prorated Percentage of Unit Factor | N/A
| Prorated Percentage of Unit Flexible Factor | N/A
| Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt) | CAISO System
| Resource Category as defined by the CPUC (DR, 1, 2, 3, 4) | 4

[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>
</tr>
</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>
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between East Bay Community Energy Authority, a California joint powers authority ("Purchaser" or "EBCE") and Silicon Valley Clean Energy, a California joint powers authority ("Seller" or "SVCE"), and each individually a "Party" and together the "Parties", dated as of November 14, 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
Appendix A

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 setoff 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) 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**

The Parties are each 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. The Parties shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party’s 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(c), 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

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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,
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.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY,  
A CALIFORNIA JOINT POWERS AUTHORITY

By: Girish Balachandran  
Name: Girish Balachandran  
Title: CEO

EAST BAY COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

By: [Signature]  
Name: Howard Chang  
Title: COO
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.

“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 EBCE dated concurrently herewith, in which SVCE is the buyer of the following: 10.19 - March of CAISO System Generic RAR.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

“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.

“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.
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: 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 1

Delivery period: [Blank]

Contract Quantity and Contract Price:

RAR and Local RAR with Flexible Capacity as applicable

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<th>FCR Quantity, if any (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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## Unit 1 (2020 System Flex)

### Unit Specific Information

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<tr>
<td></td>
<td>HIDSR12_UNITS</td>
</tr>
<tr>
<td></td>
<td>EDF8</td>
</tr>
<tr>
<td>Physical Location</td>
<td>NAT/4A 630 MW</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>Natural Gas</td>
</tr>
<tr>
<td>SCID of Resource</td>
<td>1</td>
</tr>
</tbody>
</table>

- **Unit NQC by month (e.g., Jan=50, Feb=65):**
- **Unit EFC by month (e.g., Jan=30, Feb=50):**
- **Resource Type (e.g., gas, hydro, solar, etc.):**
- **Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3):**
- **TAC Area (e.g., PG&E, SCE):**
- **Prorated Percentage of Unit Factor:**
- **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):**
- **Resource Category as defined by the CPUC (DR, 1, 2, 3, 4):**

- **[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>
</tr>
</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>

Appendix D - 1
SOUTHERN CALIFORNIA EDISON COMPANY

and

SILICON VALLEY CLEAN ENERGY AUTHORITY

This REC Sales Confirmation ("Confirmation") confirms the transaction ("Transaction") between Southern California Edison Company ("Seller" or "SCE") and Silicon Valley Clean Energy Authority ("Buyer"), each individually a "Party" and together "Parties", effective as of November 5, 2019 (the "Confirmation Effective Date"). This Transaction is governed by the Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement between the Parties, effective as of February 7, 2018, along with the Cover Sheet, any amendments and annexes thereto (the "Master Agreement"), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are both referred to herein as the "Collateral Annex") (the Master Agreement and the Collateral Annex shall be collectively referred to as the "EEI Agreement"). The EEI 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 EEI Agreement or the Tariff. If any defined term in this Confirmation conflicts with the same defined term in the Tariff or EEI Agreement, the definition set forth in this Confirmation shall supersede.

ARTICLE 1

COMMERCIAL TERMS

<table>
<thead>
<tr>
<th>Seller: SOUTHERN CALIFORNIA EDISON COMPANY</th>
<th>Buyer: SILICON VALLEY CLEAN ENERGY AUTHORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trading:</strong></td>
<td></td>
</tr>
<tr>
<td>Seller</td>
<td>Buyer</td>
</tr>
<tr>
<td>Day Ahead: 626-307-4425</td>
<td>Attn; ZGlobal – 916-221-4327</td>
</tr>
<tr>
<td>Real Time: 626-307-4453</td>
<td>Email: <a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
</tr>
<tr>
<td>Contact information is for convenience and is subject to change by notice.</td>
<td></td>
</tr>
</tbody>
</table>

| Seller                                   | Buyer                                     |
| Day Ahead: 626-307-4425                   | Attn; ZGlobal – 916-221-4327               |
| Real Time: 626-307-4453                   | Email: eric@zglobal.biz                    |
| Contact information is for convenience and is subject to change by notice. |                                            |

| Product:                                 |                                            |
| The Product is a Firm Delivery Obligation of California RPS-Eligible Electric Energy and |
Southern California Edison
CONFIDENTIAL INFORMATION

ID #: 11229-8027, Silicon Valley Clean Energy Authority

<table>
<thead>
<tr>
<th>Project:</th>
<th>associated Green Attributes. During the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project:</td>
<td>All Product sold hereunder shall be from one or more of the generating facilities listed in Exhibit A (collectively, the “Project”). The Parties acknowledge and agree that the Project consists of one or more generating facilities and that Seller is permitted to utilize any one or more of these generating facilities in order to satisfy its obligations hereunder. The Parties further acknowledge and agree that, with respect to Section 3.2(a) of this Confirmation, Product shall solely be limited to the actual Product generated and delivered by the generating facility(ies) used to satisfy the Contract Quantity, and that Buyer is not entitled to any additional Product or other attributes related to the Product produced by the generating facility(ies) in the Project above and beyond the Contract Quantity. Subject to Buyer’s consent, not to be unreasonably withheld, Seller may include additional generating facility(ies) in the Project such that Seller is permitted to utilize such additional generating facility(ies) to satisfy its obligations hereunder, provided that Seller notifies Buyer of the additional generating facility(ies) at least two (2) Business Days prior to such addition.</td>
</tr>
<tr>
<td>Contract Capacity:</td>
<td>“Contract Capacity” shall be equal to the Contract Quantity divided by the number of hours between the start of the Delivery Period and the end of the day on December 31, 2021, rounded up to the nearest whole MW.</td>
</tr>
<tr>
<td>Contract Quantity:</td>
<td></td>
</tr>
<tr>
<td>Contract Price:</td>
<td></td>
</tr>
<tr>
<td>Term:</td>
<td>The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Seller to Buyer of the Contract Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Conditions Precedent or as otherwise provided in the Agreement (“Term”).</td>
</tr>
<tr>
<td>Delivery Period:</td>
<td></td>
</tr>
<tr>
<td>Delivery Point:</td>
<td>Seller shall deliver the Product at the Pricing Node applicable to the Project.</td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Firm Delivery Obligation:</td>
<td>“Firm Delivery Obligation” shall have the following meaning: The obligation to provide the Contract Quantity is a firm obligation in that Seller shall deliver the Contract Quantity of the Product from the Project consistent with the terms of this Confirmation without excuse other than Force Majeure, provided that, for purposes of this Confirmation, Force Majeure does not include the lack of wind, sun or other fuel source of an inherently intermittent nature. If a failure by Seller to deliver the Contract Quantity from the Project by the end of the Delivery Period is not excused by Force Majeure, Article 4 of the Master Agreement shall apply. Seller shall convey title to and risk of loss of all CAISO Energy to Buyer at the Delivery Point.</td>
</tr>
<tr>
<td>Scheduling Obligations:</td>
<td>Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator for the Project. Buyer authorizes Seller, or its third party Scheduling Coordinator designee, to deliver the Contract Capacity and any Adjusted Contract Capacity to the CAISO at the Delivery Point as an agent on Buyer’s behalf.</td>
</tr>
<tr>
<td>Scheduling Period:</td>
<td>“Scheduling Period” means each hour of the Delivery Period.</td>
</tr>
<tr>
<td>Seller Regulatory Obligations:</td>
<td>Within ninety (90) days after the Confirmation Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Buyer shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.</td>
</tr>
<tr>
<td>Conditions Precedent:</td>
<td>The commencement of delivery of the Product and the obligation of Buyer to pay for the Product shall be contingent upon CPUC Approval of this Confirmation (the “Conditions Precedent”), Either Party, in its sole discretion, has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which such notice will be effective one (1) Business Day after such notice is given, if: (i) the CPUC issues a final and non-appealable order regarding this Confirmation which contains conditions or modifications unacceptable to either Party, or (ii) CPUC Approval of this Confirmation has not been obtained on or before the date that is sixty (60) days after the date that SCE files the request for CPUC Approval, and a notice of termination in accordance with Section 10.7 of the Master Agreement is given on or before the ninetieth (90th) day after SCE files the request for CPUC Approval. Any termination made by a Party under this “Conditions Precedent” section shall be without liability or obligation to the other Party. Notwithstanding any other provision in this Confirmation, Seller will have no obligation to transfer Product to Buyer and Buyer shall have no obligation to receive or pay for the Product.</td>
</tr>
</tbody>
</table>
unless and until Seller and Buyer have obtained or waived, in their sole discretion, CPUC Approval of this Confirmation.

ARTICLE 2
DEFINITIONS

“Adjusted Contract Capacity” has the meaning set forth in Section 3.3 of this Confirmation.

“Agreement” has the meaning set forth in the preamble of this Confirmation.

“ACH” means the electronic funds transfer system operated by the National Automated Clearing House, or any successor entity.

“Buyer” has the meaning set forth in the preamble of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the preamble of this Confirmation.

“CAISO” means the California Independent System Operator, or its successor.


“Calculation Period” means each calendar month during the Delivery Period.

“California RPS-Eligible 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.

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

“Condition Precedent” has the meaning set forth in Article 1 of this Confirmation.

“Condition Precedent Satisfaction Date” means the date on which CPUC Approval has been obtained.

“Confirmation” has the meaning set forth in the preamble of this Confirmation.

“Contract Capacity” has the meaning set forth in Article 1 of this Confirmation.

“Contract Price” has the meaning set forth in Article 1 of this Confirmation.

“Contract Quantity” has the meaning set forth in Article 1 of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the preamble of this Confirmation.

“CPUC” means the California Public Utilities Commission or its regulatory successor.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; and (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Delivered Energy” means the CAISO Energy from the Project that is delivered and scheduled into either the Real Time-Market and/or Day-Ahead Market by Seller on behalf of Buyer at the Delivery Point.

“Delivery Point” has the meaning set forth in Article 1 of this Confirmation.

“Delivery Period” has the meaning set forth in Article 1 of this Confirmation.

“EEI Agreement” has the meaning set forth in the preamble of this Confirmation.
“ERR” has the meaning set forth in Section 6.1(a) of this Confirmation.

“Firm Delivery Obligation” has the meaning set forth in Article 1 of this Confirmation.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, however entitle, 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 (SO\textsubscript{x}), nitrogen oxides (NO\textsubscript{x}), carbon monoxide (CO) and other pollutants;
2. Any avoided emissions of carbon dioxide (CO\textsubscript{2}), methane (CH\textsubscript{4}), 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 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 (0) net emissions associated with the production of electricity from the Project.

“Index” means, for each Scheduling Period, the applicable CAISO market price for the CAISO Pricing Node for the applicable portion of the Project for each applicable period 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.

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.
“Make-Up Amount” has the meaning set forth in Section 3.3 of this Confirmation.

“Master Agreement” has the meaning set forth in the preamble of this Confirmation.

“Monthly Cash Settlement Amount” has the meaning set forth in Article 4 of this Confirmation.

“Pricing Node” has the meaning set forth in the Tariff.

“Project” has the meaning set forth in Article 1 of this Confirmation.

“Program” has the meaning set forth in Article 1 of this Confirmation.

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

“REC Price” has the meaning set forth in Article 1 of this Confirmation.

“Renewable Energy Credit” or “REC” has the meaning set forth in CPUC Decision 08-08-028, as such definition may be modified by the CPUC or applicable law from time to time.

“RPS” means the California Renewables Portfolio Standard Program as codified at California Public Utilities Code Section 399.11 et seq., and any decisions by the CPUC related thereto.

“Scheduling Period” has the meaning set forth in Article 1 of this Confirmation.

“Seller” has the meaning set forth in the preamble of this Confirmation.

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

“Term” has the meaning set forth in Article 1 of this Confirmation.

“Transaction” has the meaning set forth in the preamble of this Confirmation.

“Under-delivered Product” has the meaning set forth in Section 3.3 of this Confirmation.

“Vintage” means the calendar year the WREGIS Certificate is associated with through the generation of electric energy.

“WREGIS” means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

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

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

**ARTICLE 3**

**CONVEYANCE OF RENEWABLE ENERGY**

3.1 **Seller’s Conveyance of Electric Energy**

Beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the electric energy associated with the Product, subject to the terms and conditions of this Confirmation. Buyer will not be obligated to purchase from Seller any Product that is not or cannot be delivered as a
result of Force Majeure.

3.2 Seller’s Conveyance Of Green Attributes

(a) 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.

The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(b) Green Attributes Initially Credited to Seller’s WREGIS Account

(1) During the Delivery Period, Seller, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

(2) For each applicable month of the Delivery Period, Seller shall deliver and convey the Green Attributes associated with the electric energy delivered pursuant to Section 3.1 above within thirty (30) days after the WREGIS Certificates for the Green Attributes are created. Seller shall deliver and convey such Green Attributes by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes, to Buyer into Buyer’s WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer; provided further, that if Seller fails to properly transfer such WREGIS Certificates to Buyer in accordance with the above due to an error or omission of an administrative or clerical nature and if such failure can be cured with no harm to Buyer, then Seller may cure such failure within thirty (30) days after notice of such failure.

(3) In addition to its other obligations under this Section 3.2, Seller shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the California RPS-Eligible Electric Energy that was provided under Section 3.1 of this Confirmation.

3.3 Delayed Delivery of Product

In the event Seller is unable to deliver any portion of the Contract Quantity, during any particular portion of the Delivery Period for any reason (such amount of Product being referred to herein as “Under-delivered Product”), Seller shall be permitted to increase the amount of Product it provides during any remaining portion of the Delivery Period (the “Make-Up Amount”) by increasing the Contract Capacity scheduled during the remaining portion of the Delivery Period (the “Adjusted Contract Capacity”). The aggregate amount of Product provided during the Delivery Period as part of any Make-Up Amount shall (a) be equivalent to the amount of Under-delivered Product, such that Seller will provide Product to Buyer in an aggregate amount equal to the Contract Quantity over the entire Delivery Period in accordance with this Confirmation, (b) be Product from the
Project, and (c) be provided during the Delivery Period. In the event that there is any Under-delivered Product at any point in time during the Delivery Period, (i) such fact shall not constitute an Event of Default, and (ii) Section 4.1 of the Master Agreement shall not apply with respect to such fact until the Delivery Period has concluded, provided that, if at the end of the Delivery Period, the amount of Product, including any Product in the form of a Make-Up Amount, provided by Seller to Buyer is less than the Contract Quantity, then Section 4.1 of the Master Agreement will apply to the Under-delivered Product associated with such shortfall.

ARTICLE 4
COMPENSATION

4.1 Monthly Cash Settlement Amount
buyer shall pay seller the “Monthly Cash Settlement Amount”, in arrears, for each Calculation Period in the amount equal to the sum, of (A) plus (B) minus (C), where:

\[ A = \text{the sum, over all hours of the Calculation Period, of (i) the applicable Contract Price for each hour of Delivered Energy within the applicable CAISO market (i.e. integrated forward market, fifteen minute, and/or Real-Time Market) multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market; and} \]

\[ B = \text{the REC Price multiplied by the quantity of Green Attributes (in MWhs) that will be conveyed as described in Section 3.2 and that are associated with the Delivered Energy in the Calculation Period; and} \]

\[ C = \text{the sum, over all hours of the Calculation Period, of (i) the applicable Contract Price for each hour of Delivered Energy within the applicable CAISO market (i.e. integrated forward market, fifteen minute, and/or Real-Time Market), multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market.} \]

Such Monthly Cash Settlement Amount constitutes payment for the Product, including the Green Attributes, for such applicable Calculation Period. Buyer shall be obligated to make such payments with respect to each applicable Calculation Period notwithstanding the fact that the Green Attributes associated with a particular Calculation Period may be delivered or credited to Buyer’s WREGIS account subsequent to the conclusion of the applicable Calculation Period in accordance with Section 3.2(b) of this Confirmation, provided that if Seller fails to comply with the provisions of Section 3.2(b), Buyer shall be entitled to exercise all rights and remedies available to Buyer under this Agreement for Seller’s failure to deliver the Product.

4.2 Payment
Notwithstanding any provision to the contrary in Section 6.2 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be due and payable on or before the later of the twentieth (20th) day of the month in which the Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or within ten (10) Business Days, or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller for the applicable
Calculation Period.

Payment to Seller shall be made by ACH, or in another form reasonably requested, pursuant to the following:

JP Morgan Chase Bank
New York, NY
ACCT: [redacted]

4.3 Invoicing

Invoices to Buyer will be sent by hard copy and PDF format to:

Attn: Power Supply Group
Phone: 408-721-5301
Email: SVCEPowerSettlements@svcleanenergy.org

For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of either the hard copy or PDF format of the invoice, whichever comes first.

ARTICLE 5
REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Seller’s Representation, Warranties, and Covenants Related to Green Attributes

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement that:

(i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and

(ii) The Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

To the extent a change in law occurs after execution of this Confirmation 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.

“Commercially reasonable efforts” shall not require Seller to incur out-of-pocket expenses in excess of $25,000 in the aggregate in any one calendar year.

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

(c) In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Term, that:

(i) Seller has the right to sell all right, title, and interest in the Product agreed to be delivered hereunder;
Appendix A

Southern California Edison

ID# 11229-8027, Silicon Valley Clean Energy Authority

(ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity;

(iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;

(iv) the electric energy generated with the Green Attributes delivered under this Confirmation was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner;

(v) the Project and all electrical output from the Project is registered with WREGIS as California RPS-Eligible Electric Energy; and

(vi) the Project meets the criteria in either (A) or (B):

(A) The Project either has a first point of interconnection with a California balancing authority, or a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area; or

(B) The Project has an agreement to dynamically transfer electricity to a California balancing authority.

(d) 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.

(e) Seller makes no representation, warranty or covenant with respect to any portfolio content category designation pursuant to California Public Utilities Code Section 399.16 or any eligibility of the Product to qualify as excess procurement pursuant to California Public Utilities Code Section 399.13(a)(4)(B).

(f) If and to the extent that the Product sold by Seller is a resale of part or all of a contract between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below as of the Confirmation Effective Date and throughout the Delivery Period:

(i) The original upstream third party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);

(ii) This Agreement transfers only Electric Energy and Green Attributes that have not yet been generated prior to the commencement of the Delivery Period;

(iii) The Delivered Energy transferred hereunder is transferred to Buyer in real time; and

(iv) If the Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not
contrary to any condition imposed by a balancing authority participating in the
dynamic transfer arrangement.

6.1 **Applicability to Transactions under this Confirmation**

Notwithstanding Section 10.6 of the Master Agreement, for the purposes of the Transaction memorialized in this Confirmation, the provision set forth below will apply. This provision does not change the Governing Law applicable to any other Transaction entered into between the Parties under the Master Agreement.

6.2 **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.*

**ARTICLE 7**

**CREDIT AND COLLATERAL**

7.1 **General Provisions**

To the extent that there are conflicting credit terms between the Master Agreement and this Confirmation, the credit and collateral terms set forth in this Confirmation shall prevail. All implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

7.2 **Collateral Requirements**

Buyer shall provide its Fixed Independent Amount requirement of $0.00 within five (5) Business Days following the Condition Precedent Satisfaction Date. Such requirement can be satisfied with Buyer’s Collateral Threshold or by posting Cash or a Letter of Credit. This Fixed Independent Amount constitutes the sole Collateral Requirement for Buyer under this Confirmation and shall be maintained throughout the Delivery Period until all Buyer’s obligations have been satisfied under this Confirmation.

For avoidance of doubt, Collateral Requirement for Seller is zero under this Confirmation.
ARTICLE 8
CONFIDENTIALITY

Notwithstanding Section 10.11 (Confidentiality) of the Master Agreement and Cover Sheet, the Parties agree that a Party may also disclose the terms of this Transaction to WREGIS.

ARTICLE 9
TERMINATION

9.1 Termination Payment

If this Confirmation is terminated for any Event of Default, such termination shall be treated in accordance with Sections 5.2 and 5.3 of the Master Agreement and the corresponding Termination Payment may be netted against other Transactions between the Parties under the Master Agreement.

[Signatures are on the following page]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY

a California joint powers authority

By: Girish Balachandran
Chief Executive Officer
Date: 10/23/2019

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation.

By: Colin E. Cushnie
Vice President, Energy Procurement & Management
Date: 11/4/2019
### EXHIBIT A

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<thead>
<tr>
<th>Name of Facility: RE Garland A, LLC</th>
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<tr>
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Name of Facility: Solar Partners I, LLC (Ivanpah Solar - Unit 2)
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### Name of Facility: Desert Stateline LLC

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**Name of Facility: Alta Wind V, LLC**

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| EIA-860 Number: | 57294 |
| CEC ID: | 61094A |
| WREGIS ID: | W2068 |
| CEC RPS Eligibility Date: | 6/8/2010 |
| On-line Date: | 3/11/2011 |

**Name of Facility: Alta Wind I, LLC**

| Resource: | Wind |
| Location: | Mojave, CA |
| EIA-860 Number: | 57282 |
| CEC ID: | 60794A |
| WREGIS ID: | W1727 |
| CEC RPS Eligibility Date: | 5/15/2009 |
| On-line Date: | 11/1/2010 |

**Name of Facility: Alta Wind II, LLC**

| Resource: | Wind |
| Location: | Mojave, CA |
| EIA-860 Number: | 57291 |
| CEC ID: | 60795A |
| WREGIS ID: | W1841 |
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| On-line Date: | 11/1/2010 |

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**Name of Facility: Pinyon Pines Wind I, LLC**

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**Name of Facility: Solar Star California XX, LLC**

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**Name of Facility: Solar Star California XIII, LLC**

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**Name of Facility: Silver State Solar Power South, LLC**

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Name of Facility: Alta Wind X, LLC

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| WREGIS ID: | W3537 |
| CEC RPS Eligibility Date: | 11/21/2012 |
| On-line Date: | 3/13/2014 |

Name of Facility: Alta Wind XI, LLC

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| WREGIS ID: | W3538 |
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| On-line Date: | 3/13/2014 |

Name of Facility: McCoy Solar, LLC

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### Name of Facility: RE Garland, LLC

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AGREEMENT BETWEEN
Powerex Corp. * and Silicon Valley Clean Energy Authority
Powerex Deal No. GSA511

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

Seller: Powerex

Buyer: SVCEA

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

Product: [Redacted] being energy delivered from an ACS System or Carbon Free Source listed in Schedule A and scheduled to the CAISO Balancing Authority, in quantities as provided for under the "Delivery Term and Contract Quantity" Section of this Confirmation.

The Parties recognize that a schedule of energy to the CAISO Balancing Authority is a delivery to the California Independent System Operator ("CAISO") and not directly to the Buyer. Scheduling energy to the CAISO Balancing Authority shall constitute delivery of Low Carbon Energy provided such energy was delivered from an ACS System or Carbon Free Source listed in Schedule A.

Contract Price: In this Confirmation,

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

"Energy Price" means, for each MWh of Low Carbon Energy delivered, the applicable Locational Marginal Price, as defined in the CAISO Tariff and published by CAISO, at the CAISO Point where CAISO models the physical injection of such energy.

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

Payment: Invoicing and payment for the Low Carbon Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. Seller's
invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer.

**Change in Law:**

If due to (i) any action by a Governmental Authority, or (ii) any change in Applicable Law ((i) and (ii), collectively, a "Change in Law"), occurring after the Reference Date that results in material change(s) to Buyer's or Seller's obligations with regard to the Product(s) sold under this Confirmation or that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product(s) sold hereunder in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder with regard to any Product hereunder in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, neither Party shall be obligated to perform any obligation hereunder (other than payment obligations) to the extent that doing so would cause such Party to be materially adversely affected.

**Delivery Term and Contract Quantity:**

<table>
<thead>
<tr>
<th>Product</th>
<th>Delivery Term</th>
<th>Minimum Contract Quantity (MWh)</th>
<th>Maximum Contract Quantity (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

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

Low Carbon Energy shall be scheduled in accordance with "Scheduling" below.

**Delivery Point:**

Seller may deliver Low Carbon Energy to any CAISO Point. For greater certainty, in the event an e-Tag includes more than one CAISO Point, the Delivery Point shall be the last point of delivery (POD) or "sink" CAISO Point on such e-Tag.

**Title:**

Title to the Low Carbon Energy shall be deemed to pass from Seller to Buyer at the Delivery Point.
Scheduling: Seller will perform or cause to be performed all scheduling and tagging requirements for Low Carbon Energy. Energy deliveries shall be scheduled pursuant to WECC and CAISO requirements to the Delivery Point.

Scheduling: Seller shall schedule or cause to be scheduled, at its sole discretion, Low Carbon Energy from an ACS System or Carbon Free Source listed in Schedule A to the CAISO Balancing Authority on a day-ahead, hour-ahead, sub-hourly and/or real-time basis.

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

Tagging: Each e-tag for Low Carbon Energy will include the following, depending on the ACS System or Carbon Free Source from which Low Carbon Energy is delivered:

For greater certainty, no e-Tags will be generated for deliveries from a Carbon Free Source within the CAISO Balancing Authority.

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

Seller scheduling contacts:

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

Buyer scheduling contacts

<table>
<thead>
<tr>
<th>Prescheduler:</th>
<th>(916) 221-4327</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real-Time</td>
<td>(916) 221-4327</td>
<td>N/A</td>
</tr>
<tr>
<td>Mid-office Agreement</td>
<td>(916) 221-4327</td>
<td>N/A</td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
<td></td>
</tr>
</tbody>
</table>
Definitions Applicable to this Transaction

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

(a) "ACS System" means an ACS system set forth in Schedule "A" hereto. Seller may add additional ACS systems by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A provided that at the time such ACS system is added the current CARB-assigned emission factor must be equal to or lower than the current CARB-assigned emission factor for the Powerex ACS System.

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

(c) "Asset Controlling Supplier" or "ACS" means "asset-controlling supplier" or "Asset Controlling Supplier", as such terms are defined in the Mandatory Reporting Rule and Cap and Trade Regulation.

(d) "CAISO Balancing Authority" means, as the context requires, CAISO as "Balancing Authority" or "CAISO Balancing Authority Area", as such terms are used in the CAISO Tariff.

(e) "CAISO Point" means any Location in the CAISO Balancing Authority or CAISO Controlled Grid, including any Scheduling Point (as such terms are defined in the CAISO Tariff).

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

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

(h) "CARB" means the California Air Resources Board of the California Environmental Protection Agency.

(i) "Carbon Free Source" means any energy source that is located within the WECC area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Reporting Rule and the Cap and Trade Regulation. Carbon Free Source does not include any Category 3 Renewables or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility. Seller may add additional Carbon Free Sources by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A.
Appendix A

Events of Default, Remedies

1. Events of Default

(a) For the purpose of determining payments under Section 5.2 of the Master Agreement, the Party delivering or receiving a Product for any failure to schedule, deliver, or receive will be based on energy delivered from a low or zero-carbon source, including an alternate source that was not delivered or received, as the case may be.

(b) For the purpose of determining payments under Section 4.1 or 4.2 of the Master Agreement, the Party delivering or receiving a Product will be based on energy delivered from a low or zero-carbon source, including an alternate source that was not delivered or received, as the case may be.

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

Power Source Disclosure Program

The Power Source Disclosure Program has initiated a pre-existing process in California, Assembly Bill (AB) No. 110, "Updated Program," in connection with the power source and the Commission's input into the updated program. In connection with the Power Source Disclosure Program, the Commission has issued guidelines that set forth the requirements for energy delivered from an ASR system that have not been established with reasonable certainty. Buyer acknowledges that Seller makes no representations or warranties as to the accuracy or completeness of the information provided.

Section 4.2 - Non-Compliance

In the event of non-compliance with the requirements of Section 399.16 of the California Public Utilities Code, "Non-Compliance" means the inability of the Seller to deliver the Product to the Buyer in the form and quantity specified in the Master Agreement, as amended by this Confirmation, due to any failure to schedule, deliver, or receive.

Mandatory Reporting Rule

The regulations entitled "Mandatory Reporting Rule" means the regulations established by the California Greenhouse Gas Emissions Reporting Program, as set forth in Section 17 of the California Code of Regulations, Title 17.
representations or warranties regarding reporting of energy from an ACS System by Buyer or any other LSE or the component generation technology of any ACS System for the purposes of the Power Source Disclosure Program or the Updated Program. If requested by Buyer following completion of CEC rulemaking for the Updated Program, Seller will use commercially reasonable efforts to work with the CEC or other applicable Governmental Authority as necessary such that energy delivered from an ACS System pursuant to this Confirmation may be claimed by Buyer in its Power Content Label under the Updated Program by the component generation technologies. Notwithstanding the foregoing, Seller shall not be required to use such commercially reasonable efforts if, in Sellers sole and absolute determination, (a) the final CEC rulemaking for the Updated Program conflicts with any legal or regulatory requirements or third party claims with respect to the Powerex ACS system (or its component generation technologies) or (b) Seller is (or would be) required to (i) provide or otherwise disclose documents, data or other information or (ii) take any other action that, in either case, may result in an adverse impact on Seller or its Affiliates, including (without limitation) requiring disclosure of information that Seller does not have under its control, is considered confidential by Seller or is otherwise subject to assurances of confidentiality, provided that if Seller decides not to work with or provide information to the CEC or other applicable Governmental Authority in such circumstances, Buyer’s sole and exclusive remedy as a result thereof shall be as follows (and all other remedies are waived):

(a) A refund of $_____ for each MWh of energy delivered from an ACS System pursuant to this Confirmation for which Buyer is unable to claim the associated emissions factor in its Power Content Label under the Updated Program; and

(b) A refund of $_____ for each MWh of energy delivered from an ACS System pursuant to this Confirmation for which Buyer is unable to claim the component generation technology in its Power Content Label under the Updated Program.

Buyer’s exclusive remedy set forth above shall expire on August 31, 2020, and Seller shall have no further liability to Buyer with respect to the foregoing after such date. In the event of a conflict between this Section 4 and the “Change in Law” Section of this Confirmation, this Section 4 shall prevail.

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

6. Condition Precedent. This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Seller and Buyer have executed and delivered this Confirmation to the other Party before 5 p.m. Pacific Prevailing Time on November 21, 2019. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

This Confirmation is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.
The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

**Powerex Corp.**

By:  
Name:  
Title:  
Date:  

**Silicon Valley Clean Energy Authority, a California state power authority**

By:  
Name: Girish Balachandran  
Title: CEO  
Date: 11/20/2019  

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

Contacts:  

**Powerex:**

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

**SVCEA:**

Monica Padilla  
Tel: (408) 721-5301
WSPP CONFIRMATION
Carbon Free

This confirmation ("Confirmation"), dated as of November 14, 2019 (the "Effective Date") is entered into between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and City of Lancaster, a California municipal corporation and charter city, d/b/a Lancaster Choice Energy ("Lancaster" or "Seller") and, together with Seller, the "Parties" and each individually, a "Party". This Confirmation constitutes a "Transaction" under, and supplements, forms a part of, and will be subject to, the terms of the WSPP Master Agreement dated as of June 21, 2018, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the "Master Agreement") and as amended and supplemented by this Confirmation; provided that, in the case of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement" and will constitute a single agreement between the Parties.

Product
Carbon Free Energy, being energy produced by a Carbon Free Source and scheduled by Seller at Seller's discretion for delivery to or within the California Independent System Operator ("CAISO") Control Area ("CAISO Balancing Authority") as determined by Seller, in quantities as provided for under the "Contract Quantity" section of this Confirmation, and at such times as chosen by Seller.

"Carbon Free Source" means a Project (as defined below) and does not include Renewable Energy Credits or any other generating facility not otherwise approved by Buyer.

The Parties recognize that a schedule of energy from a Carbon Free Source, that is considered by the State of California to have zero Green House Gas emissions in accordance with the Cap and Trade Regulations, by Seller for delivery to or within the CAISO Balancing Authority is a delivery to the CAISO and not directly to the Buyer and is the delivery required by this Confirmation and shall constitute delivery of Carbon Free Energy provided such energy was produced by a Carbon Free Source. Seller has no obligation to submit Inter-Scheduling Coordinator trades or to otherwise IST-enable the Product.

Contract Quantity
Seller will deliver the following Product quantities:

1. 
2. 
Period

The Product quantities designated as Unit Contingent above are in addition to the quantities designated as Firm. To the extent not inconsistent with the terms herein, and subject to Seller's obligations to deliver the entire Contract Quantity of Firm and Unit Contingent Product
to Buyer, Seller may sell energy or other products from the resources listed in Schedule A to third parties.

"Firm" has the meaning of “WSPP C” under the Master Agreement.

"Unit Contingent" means that Seller is excused from the failure to deliver the Contract Quantity to the extent that (i) the Specified Source(s) failed to generate a sufficient quantity of Product during the Delivery Period to provide the full Contract Quantity to Buyer and (ii) Seller has delivered all Product generated by the Specified Source(s) during the applicable year of Delivery Period to Buyer.

Seller is obligated to provide to Buyer, and Buyer is obligated to purchase, the Contract Quantity.

<table>
<thead>
<tr>
<th>Project</th>
<th>“Project” means, collectively, one or more of the Designated Facilities in Schedule A attached.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery Period</td>
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</tr>
<tr>
<td>Payment</td>
<td>Buyer will pay Seller an amount equal to the Contract Quantity delivered in such month multiplied by the Carbon Free Premium and (b) Seller shall deliver the Energy associated with the Product to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such Energy in full satisfaction of Buyer’s payment obligation for the Energy component of the Product.</td>
</tr>
<tr>
<td></td>
<td>Where:</td>
</tr>
<tr>
<td></td>
<td>“Energy” means electrical energy, measured in MWh.</td>
</tr>
<tr>
<td>Cap and Trade Regulations</td>
<td>Means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.</td>
</tr>
<tr>
<td>Delivery Point</td>
<td>The node on the CAISO system where the Seller schedules delivery of the Energy.</td>
</tr>
<tr>
<td>Scheduling, Tagging and Transaction Documentation</td>
<td>Seller shall provide to Buyer an annual attestation confirming that the Seller delivered the necessary volume of Product after Seller’s annual verification is conducted, but no later than March 31st of each year following the calendar year in which Product was delivered during the Delivery Period. Seller shall forward to Buyer electronic documentation</td>
</tr>
</tbody>
</table>
in summary spreadsheet format, with more information available upon request for use by Buyer for purposes of substantiating delivery of Product in the Contract Quantities and the allocated generation data from the applicable Carbon Free Sources as specified in Schedule “A”, Designated Facilities. In addition, Seller will work with Buyer to provide any additional information otherwise required by applicable law with respect to the Product and reasonably available to Seller. At Buyer’s discretion, such documentation may be used in communicating with the public and/or jurisdictional regulatory authorities, if necessary, to provide evidence of Product delivery during each Delivery Period.

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<tr>
<th>Buyer’s Resale of Product</th>
<th>Seller acknowledges that Buyer may re-sell all or a portion of the quantity of the Product.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governing Law</td>
<td>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.</td>
</tr>
<tr>
<td>Confidentiality</td>
<td>Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).</td>
</tr>
<tr>
<td>Credit Requirements</td>
<td>Notwithstanding any other provision of the Master Agreement, Section 27 of the Master Agreement is not applicable to, and credit support is not required for either Party under this Confirmation.</td>
</tr>
<tr>
<td>Counterparts</td>
<td>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.</td>
</tr>
<tr>
<td>Entire Agreement; No Oral Agreements or Modifications</td>
<td>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 only be entered into by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

Silicon Valley Clean Energy Authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

City of Lancaster, a California municipal corporation and charter city, d/b/a Lancaster Choice Energy

By: [Signature]
Name: Jason Lashlie
Title: [Title]
<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Province</th>
<th>Technology</th>
<th>Nameplate</th>
</tr>
</thead>
</table>

1 New Exchequer is RPS Certified by the CEC, with a CEC-RPS-ID 62802A. New Exchequer is only able to produce 26,778 MWh of Carbon Free Energy in a Month. Above this monthly production level, New Exchequer begins generating Renewable Energy Credits (RECs). This product is not covered under this agreement.