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 December 11, 2019, Board of Directors Meeting

1b) Appoint SVCE Treasurer/Auditor and Board Secretary for 2020

1c) Approve Benefits Package Enhancements for Implementation Beginning February 1, 2020

1d) Approve and Authorize the Chief Executive Officer to Execute an Agreement with Center for Sustainable Energy for Program Administration Services for the California Electric Vehicle Infrastructure Project Not-to-Exceed $420,000 through December 31, 2023

1e) Approve and Authorize the Chief Executive Officer to Execute an Amended and Restated Engagement Letter with Hall Energy Law PC for Legal Services Related to SVCE’s Energy and Capacity Transaction Needs and Long-term Power Purchase Agreements Not-to-Exceed $300,000 for a Three-Year Term

1f) Receive Q4 2019 Decarbonization Programs Update

1g) Adopt Resolution to Approve Allocation of Additional $500,000 for FY2020 and Approve Associated Program Brief to Extend the FutureFit Heat Pump Water Heater Program with Modifications

1h) Executive Committee Report
1i) Legislative Ad Hoc Committee Report
1j) Finance and Administration Committee Report
1k) Audit Committee Report

Regular Calendar

2) Receive Lobbyist Update (Discussion)
3) Climate Youth Ambassador Program Recap (Discussion)
4) CEO Report (Discussion)
5) Elect a Chair and Vice Chair of the SVCE Board of Directors for 2020 (Action)
6) Appoint Directors to the SVCE Executive Committee for 2020 (Action)
7) Approve Formation of Ad Hoc Committee of the Board for 2020 to Address Legislative and Regulatory Responses to Industry Transition (Action)
8) Adopt Resolution Authorizing the Chief Executive Officer to Execute Renewable Power Supply Power Purchase Agreements with ORNI 50 LLC, and Any Necessary Ancillary Agreements and Documents (Action)

Board Member Announcements and Direction on Future Agenda Items

Adjourn
Call to Order

Chair Abe-Koga called the meeting to order at 7:04 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 (arrived at 7:07 p.m.)
Director Javed Ellahie, City of Monte Sereno
Director Marico Sayoc, Town of Los Gatos
Director Nancy Smith, City of Sunnyvale
Director Rod Sinks, City of Cupertino
Director Courtenay Corrigan, Town of Los Altos Hills
Director Liz Gibbons, City of Campbell (participating by teleconference from Capital Hilton, 1001 16th Street NW, Washington, District of Columbia, 20036)
Alternate Director Neysa Fligor, City of Los Altos
Director Susan Ellenberg, County of Santa Clara
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 8:45 p.m.)

Absent:
Director Fred Tovar, City of Gilroy

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

Consent Calendar

MOTION: Director Ellenberg moved and Director Smith seconded the motion to approve the Consent Calendar.

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

The motion carried unanimously by roll call vote with Directors Martinez Beltran, Montano, and Tovar absent.

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

Chair Abe-Koga noted Item 9) Authorize the Chief Executive Officer to Negotiate and Execute an Office Lease Agreement, would be addressed following Closed Session.

2) CEO Report (Discussion)

CEO Girish Balachandran provided a CEO report which included introduction of two new employees, Energy Consultant Zoe Elizabeth and Administrative Services Manager Kevin Armstrong, who would be present at a future meeting. CEO Balachandran addressed an update in the CEO report on the restructuring of PG&E.

Manager of Regulatory and Legislative Affairs Hilary Staver provided an update which included information on the proceeding for creating the regulations for implementing AB1110, an update on the Integrated Resource Plan (IRP) development, and thanked Legislative Ad Hoc Committee members for meeting with legislators before recess ends.

Director of Finance and Administration Don Eckert presented a PowerPoint on a 2020 power charge indifference adjustment (PCIA) update; CEO Balachandran responded to Board member questions and provided additional information on forecasted SVCE rates.

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

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)

Director of Power Resources Monica Padilla and Power Resources Manager Ian Williams presented a PowerPoint presentation and responded to board member questions; CEO Balachandran provided additional information.

Director of Power Resources Padilla noted a revised staff recommendation from the previously distributed staff report:

1. Accept PG&E’s Full Allocation for 2020 including Short-term Nuclear; and
   a. If Board selects 50% RPS & 50% CF mix, then sell Large Hydroelectricity, and include Nuclear on PCL for estimated savings of $11.4 million; or
   b. If Board selects 35% RPS and 65% CF mix, then sell RPS PCC1 and no Nuclear on PCL for an estimated savings of $17.3 million.

The Board discussed including short-term nuclear from PG&E’s allocation, SVCE’s current and future power portfolio mix, SVCE’s renewable portfolio standard percentage, the importance of remaining carbon-free, distinguishing factors of SVCE from other utilities, and SVCE’s objective and mission.
Chair Abe-Koga opened public comment.

Bruce Karney, resident of Mountain View, commented on Carbon Free Mountain View's involvement in creating SVCE and its influence on SVCE's carbon free portfolio mix, his opinion of how customers would react if there is nuclear in SVCE’s portfolio or if there is 35% California renewables instead of 50%, commented on his hopes for the future of SVCE, and noted the question that should be at the uppermost in Director’s minds is which decision does the most to ensure SVCE will be around in 10 years and that it can fund its decarbonization programs.

Bryan Mekechuk, resident of Monte Sereno, voiced his opposition of having nuclear on SVCE’s power content label.

Chair Abe-Koga closed public comment.

Chair Abe-Koga led a straw poll regarding the first part of staff’s recommendation Accept PG&E’s Full Allocation for 2020 including Short-term Nuclear by show of hands, and verbally with Director Gibbons by phone; the group was in consensus to support the first of staff’s recommendation.

Following discussion, CEO Balachandran summarized Board comments:
Accept the full PG&E allocation;
Try to stay at 50% RPS and 50% Carbon-free mix;
Wait to see how the PCIA risks unfold; and,
Request staff to come back to the Board with a recommendation on the mix.

The Board discussed accepting nuclear in SVCE’s portfolio and the possibility SVCE may not be able to sell the nuclear, which would then be shown on SVCE’s power content label.

CEO Balachandran noted the discussion would be brought back to the Board with additional analysis including:
Not including nuclear in SVCE’s mix,
Showing the value of 50% RPS and 50% Carbon-free mix if SVCE takes only large hydro; and,
If the PCIA is high risk, show additional alternatives between 50-35% RPS.

MOTION: Director Ellahie moved and Director Corrigan seconded the motion to direct Staff to take the PG&E allocation in-full, and come back to the Board at the next convenient time as to what the options are as far as what should and should not be sold.

Director Corrigan clarified the motion was to accept the allocation, but to come back to the Board with all options when they become clear and present.

ALTERNATIVE MOTION: Vice Chair Miller moved and Chair Abe-Koga seconded the motion to direct Staff to only accept the allocation if there is a plan to offload the nuclear component to another party.

The alternative motion was adopted by roll call vote 7-5 with Director Tovar absent.

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

Director of Account Services and Community Relations Don Bray 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 Ellenberg moved and Director Sinks seconded the motion to 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.

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

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

CEO Balachandran 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 Sinks moved and Vice Chair Miller seconded the motion to select the first of the two options provided by staff to have the Board set priorities on a periodic basis and nominally, unless decided otherwise, to have the committee run from commencement in January until the end of the legislative session.

CEO Balachandran clarified the priorities of the committee would be decided in January and Legislative Ad Hoc Committee members would be selected at the February meeting.

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

6) SVCE Board Succession Planning (Discussion)

CEO Balachandran introduced the item and responded to board member questions.

The Board provided succession planning ideas and suggestions including:

- Changing the bylaws that if an elected official is no longer a councilmember, they are able to continue as a Director;
- Requesting two-year appointments from member agencies, but keep Directors as current councilmembers;
- Changing the bylaws to require two-year terms;
- Changing the bylaws to reflect new Directors be set at two-year terms after conferring with member agency councils,
- A request to look at long-term models which incorporate staff, for example: a technical committee, or allowing a member agency staff member to serve as a Director;
- Foster training and development by inviting and encouraging participation of SVCE Alternate Directors;
- Consider looking at a directly elected board (what would it take, would it be classified as a special district, etc.);
- Consider long-term appointments; and,
- Consider a Technical Advisory Board and what could be delegated (what would be the charter, what would be the limits, performance measures, etc.).

CEO Balachandran noted the ideas would be brought back to the Executive Committee in the coming months.

Director Gibbons left the meeting at 9:30 p.m.
Director Ellenberg left the meeting at 9:43 p.m.
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
7) Executive Committee Report (Discussion)
Vice Chair Miller reported the Executive Committee met November 22, 2019 and received updates on Reach Code Adoption, Power Prepay, and projected PCIA and PG&E Generation rate changes that will impact SVCE’s financial position. Vice Chair Miller reported staff went through employee health and welfare benefits changes for the upcoming plan year.
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

8) Audit Committee Report (Discussion)
Director Corrigan reported the Audit Committee met December 4, 2019 to kick off the financial audit with an independent auditor from Pisenti & Brinker, LLP, and received an update from staff on cybersecurity risk assessment and mitigation strategies.
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
Following Item 8, the Board addressed Board Member Announcements and Direction on Future Agenda Items.

9) Authorize the Chief Executive Officer to Negotiate and Execute an Office Lease Agreement
Item 9 was heard following Closed Session.
MOTION: Vice Chair Miller moved and Director Corrigan seconded the motion to authorize the CEO to negotiate and execute a lease agreement for office space consistent with parameters provided by the Board in closed session.
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
The motion carried unanimously with Directors Ellenberg, Gibbons, and Tovar absent.

Board Member Announcements and Direction on Future Agenda Items
Director Sinks announced meetings with legislators and encouraged Directors to attend.
Director Corrigan announced the Town of Los Altos Hills passed reach codes requiring all new construction have an option for gas or full electrification in kitchens and in laundry rooms, and the use of fireplaces would still be permitted. Director Corrigan thanked Alternate Director Tyson on his support of getting the reach codes passed.
Director Sayoc announced the first reading to ban natural gas in all residential homes in Los Gatos passed; Director Sayoc noted the second reading would occur Tuesday evening and there may be a change in workload which may result in Alternate Director Rob Rennie becoming the Director and Director Sayoc becoming the Alternate Director for 2020.
Director Smith announced the League of California Cities League Leaders met in Napa and added climate change as a priority; Director Smith read the priority. Director Smith noted the Peninsula division of the League of California Cities is planning a third quarter meeting to focus on CCAs and sustainability.
Director Ellahie announced the City of Monte Sereno passed the second reading of reach codes which require pre-wiring for all appliances and require two EVs; Director Ellahie indicated he would continue to serve as Director of Monte Sereno and Alternate Director Liz Lawler would continue as alternate for 2020.

Chair Abe-Koga thanked the Board for their leadership in their respective communities on reach codes and staff for their support; Chair Abe-Koga reminded Directors who are interested in the Chair/Vice Chair and/or Executive Committee membership letters of interest are due December 19, 2019 and reviewed the timeline for other appointments.

Chair Abe-Koga thanked the Board for a great year and expressed appreciation for their commitment and participation, and commented she was proud of the organization, Board, and staff.

Vice Chair Miller noted the Board was equally proud of Chair Abe-Koga for serving as Chair.

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

The Board convened to closed session in the Community Hall Kitchen at 9:56 p.m.

**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

The Board returned from Closed Session at 10:22 p.m. with Directors Ellenberg, Gibbons, and Tovar absent.

**Report from Closed Session**

There was no report.

Following the return from Closed Session, the Board considered Item 9.

**Adjourn**

Chair Abe-Koga adjourned the meeting at 10:22 p.m.
Staff Report – Item 1b

Item 1b: Appoint SVCE Treasurer/Auditor and Board Secretary for 2020

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 1/8/2020

RECOMMENDATION
Appoint Don Eckert, SVCE Director of Finance and Administration, as the Board Treasurer/Auditor and Andrea Pizano, SVCE Board Clerk/Executive Assistant, as the Board Secretary for 2020.

BACKGROUND
Pursuant to Section 4.11.3 of the Joint Powers Agreement, the Board shall appoint a qualified person to act as Treasurer and a qualified person to serve as Auditor. The Board may appoint a qualified person to serve as both Treasurer/Auditor. The Treasurer/Auditor acts as the depository of the Authority’s funds and has custody of all of the money of the Authority. The Treasurer/Auditor reports directly to the Board in the performance of his or her duties as Treasurer/Auditor and must comply with the requirements for treasurers of general law cities. Government Code Section 6505.5 and Section 6 of the Joint Powers Agreement further specify the duties and obligations of the Treasurer/Auditor.

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

ANALYSIS & DISCUSSION
SVCE’s Director of Finance and Administration Don Eckert and SVCE Board Clerk/Executive Assistant Andrea Pizano have served as the Board Treasurer/Auditor and Board Secretary, respectively, since 2017. Given their knowledge and experience gained in these roles, staff would recommend that they continue serving in this capacity for 2020.

STRATEGIC PLAN
N/A

ALTERNATIVE
The Board can elect to appoint other individuals for Board Treasurer/Auditor and/or Board Secretary.

FISCAL IMPACT
No fiscal impact as a result of the appointments.
Staff Report – Item 1c

Item 1c: Approve Benefits Package Enhancements for Implementation Beginning February 1, 2020

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration
Kevin Armstrong, Administrative Services Manager

Date: 1/8/2020

RECOMMENDATION
Staff recommends that the Board approve amendments to the employee handbook and other benefits policies to include:

a) Tuition Assistance Policy;
b) Cash In-Lieu-Of Policy;
c) Fitness Reimbursement Policy;
d) Establish an Employee Assistance Program (EAP); and,
e) Amendment to Employee Handbook to remove “Pilot” language for the payroll classification of holiday regarding workdays between Christmas Day and New Year’s Day.

EXECUTIVE COMMITTEE RECOMMENDATION
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 for amendments to the benefits package within the parameters the benefits changes are competitive compared to other Community Choice Aggregators (CCAs) and are fiscally responsible. The recommendation in this report supports the Committee’s direction.

BACKGROUND
SVCE’s employee health and welfare 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 in the 2019 plan year.

In Fall 2019, staff conducted an employee survey in support of an annual review of the health and welfare benefits package. The responses to the survey provided the guidance for the health and welfare benefits enhancements report received by the Board of Directors at the December 11, 2019 meeting.

ANALYSIS & DISCUSSION
As mentioned earlier, the feedback from the employee survey provided the guidance for amendments to SVCE’s benefits package. The recommendation was created with the following guiding principles:

1. Support of SVCE’s competitive position in attracting and retaining employees;
2. Fiscally responsible;
3. Responsive to the needs of the employees;
4. Can be implemented for the new plan year.
Amendments to the Benefits Package

a) Tuition Assistance Policy – The purpose of the policy is to support the professional development, educational advancement, and career growth of our employees. SVCE will benefit from a higher level of workforce engagement and increased numbers of qualified internal candidates for promotional opportunities. The proposed policy is capped at $5,000 per fiscal year per employee with a repayment obligation if the employee should voluntarily leave the agency within twelve months after receiving the benefit. The fiscal impact assuming 100% employee participation would be $135,000 per fiscal year.

b) Cash In-Lieu-Of Policy – The purpose of the policy is to offer the opportunity to decline health insurance through the agency and receive a monthly cash payment in-lieu-of health insurance. The proposed policy recommends $250 per month per employee or $3,000 per fiscal year. Employees receiving the cash in-lieu-of payment would remain eligible for the Flexible Spending Account (FSA) and Health Reimbursement Account (HRA) programs. The fiscal impact to SVCE of the $250/month payment is offset by avoidance of budgeting $1,000 per month for providing health insurance.

c) Fitness Reimbursement Policy – The purpose of this policy is to offer employees the opportunity to participate in a fitness reimbursement program to promote employee health and morale. The proposed policy includes financial support for gym, classes, or another qualified program. The cap would be $600 per fiscal year per employee. The fiscal impact assuming 100% employee participation would be $16,200.

d) Establish an EAP Program – This is a work-related program that offers free and confidential assessments, short-term counseling and other follow-up services for employees who have personal and/or work-related problems. The fiscal impact is $4,500 per fiscal year.

e) Remove “Pilot” language for workdays between Christmas Day and New Year’s Day to be classified as holidays. With most employees having remote availability, the continuation of this benefit will have no impact to agency operations or the budget.

Timing
The recommended amendments to the benefits package would be available to employees for the new plan year which begins February 1, 2020.

STRATEGIC PLAN
The recommendation in this report supports the “Best Place to Work” goal of the strategic plan.

ALTERNATIVE
Staff considered many alternatives through an employee survey, the Executive Committee and the Board of Directors in developing a final recommendation.

FISCAL IMPACT
The incremental budget impact of the recommendations in this report is $0.2 million per fiscal year.

ATTACHMENTS
1. HRP6 – Tuition Assistance Policy
2. HRP7 – Cash In-Lieu-Of Policy
3. HRP8 – Fitness Reimbursement Policy
4. Employee Assistance Program Summary
TUITION ASSISTANCE POLICY

I. PURPOSE
The purpose of the Tuition Assistance Policy is to support the professional development, educational advancement, and career growth of SVCE employees. As a result, the agency will benefit from improved employee performance, higher levels of workforce engagement, and increased numbers of qualified internal candidates for promotional opportunities.

II. SCOPE
All regular full-time employees who have served a minimum of six months with the agency.

III. DEFINITIONS
“Coursework” means any required curriculum or materials from accredited college classes, certificate programs or online classes.

“Reimbursement” means the amount that is paid to the employee to offset the cost of completing coursework.

“Repayment” means the obligation of the employee to repay the entire amount of the reimbursement benefit paid to them if they voluntarily separate from the agency within 12 months of receiving the benefit.

“Verification of Completion” means attainment of a grade of “C” or better for graded classes. For non-graded classes, employees must provide proof of attendance and satisfactory completion of the course. For example, a certificate of completion or letter in the name of the employee and signed by the instructor would be considered acceptable.
IV. POLICY

A. Funding
1. The availability of funding for the Tuition Assistance Program is subject to the annual budget process and may be augmented as needed by the Chief Executive Officer during the mid-year budget review process.

B. Eligibility
1. Employee must pay for any expense upfront and will receive reimbursement of approved and eligible expenses upon successful completion of coursework and submission of required documentation within 60 days of course completion.
2. Coursework must be aligned with and support SVCE’s core mission, the employee’s current duties, or future opportunities within the agency.
3. Employee must provide a written justification for coursework to their supervisor.
4. Employee is strongly encouraged to obtain approval for coursework PRIOR to enrollment. Should employee not obtain the required approvals prior to enrollment, there is no guarantee that they will receive reimbursement for their expenses.

C. Limitations
1. Individuals classified as temporary, consultant, or interns are not eligible for tuition assistance.
2. Tuition assistance may not be used for dependents.
3. All coursework should be taken during non-work hours.

D. Eligible Expenses
Eligible expenses include, but are not limited to: (1) tuition; (2) required course books; (3) required course software or online materials; (4) registration fees; (5) lab fees; (6) non-resident fees; (7) examination and certification fees; (8) matriculation fees; (9) college preparatory and/or bridge classes; (10) tutoring fees; (11) official transcripts; (12) college application fees.
E. Non-reimbursable Expenses
Non-reimbursable expenses include, but may not be limited to:
(1) Equipment such as calculators, computers or other related
hardware, lab equipment, etc.; (2) Parking and/or travel related
expenses; (3) Room and Board; (4) Late registration fees; (5) Direct payment of student loans to financial institutions; (6) Interest on credit card for eligible expenses.

F. Documentation
Employee must submit all required documentation to the Administrative Services Manager within 60 days of course completion. Below is a list of the required documentation:
- Proof of payment – must include itemized expenses on receipt/s.
- Confirmation of Registration – must include employee’s name on the registration.
- Proof of completion – For graded courses, an unofficial transcript with employee’s name is acceptable and must show a grade of “C” or better or “Pass.” For non-graded courses, a signed certificate of completion from the institution is acceptable.

G. Training Required by Management
Employees shall not be required to use tuition assistance for continuing education or training required or approved by management to perform their existing duties. In these instances, expenses must be paid for the agency and employee may use work time to attend the required coursework, subject to advance approval.

H. Maximum Reimbursement Amount
Employee may be reimbursed up to $5,000 per fiscal year (October 1-September 30) to offset the cost of coursework.

I. Payment & Taxation
1. The Administrative Services Manager will administer the payment request process. Reimbursement will take
Category: HUMAN RESOURCES

approximately 1-2 pay periods after receipt of all required documents.
2. Approved reimbursements will be included (pre-tax) with the employee’s regular paycheck.
3. Any tax ramifications for receiving tuition assistance shall be the responsibility of the employee. Employees are advised to consult a tax attorney or tax accountant for questions on taxation.

J. Re-payment Obligation
1. Employee must agree that if he or she voluntarily leaves the agency, the employee will repay the full amount (100%) of any tuition reimbursements received during the twelve-month period preceding the employee’s separation date.
2. To the extent allowed by law, the agency may deduct the amount of any Tuition Repayment Obligation from any compensation due and owing to Employee at time of separation from employment. The agency may withhold from your final paycheck monies up to the amount due the agency.

K. No Guarantee of Employment or Promotion
Completion of coursework is no guarantee for promotion to the employee for any specific classification, period, or duration.

L. Termination:
Employee ceases to be eligible for tuition assistance upon notice of termination of employment. No reimbursements will be made to former employees or employees who have given notice of resignation.
TUITION ASSISTANCE
REIMBURSEMENT REQUEST

INSTRUCTIONS – (See TUITION ASSISTANCE POLICY)
1. Complete a new education reimbursement form for each specific course
2. Attach description of course as described by Education Institution
3. Submit to Supervisor and Department Director for processing two weeks prior to start of course work
4. If request is denied by department, employee may appeal to CEO

SECTION 1 – INFORMATION
(To be completed by Employee)

<table>
<thead>
<tr>
<th>NAME (LAST)</th>
<th>(FIRST)</th>
<th>DATE</th>
<th>DEPARTMENT/DIVISION</th>
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COURSE NO. and TITLE (one form per course)

Educational Institution/Company/Professional Association (NAME)

Type of Reimbursement

☐ Regular Academic Units (# of Units) ________
☐ Continuing Education Units (# of CEUs) ________

Relationship of Education to Present Position:

ATTACHMENTS: Complete new education reimbursement form for each specific course

☐ Regular Academic course description
☐ Continuing Education course description

Start Date: ____________
End Date: ____________

Estimated Costs

Tuition: ____________
Registration: ____________
Books: ____________
Other (Specify): ____________
TOTAL COSTS: $ ____________

Are you now receiving Educational Assistance from other sources?

☐ No ☐ Yes (If Yes Name Source): ____________

Amount: $ ____________

I hereby certify that the foregoing information is true and correct

Signed: __________________________ (Applicant) __________________________ (Date)

SECTION 2 – Employment Verification and Coursework APPROVAL or DISAPPROVAL
(To be completed by Supervisor)

☐ I hereby certify that the coursework described above fulfills the course selection requirements as detailed in the Tuition Assistance Policy. Reimbursement approved subject to satisfactory Course completion.
☐ Disapproved: Explanation (If request is denied by department, employee may appeal to CEO)

Signed: __________________________ (Supervisor) __________________________ (Date)

SECTION 3 – APPROVAL or DISAPPROVAL
(To be completed by Department Director)

☐ Approved
☐ Disapproved: Explanation (If request is denied by department, employee may appeal to CEO)

Signed: __________________________ (Department Director) __________________________ (Date)

SECTION 4 – REIMBURSEMENT
(To be completed by Department Fiscal Staff)

Evidence of payment and satisfactory course completion

☐ Yes ☐ No

Signed: __________________________ (Department Fiscal Staff)

Date: __________________________

Actual Costs

Tuition: ____________ Registration: ____________
Books: ____________ Other: ____________
TOTAL COST: $ ____________
Category: HUMAN RESOURCES

CASH IN LIEU OF HEALTH BENEFITS

I. PURPOSE
SVCE offers the opportunity to decline health insurance through the agency and receive a monthly cash payment in-lieu of health insurance.

II. SCOPE
All regular full-time employees.

III. DEFINITIONS
“Satisfactory group health insurance plan” – shall include group coverage (medical, dental, and / or vision) from an employee’s spouse / domestic partner / another covered person clearly showing the employee as a covered dependent for the entire plan year.

IV. POLICY
A. Eligibility
1. To be eligible, employee must provide written proof of satisfactory group health insurance.
2. Employee must decline all SVCE-offered coverage (medical, dental, AND vision), and cannot decline only a portion.
3. Evidence of coverage under COBRA or an individual health insurance plan is not considered satisfactory.

B. Enrollment
To enroll in the Cash In-Lieu of Health Benefits:
1. Obtain proof of other current health coverage. The required proof is an official document verifying you are named as an insured party under a satisfactory group health insurance plan.
2. Submit proof to Administrative Service Manager along with signed Election of Cash In-Lieu form.
3. If you later wish to enroll in SVCE’s health coverage, you will be subject to the normal open enrollment and plan
Category: HUMAN RESOURCES

waiting periods, with the exception of a qualifying Section 125 event (detailed below).

C. Amount
Employee will receive a monthly cash in-lieu payment of $250.

D. Payment & Taxation
1. Upon approval, cash payment in-lieu of health insurance will be scheduled for the first pay period of the following month.
2. The benefit is paid on the first pay period of the month and is a taxable benefit.
3. The amount deducted for taxes depends on individual circumstances as determined by state and federal taxing authorities. SVCE is unable to determine individual tax and withholding calculations prior to the actual payment.

E. Eligibility for FSA/HRA Benefits
1. Employee participation in the cash in-lieu benefit will not impact their eligibility to participate in the Flexible Spending Account (FSA) or Health Reimbursement Account (HRA) programs offered by SVCE.

V. ITEMS TO CONSIDER BEFORE DECLINING HEALTH COVERAGE
Once you apply and receive cash in-lieu of health benefits, you may only enroll in the agency health plan if a qualifying Section 125 event occurs:

Qualifying Events Are:
1. Marital Status Change:
   a. Marriage
   b. Death of spouse / partner / covered individual
   c. Divorce or annulment
   d. Legal separation
2. Number of Dependents Change:
   a. Birth
   b. Adoption or placement for adoption
   c. Death of dependent child
Category: HUMAN RESOURCES

d. Newly eligible dependents due to plan design change

3. Loss of Coverage

a. If the employee loses other coverage (e.g. spouse / partner / covered individual’s health plan coverage terminates, or Medicare or Medicaid eligibility ends)

VI. ATTACHMENTS

Election of Cash In-Lieu Form
Election of Cash In-Lieu Form

Employee Name: __________________________________________
(Please Print)

I certify that I am covered by satisfactory group health insurance through a spouse, parent, domestic partner, or other covered individual and have attached verification of my coverage offered through:

Covered Individual’s

Name: ____________________________________________________

Employer: ________________________________________________

Health Plan / Policy Number: ________________________________

_____ I understand that, by exercising the election to receive monthly payments, I will receive no benefits or coverage from any SVCE health plan. If I wish to enroll at a later date, I will be subject to that plan’s enrollment rules.

_____ I understand that verification must be provided by the employer providing my insurance and must state that I am currently covered for the current plan year. Without proof of coverage, this form cannot be processed.

_____ I understand I cannot opt for cash if my only other medical insurance is COBRA or an individual health insurance plan.

_____ I understand that under the cash in-lieu benefit policy, my election to waive coverage must be submitted by the 10th of the month to become effective the 1st of the following month. Also, I understand that SVCE will not retroactively provide this benefit, which is only effective moving forward.

_____ I understand that my eligibility for the cash in-lieu benefit is subject to an annual recertification process.

_____ I understand that I must notify the Administrative Services Manager within 30 days of a discontinuation, cancellation, or any other similar change in health coverage.

___________________________________________________________  ____________________
Employee Signature                                      Date

Finance Received ___________________________       Date __________
I. PURPOSE
SVCE offers its employees the opportunity to participate in a voluntary Fitness Reimbursement Program in order to promote employee health and morale.

II. SCOPE
All regular full-time employees.

III. DEFINITIONS
“Approved Health Club or Fitness Program” shall mean a facility, class, or series of classes primarily designed to promote wellness and improve the health and physical condition of each member through cardiovascular, flexibility, strength and/or other exercises. Weight loss clinics, massages, spas, and similar facilities are excluded.

IV. POLICY
A. Terms
Employees that choose to participate do with the information that:
1. The program is not a requirement of their employment with the agency;
2. Injuries resulting from an employee’s participation in this Program will not qualify for worker’s compensation benefits;
3. The employee’s time spent in fitness activity is not compensable.

B. Enrollment
1. Employees must sign and return their Fitness Reimbursement Program Form to the Administrative Services Manager to participate in the program.
2. The form shall state the employee understands the terms and requirements of the program, the name of the
Category: HUMAN RESOURCES
Approved Health Club or Fitness Program the employee has selected, and the estimated membership cost.
3. Once the employee has chosen to participate in the program, they are assumed to be a participant until they notify the Administrative Services Manager that they no longer wish to participate.

C. Gym Eligibility
To be eligible for reimbursement, the Approved Health Club or Fitness Program must have an active sales tax permit with the State of California.

D. Payment & Taxation
1. SVCE will reimburse employees that meet the requirements for reimbursement twice a year, up to a maximum of $600 annually.
2. Reimbursement will be included as an allowance on the employee’s paycheck.
3. Employees should note that the reimbursement is treated as a taxable benefit.

E. Eligible Expenses
Reimbursements will be for the cost of the Approved Health Club or Fitness Program membership fees only.

F. Ineligible Expenses
Workout clothing, in-gym purchases, travel costs, etc. are not eligible for reimbursement.

V. ATTACHMENTS
Fitness Reimbursement Benefit Form
FITNESS REIMBURSEMENT FORM

Employee Information

Name (Print): ____________________________________________

Approved Health Club or Fitness Program Information

Name of Facility / Program: ___________________________________

Address: ___________________________________________________

Membership / fee you paid: $ ____________________________
per Month ☐ Year ☐ Other: ____________________________
(limit of $600/year)

*Please attach all itemized receipts/documentation, including contract if applicable. If auto-billed, please include a redacted bank or credit card statement(s) showing deductions.

Employee Signature: ____________________________

Date: ____________________________

I attest that the services for which I am seeking payment were purchased for my own personal use and were not acquired for use by anyone else. I understand that the Benefit is only for Health Club and Fitness Program reimbursement, and SVCE, in its sole discretion, can refuse to pay for services that I may have purchased that are not considered approved services.

(Return signed copy to Administrative Services Manager)
EMPLOYEE ASSISTANCE PROGRAM (EAP)

100% Employer Paid

- Confidential counseling for you and your immediate family members
  - Available 24 hours a day, 7 days a week
  - 5 Face to face consultations per member per issue per year
  - Unlimited telephonic counseling available

- Work / life services for assistance with:
  - Parenting and childcare
  - Eldercare
  - Relationships
  - Legal and financial
  - Emotional & psychological matters
  - Alcohol and drug abuse
  - Grief and loss
Item 1d: Approve and Authorize the Chief Executive Officer to Execute an Agreement with Center for Sustainable Energy for Program Administration Services for the California Electric Vehicle Infrastructure Project Not-to-Exceed $420,000 through December 31, 2023

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation
Justin Zagunis, Decarbonization and Grid Innovation Analyst

Date: 1/8/2020

RECOMMENDATION
Staff recommends the Board authorize the CEO to execute an agreement with Center for Sustainable Energy ("CSE") for services necessary to administer the California Electric Vehicle Infrastructure Project ("CALeVIP") program through December 31, 2023 for an amount not to exceed $420,000.

BACKGROUND
In February 2019, the SVCE Board of Directors approved $8M in budget for Electric Vehicle Infrastructure ("EVI") programs for the four-year period of FY2020-FY2023. To supplement these funds, SVCE submitted a letter of interest to the California Energy Commission's ("CEC’s”) CALeVIP program in conjunction with local partners San Jose Clean Energy, City of Palo Alto, Silicon Valley Power and Peninsula Clean Energy. In August 2019, the CEC announced that SVCE and its local coalition were successful in attracting a CALeVIP program in the 2020 launch cycle. In SVCE service territory, the CEC is dollar-for-dollar matching SVCE’s commitment of $6M to this program for a combined investment of $12M through CALeVIP.

To administer the CALeVIP program, the CEC contracted with CSE in June 2017 after a competitive solicitation process. CSE has since launched CALeVIP projects in six regions throughout California. For each region with local partner(s), CSE also signs a contract with the local partner(s) to allow CSE to administer the combined CEC and partner funding in one seamless project.

For the CALeVIP program in SVCE’s territory, the not-to-exceed value for SVCE’s contract with CSE is $420,000 (taken from SVCE’s $6M overall commitment to CALeVIP, with the remainder going towards customer incentives). This incorporates the standard suite of CSE support with project design, marketing, outreach, technical assistance, application processing and reporting. Once the CSE contract is signed, the CEC, CSE, SVCE and the other local partners will work to finalize eligibility requirements and timing for our CALeVIP launch.

Attracting these CEC funds will result in significantly increased deployment of EVI across SVCE territory. As outlined in the SVCE EVI Joint Action Plan approved in September 2019, SVCE’s six targeted EVI programs were designed to also leverage this funding as a way to greatly magnify the programs’ impacts and help to guide the CALeVIP dollars to the market segments with the greatest needs. The remaining $2M in approved budget for EVI programs will be used to run these six parallel programs.
ANALYSIS & DISCUSSION

CALeVIP represents a major success for SVCE in multiplying the impact of its funding by attracting outside matching investment. Based on the draft incentive levels, the program will lead to around one hundred new DC Fast Chargers (“DCFC”) and over one thousand new Level 2 (“L2”) chargers deployed in SVCE territory.

CALeVIP has been set up with a single administrator, CSE, to maximize the economies of scale and ensure that a consistent message is sent to the EVI market throughout the regions with a CALeVIP program. The CEC expects the local partner to sign their own contract with CSE to allow the combined funding to be jointly managed and cover the partner’s portion of the administration costs incurred to extend CALeVIP to their region.

CALeVIP is designed to facilitate EVI growth, specifically for L2 and DCFC, in line with the State’s decarbonization goals. Of the $12M in total funding reserved for SVCE service territory, $6M will be allocated toward L2 and $6M towards DCFC, though the allocation between L2 and DCFC may be adjusted after program launch to respond to observed needs.

Eligible sites for CALeVIP include workplaces, multi-unit developments (“MUDs”), commercial properties, retail spaces and public agencies. L2 installations must be in shared parking spaces, though they do not need to be made publicly available (such as at an MUD with a resident-only parking lot that does not have assigned spaces). DCFC installations must be publicly available at all times.

The draft incentive level for L2 is $4,500 per connector, for DCFC from 50kW to under 100kW is $50,000 per charger and for DCFC at 100kW and above is $70,000 per charger. These incentives are also capped at a percentage of the total project cost. Installations in disadvantaged and/or low-income communities are eligible for additional incentives, as well as L2 installations in MUDs. Incentive levels are also subject to change based on program uptake.

After signing the contract, SVCE will work to finalize all program eligibility requirements through public workshops and with the other CALeVIP partners and the CEC. But some key program design elements will not be renegotiated and have been agreed to by SVCE and the CEC:

- SVCE funds can only be used within SVCE territory and will only go to SVCE customers.
- The CEC’s matching commitment of $6M must also be spent within SVCE territory but is not limited to SVCE customers – state funds cannot be restricted in that way.
- The CEC’s $6M will be used to fund the DCFC incentives.

Due to how SVCE and the CEC are initially allocating funding between the technologies, this means that the L2 incentives will be restricted to SVCE customers, while the DCFC incentives will merely be restricted to within SVCE territory. Ultimately, this compromise was necessary to allow both SVCE and CEC to meet their own restrictions on how funds may be used – and since the DCFC installations need to be publicly available, all residents in our territory will benefit from deployed DCFC chargers even if a given site host is not an SVCE customer.

STRATEGIC PLAN

This contract supports SVCE’s Strategic Plan Goal 5, which is to work with the community to achieve energy and transportation greenhouse gas emissions reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030. The CALeVIP program also supports specifically the strategy to execute and maintain SVCE’s Decarbonization Strategy and Programs Roadmap to achieve these community-wide emissions reduction targets.

ALTERNATIVE

If the Board does not approve this contract, SVCE may lose access to participate in the CALeVIP program launched in its service territory – the CEC may still choose to proceed with its $6M in funding but SVCE would
not be able to inform and influence the eligibility requirements and program design. In this scenario, the CEC’s funding committed to SVCE territory might also be reduced. The CALeVIP program launch date could instead be delayed to allow SVCE to run a separate solicitation and bring on a different consultant to administer SVCE’s portion of the program, but this would likely lead to higher overall administration costs and would miss the opportunity to follow the CEC’s competitive selection of CSE. SVCE does not have the internal bandwidth to administer CALeVIP without substantially reprioritizing and limiting or eliminating other planned initiatives in the coming years.

**FISCAL IMPACT**
Approval of the agreement with CSE will have no additional fiscal impact, as it will be funded through the $8M that the Board approved in February 2019 for EVI programs over the FY2020-FY2023 period. Within this already-approved budget, the fiscal impact of the agreement shall not exceed the amount of $420,000. These funds will be paid out across the duration of the CALeVIP project on a time and materials basis, until such a point that all incentive funds are spent and the program closes.

**ATTACHMENTS**
1. Agreement with Center for Sustainable Energy
SILICON VALLEY CLEAN ENERGY STANDARD SERVICES AGREEMENT

This Agreement is made as of January 8, 2020 (the “Effective Date”) by and between Silicon Valley Clean Energy (“SVCE”) and Center for Sustainable Energy (hereinafter “CONTRACTOR”), a California nonprofit corporation with its principal place of business located at 3980 Sherman Street, Suite 170, San Diego, CA 92110. SVCE and CONTRACTOR may be individually referred to herein as “Party” or collectively as “Parties.”

WHEREAS the California Energy Commission (“CEC”) approved funding for up to $200 million (the “CALEVIP Funding”) for the design and implementation of an electric vehicle charger investment incentive project. CONTRACTOR has accepted the CALeVIP Funding under the terms and conditions of that certain Grant Agreement (ARV-16-017) effective as of June 27, 2017 (the “Grant Agreement”).

WHEREAS CEC has authorized CONTRACTOR to launch an incentive project in Santa Clara and San Mateo Counties (the “Peninsula - Silicon Valley Incentive Project”) and deploy a portion of CALeVIP Funding (the “CEC Funds”), $6,000,000, within SVCE’s service territory. The component of the Peninsula - Silicon Valley Incentive Project focused on and dedicated to SVCE service territory, including any additional program requirements and design elements, shall be referred to herein as the “Silicon Valley Clean Energy Incentive Project” but shall exist within the broader Peninsula - Silicon Valley Incentive Project and shall not be represented publicly as a distinct incentive project.

WHEREAS SVCE provides locally-controlled, clean electricity to residents and businesses in its service territory consisting of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County.

WHEREAS SVCE desires to promote more rapid deployment of public and private infrastructure that will accelerate adoption of electric vehicles in its service territory. Funding that is to be provided by SVCE to support such promotion (the “Client Funds”) will be identified through the annual budget cycle to be approved by the SVCE Board. Client Funds will be used to grant incentive payments (“Incentive Payments”) to public and private property owners and business owners that install electric vehicle chargers that meet specific standards in SVCE’s service territory.

WHEREAS the Incentives Payments made from CEC Funds for DC Fast Charger applicants may be made to applicants that meet either the CEC’s eligibility requirements or SVCE’s eligibility requirements, provided the applicant is within SVCE’s service territory.

WHEREAS the Incentive Payments made from Client Funds are only to be dedicated to SVCE customers.

WHEREAS any Incentive Payments made from CEC Funds are to be directed to DC Fast Charger applicants.

WHEREAS SVCE desires to hire CONTRACTOR to develop and administer the Silicon Valley Clean Energy Incentive Project in consideration of payment of a fee in accordance with the terms and conditions set forth herein.
Agreement

NOW THEREFORE, in consideration of the covenants and conditions set forth in this Agreement, the Parties agree as follows:

1. GENERAL DESCRIPTION

1.1. SVCE hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A (the “Services”) in conformity with the terms of this Agreement.

1.2. SVCE has secured or will secure Client Funds in the amount of $6,000,000.

2. Payment Provisions

2.1. Payment for Services. As compensation for Services, SVCE shall pay CONTRACTOR a fee (the “Services Fee”) in accordance with the payment provisions set forth in Exhibit B (Payment Terms).

2.2. Payment of Client Funds for Incentive Payments. Client Funds other than the Services Fee shall be transferred to Contractor in accordance with Part 8 of the Scope of Services set forth in Exhibit A.

3. TERM OF AGREEMENT

3.1. The term of this Agreement is from the Effective Date until December 31, 2023 (“Term”), unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and SVCE, with SVCE’s execution to be last in time. CONTRACTOR may not commence work under this Agreement before SVCE signs this Agreement.

4. SCOPE OF SERVICES AND ADDITIONAL PROVISIONS

4.1. The following attached exhibits are incorporated herein by reference and constitutes a part of this Agreement:

4.1.1. Exhibit A: Scope of Services

4.1.2. Exhibit B: Payment Terms

5. PROPRIETY RIGHTS

5.1. Licensed Services. Prior to this Agreement, CONTRACTOR developed a secure incentive processing platform, which provides but is not limited to websites, online data dashboards, online rebate application forms, a rebate database, and online document storage (“CSE Software”) and considers it proprietary intellectual property. SVCE shall have a limited, non-exclusive, and non-transferable right during the Term to access and use the CSE Software, as applicable to the Silicon Valley Clean Energy Incentive Project, within its service territory, subject to the terms and conditions of this Agreement. The CSE Software may be used by SVCE only in connection with the Silicon Valley Clean Energy Incentive Project. SVCE shall have no right to copy, in whole or in part,
the CSE Software, and SVCE shall not, and shall not permit any third party to, modify, adapt, translate, reverse engineer, decompile, disassemble, sublicense, redistribute, resell, rent, lease, remove any copyright or other proprietary notice from, or create derivative works based on the CSE Software, or extract any component thereof for use with any other systems, applications, data or materials, or use or reproduce any part of the CSE Software in source-code format. Further, SVCE shall not access, use or exploit the CSE Software (in whole or in part) in order to build, develop (or commission the development of), or consult upon any product or service which competes (directly or indirectly) with the CSE Software. SVCE agrees that its access to and use of any software components, data, applications and/or related materials owned and controlled by third parties that interoperate with or are otherwise made available in connection with the Services (collectively, “Third Party Materials”) may be subject to separate terms and conditions as may be imposed from time to time by the third party involved.

5.2. Ownership of Services. Except for the license to access and use the CSE Software expressly granted to SVCE under this Agreement, CONTRACTOR retains all right, title and interest in the CSE Software, whether as individual items or a combination of components, regardless of any participation or collaboration by SVCE in their design, development or implementation. CONTRACTOR has the sole right to obtain, hold and renew in its own name and for its own benefit, any patents, copyrights, registrations and other similar intellectual property and proprietary rights protections regarding CSE Software. SVCE shall reasonably cooperate with CONTRACTOR and execute all documents necessary to enable CONTRACTOR to perfect, preserve, register and record its rights in the CSE Software. Except for the limited rights and licenses granted to SVCE under this Agreement, nothing shall be construed to restrict, impair, encumber, alter, deprive or adversely affect the CSE Software or any of CONTRACTOR’s rights or interests therein. All rights not expressly granted to SVCE hereunder are reserved by CONTRACTOR.

5.3. SVCE Materials. SVCE shall reasonably cooperate with CONTRACTOR in the performance of the Services, including by promptly providing CONTRACTOR with all SVCE and third party trademarks, trade names, service marks, logos, names, and distinctive identification (collectively, “SVCE Trademarks”), information, materials, data, images and content required to perform the Services (collectively, “SVCE Materials”). SVCE hereby grants to CONTRACTOR a non-exclusive, non-sublicensable, and non-transferable right and license to use the SVCE Materials and SVCE Trademarks during the Term as provided by SVCE to CONTRACTOR hereunder, solely in connection with the performance of the Services. All goodwill resulting from CONTRACTOR’s use of the SVCE Trademarks shall inure to the benefit of SVCE. Without limiting the foregoing, SVCE hereby grants to CONTRACTOR a non-exclusive, non-sublicensable, non-transferable right and license to use any data inputted or uploaded by SVCE in connection with the Services and any data generated from SVCE’s use of the Services, including information and data regarding SVCE’s customers (collectively, the “SVCE Data”); provided that SVCE Data excludes customers’ protected personal information and usage data defined as “Covered Information” in Attachment B of CPUC Decision D-12-08-045 (collectively, “Customer Data”). As between SVCE and CONTRACTOR, SVCE retains all right, title and interest in the SVCE Materials, SVCE Trademarks and SVCE Data, except for the limited rights and licenses granted to CONTRACTOR under this Agreement.

5.4. Use of Data. SVCE hereby grants to CONTRACTOR a non-exclusive, irrevocable, royalty-free, worldwide right and license to use the SVCE Data for the term of the Grant Agreement (i) for data analysis and market research purposes, (ii) to improve and enhance the Services and for other development, diagnostic and corrective purposes, (iii) to disclose such data to CEC as required
under the Grant Agreement, and (iv) to disclose such data solely in aggregate or other de-identified form in connection with its business, including for benchmarking purposes and providing market reports and studies to third parties.

5.5. **Data Security.** CONTRACTOR shall implement, maintain, and enforce appropriate technological, physical and administrative safeguards that are consistent with the sensitivity of SVCE Data and Customer Data, and that are designed to physically and electronically protect the SVCE Data and Customer Data from unauthorized access, use, loss, destruction, or disclosure. Such safeguards shall include, but are not limited to, measures designed to prevent access, use, modification, loss, destruction, or disclosure of SVCE Data and Customer Data by CONTRACTOR personnel except (a) to provide the Services, (b) as authorized by this Agreement, including without limitation, as required by applicable law, or (c) as otherwise authorized by SVCE in writing.

6. **PERFORMANCE STANDARDS**

6.1. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of SVCE or immediate family of an employee of SVCE.

6.2. CONTRACTOR and CONTRACTOR’s agents, employees and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

6.3. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use SVCE premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

7. **LIMITED WARRANTY.** CONTRACTOR warrants to SVCE that the Services will be performed in a professional and workmanlike manner and in accordance with the specifications provided in the Scope of Services in all material respects. In the event of a breach of the warranty set forth in this Section 7, CONRACCTOR agrees, as CONTRACTOR’s sole and exclusive obligation and SVCE’s sole and exclusive remedy, to use commercially reasonable efforts to re-perform the defective Services or to modify or correct the defective deliverable, as applicable, at CONTRACTOR’s sole costs and expense.

8. **REPRESENTATIONS AND WARRANTIES**

8.1. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it has the right, power and authority to enter into this Agreement and to perform the acts and grant such rights required of it under this Agreement, (b) the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary organizational governance action and violates no applicable law to which it is subject, (c) the execution of this Agreement and performance of its obligations under this Agreement do not and shall not violate any other agreement to which it is a party, and (d) this Agreement
constitutes the legal, valid and binding obligation of such Party when executed and delivered by each Party.

8.2. **SVCE Materials and Trademarks.** SVCE represents and warrants that (a) it owns the SVCE Materials and SVCE Trademarks and/or controls all necessary rights and licenses required for CONTRACTOR’s use of the SVCE Materials and SVCE Trademarks as set forth in this Agreement, (b) the SVCE Materials and SVCE Trademarks, and CONTRACTOR’s use thereof as contemplated hereunder, will not violate any applicable laws or misappropriate, violate or infringe upon the intellectual property, privacy, publicity or other proprietary rights of any third party, and (c) the SVCE Materials do not contain any content that is false, misleading, defamatory or obscene.

8.3. **CSE Software.** CONTRACTOR represents, warrants, or covenants that: (i) CONTRACTOR owns, or has a legal right to use, all intellectual property used in the CSE Software; (ii) so long as SVCE uses the CSE Software in accordance with Agreement terms, SVCE’s receipt or use of the CSE Software will not infringe upon or violate any U.S. or foreign patent or copyright, misappropriate any trade secret, or violate any third party’s intellectual property right.

8.4. **Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the Services required to be rendered under this Agreement.

8.5. **NO OTHER WARRANTIES.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES AND THE PARTIES HEREBY DISCLAIM ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES REGARDING ANY SERVICES (INCLUDING THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY PARTICULAR RESULT WILL BE OBTAINED BY USE OF THE SERVICES), DELIVERABLES, INFORMATION, CONTENT, PRODUCTS OR MATERIALS FURNISHED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

9. **PAYMENT CONDITIONS**

9.1. Prices shall remain firm for the Term of the Agreement and, thereafter, may be adjusted annually as provided herein. SVCE does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement; provided that SVCE shall pay for Services actually rendered in conformity with this Agreement.

9.2. Invoices shall be submitted to SVCE in conformity with Exhibit B, on a form reasonably acceptable to SVCE, and shall provide sufficient detail, as reasonably determined by SVCE, of services rendered for the invoiced period.

9.3. SVCE shall confirm the accuracy of invoices and promptly notify CONTRACTOR if the invoice is incorrect or deficient, and if necessary CONTRACTOR shall resubmit invoices only in conformity with this Agreement. Invoices shall be paid within 45 days of receipt of a correct invoice by SVCE.

10. **TERMINATION**
10.1. SVCE may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. “Good cause” includes the failure of CONTRACTOR to perform the required Services at the time and in the manner provided under this Agreement. In such event, SVCE may pursue available legal or equitable remedies for breach.

10.2. CONTRACTOR may cancel and terminate this Agreement for good cause effective immediately upon written notice to SVCE. “Good cause” includes the failure of SVCE to pay CONSULTANT when due, provided that CONSULTANT has provided SVCE with a “Notice of Dispute” and the Parties have met and conferred as provided in Section 17.5.1 below. In such event, CONTRACTOR may pursue available legal or equitable remedies for breach.

10.3. SVCE may terminate the Agreement for any reason by giving written notice of termination to CONTRACTOR at least thirty (30) days prior to the effective date of termination.

10.4. This Agreement may be terminated as a result of regulatory or statutory action that terminates or defunds CALeVIP during the term of the Agreement.

10.5. In the event of termination, whether for cause or convenience, any remaining portion of Client Funds not reserved under this Agreement shall be returned to SVCE within 45 days of the date of termination. In the event of termination for convenience, any Client Funds previously reserved for existing applications shall continue to be incurred.

11. INDEMNIFICATION; LIMITATION OF LIABILITY

11.1. Mutual Indemnification. Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold the other Party (the “Indemnified Party”), harmless, at the Indemnifying Party’s own cost and expense, from and against any and all liabilities, losses, damages, injuries, judgments, amounts paid in settlement, costs and expenses, including reasonable attorneys’ fees and costs, arising out of or related to any third party claim resulting from any material breach of any of the Indemnifying Party’s representations or warranties specifically set forth in Article 8 of this Agreement. The Indemnifying Party shall solely conduct the defense of any such claim and all negotiations for its settlement; provided that (a) no settlement shall be agreed to without the Indemnified Party’s prior written approval, and (b) the Indemnified Party has the right to participate, at its own expense, in the defense and/or settlement of any such claim in order to protect its own interests.

11.2. Infringement Indemnification. CONTRACTOR shall indemnify, defend with counsel approved by SVCE, and hold SVCE harmless from and against all claims, losses, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys’ fees) resulting from any claim that the Services infringe on the United States patent, trademark, trade name, trade secret, or copyright of any third party, provided CONTRACTOR is promptly notified of any and all threats, claims, and proceedings related thereto and given reasonable assistance. CONTRACTOR shall not settle such suit or action without the consent of SVCE. The foregoing obligations do not apply regarding portions or components of the Service (i) not supplied by CONTRACTOR, (ii) made in whole or in part in accordance with SVCE specifications, (iii) that are modified after delivery by CONTRACTOR, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where SVCE continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where SVCE’s use of the Service is not strictly in accordance with this Agreement. If, due to a claim of
infringement, the Services are held by a court of competent jurisdiction to be or are believed by CONTRACTOR to be infringing, CONTRACTOR may, at its option and expense (a) replace or modify the Service to be non-infringing; provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for SVCE a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and SVCE’s rights hereunder and provide SVCE a refund of any prepaid, unused fees for the applicable Services.

11.3. **Limitations of Liability.** EXCEPT IN CONNECTION WITH A PARTY’S INDEMNIFICATION OBLIGATIONS IN ARTICLE 11, OR A PARTY’S GROSS NEGLIGENCE OR FRAUD, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, OR LOSS OF DATA, IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT THE APPLICABLE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **INSURANCE REQUIREMENTS**

12.1. Prior to commencement of this Agreement, the CONTRACTOR shall provide a “Certificate of Insurance” certifying as to the insurance coverages that CONTRACTOR has obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies. The CONTRACTOR shall not begin work under this Agreement until SVCE has approved all required insurance. This approval of insurance shall neither relieve nor decrease the liability of the CONTRACTOR.

12.2. All coverages shall be issued by companies acceptable to SVCE and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California and holding a current policy holder’s alphabetic, and financial size category A.M. Best rating of not less than A-VII. Any insurer, or policy, not meeting the requirements set forth in this Paragraph 12.2 must be approved by SVCE’s Chief Executive Officer.

12.3. Without limiting CONTRACTOR’s duty to defend and indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

12.3.1. **Commercial General Liability Insurance,** including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, and cross-liability with a combined single limit for Bodily Injury and Property Damage of not less than $1,000,000 per occurrence, and $2,000,000 in the aggregate.

12.3.2. **Business Automobile Liability Insurance,** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than $500,000 per occurrence.

12.3.3. **Workers’ Compensation Insurance,** if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section
12.4. All insurance required by this Agreement shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

12.5. Each liability policy shall provide that SVCE shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

12.6. Commercial general liability and automobile liability policies shall provide an endorsement naming SVCE, its Directors, Board members, officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR’s work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by SVCE and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR’s insurance.

13. RECORDS AND CONFIDENTIALITY

13.1. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from SVCE or prepared in connection with the performance of this Agreement, unless SVCE specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to SVCE any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR’s obligations under this Agreement.

13.2. At the request of SVCE, CONTRACTOR shall return to SVCE any SVCE records which CONTRACTOR used or received from SVCE to perform services under this Agreement.

13.3. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and local rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.

13.4. SVCE shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the
expenditure of public funds in excess of $10,000, the parties to this Agreement may be subject, at the request of SVCE or as part of any audit of SVCE, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

13.5. **Grant Agreement.** Nothing in Article 13 shall prohibit CONTRACTOR from complying with its obligations under the Grant Agreement.

14. **NON-DISCRIMINATION**

14.1. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR’s employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

15. **INDEPENDENT CONTRACTOR**

15.1. In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of SVCE. No offer or obligation of permanent employment with SVCE shall entitle CONTRACTOR to receive from SVCE any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers’ compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR’s performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold SVCE harmless from any and all liability which SVCE may incur because of CONTRACTOR’s failure to pay such taxes.

16. **Notices**

16.1. All notices and other communications required or permitted under this Agreement shall be in writing and delivered personally, mailed via a nationally recognized overnight courier or sent via email correspondence (with confirmation of receipt), to the applicable Party at the addresses set forth below, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice. All notices shall be deemed given on the date personally delivered, when placed in the mail as specified or upon confirmation of email receipt.

If to CONTRACTOR:

Center for Sustainable Energy
Attn: Notice Officer
3980 Sherman Street, Suite 170
17. **MISCELLANEOUS PROVISIONS**

17.1. **Force Majeure.** Notwithstanding anything to the contrary herein, except regarding a Party’s payment obligations, neither Party shall be in breach of this Agreement or incur any liability to the other in connection with any failure to perform any of its obligations hereunder to the extent that performance of such obligations is prevented or materially hindered by reason of strikes, lockouts, restrictive governmental or judicial orders or decrees, riots, insurrection, war, acts of God or any other reason or event reasonably beyond a Party’s control.

17.2. **Amendment.** This Agreement may be amended or modified only by an instrument in writing signed by SVCE and the CONTRACTOR.

17.3. **Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by SVCE and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions of this Agreement.

17.4. **Contractor.** The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.

17.5. **Disputes.** Without prejudice to Section 10.3, CONTRACTOR shall continue to perform under this Agreement during any dispute.

17.5.1. Any dispute regarding the payment of fees shall be subject to a meet and confer between the Parties to be conducted no more than 15 days from the date of a “Notice of Dispute” is provided subject to Section 16 above.

17.6. **Assignment and Subcontracting.** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of SVCE. None of the services covered by this Agreement shall be subcontracted or delegated to third parties without the prior written consent of SVCE, which consent shall not be unreasonably withheld or denied. Should SVCE not approve or reject any such subcontracting or delegation with ten days of notice, such subcontracting or delegation shall be deemed approved. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
17.7. **Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of SVCE and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

17.8. **Compliance with Applicable Law.** The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

17.9. **Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

17.10. **Time is of the Essence.** Time is of the essence in each and all provisions of this Agreement.

17.11. **Governing Law; Venue.** The Agreement shall be governed by and interpreted under the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara.

17.12. **Non-exclusive Agreement.** This Agreement is non-exclusive and both SVCE and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

17.13. **Construction of Agreement.** SVCE and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

17.14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

17.15. **Authority.** Any individual executing this Agreement on behalf of SVCE or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

17.16. **Integration.** This Agreement, including the Exhibits, represent the entire Agreement between SVCE and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between SVCE and the CONTRACTOR as of the effective date of this Agreement, which is the date that SVCE signs the Agreement.

17.17. **Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this main body of this Agreement and the provisions of any Exhibit to this Agreement, the provisions of this main body of this Agreement shall prevail and control. If there is a conflict or discrepancy between the Grant Agreement and any other part of this Agreement, the terms of the Grant Agreement shall without exception control and govern to the extent of conflict.

[signature page follows]
IN WITNESS WHEREOF, the Parties hereto have set their hands the day and year first above written.

Center for Sustainable Energy
By: _______________________
PRINT NAME: Lawrence E. Goldenhersh
ITS: President

Silicon Valley Clean Energy
By: _______________________
PRINT NAME: 
ITS: 

APPROVED AS TO FORM:

________________________
Exhibit A

Scope of Services

1. TASK 1: INCENTIVE PROJECT DESIGN

1.1. The goal of this task is to work with SVCE, along with other Peninsula - Silicon Valley Incentive Project partners (“Coalition Members”) and CEC, to design the Peninsula - Silicon Valley Incentive Project. The goal of this task is also for the CONSULTANT to work with SVCE and CEC on any additional design necessary for the Silicon Valley Clean Energy Incentive Project.

1.2. CONTRACTOR incentive design work will consist of:

(a) Research and analysis of EV charger incentive Project opportunities along the following parameters:

   i. Market opportunities to incentivize the deployment of EV chargers;
   ii. Expected or potential demand for EV chargers;
   iii. Currently available EV charger incentives relevant to proposed project;
   iv. Attainable policy objectives (e.g., disadvantaged communities, low income / priority populations);
   v. Budget constraints and opportunities;
   vi. Funding source requirements;
   vii. Definition of applicant eligible for Incentive Payments funded by either SVCE or CEC; and
   viii. Other relevant project design variables that are developed in the course of the design sessions and included by amendment in this section 1.2(a).

(b) In consultation with SVCE, create a targeted incentive design covering:

   i. Geographic region targeted by the incentives;
   ii. Eligible sites definition (e.g., destination, workplace, multi-unit dwellings, corridors, disadvantaged communities, etc.);
   iii. Eligible applicant definition;
   iv. Minimum technical requirements for eligible EV charging equipment;
   v. Minimum other requirements for eligibility that are developed in the course of the design sessions and included by amendment in this section 1.2(b);
   vi. Amount of incentive by type of EV charger;
vii. Funding source(s) utilized for each type of incentive;

viii. Total amount of incentive funding allocated to the project;

ix. Incentive structure (e.g., Incentive Payments system disbursing incentives after chargers are installed, or other appropriate incentive);

x. Peninsula - Silicon Valley Incentive Project goals;

xi. Anticipated Peninsula - Silicon Valley Incentive Project roll-out and administration schedule;

xii. Definition of charger data to be collected and methodology for collecting the data;

xiii. Application support services consisting of CONTRACTOR staffed help desk to respond via phone and email to applicant eligibility and application process questions;

xiv. Application documentation requirements; and

xv. Internal processes and controls, processes and procedures to do the following: receive, handle, and account for and manage incentive funding, including funding from multiple sources; receive and evaluate incentive requests; effect payment for valid Incentive Payments requests; and provide monthly fiscal accounting and reporting to SVCE.

1.3. Deliverables:

(a) Final Incentive Design Package to capture the results of work specified in Section 1.2.

(b) Project Implementation Manual, consisting of

i. Eligibility requirements

   (1) Equipment categories

   (2) Equipment eligibility criteria

   (3) Other eligibility criteria

   (4) Eligible costs

   (5) Eligible sites

   (6) Incentive Payments amounts

   (7) Maximum Incentive Payments limits per entity

ii. Applicant duties
2. TASK 2: DEVELOPMENT AND CONFIGURATION OF INCENTIVE PROCESSING WEBSITE

2.1. The goal of this task is to design, develop, configure and launch a robust, user-friendly project website.

2.2. The Peninsula - Silicon Valley Incentive Project Landing Page will include:

(a) A funding visualization, including the amount of funding available and remaining amounts for each technology, within each County and for the Silicon Valley Clean Energy Incentive Project.

(b) Instructions, forms and FAQs to parties interested in participating in the Silicon Valley Clean Energy Incentive Project.

(c) Technology requirements, funding amounts for each specific technology and description of eligible locations.

(d) Description of eligible costs under the Silicon Valley Clean Energy Incentive Project.

(e) Application process description and diagram.

(f) Attribution of the Peninsula - Silicon Valley Incentive Project and Silicon Valley Clean Energy Incentive Project to SVCE and the California Energy Commission.

2.3. The online application will include:

(a) The ability for interested parties to indicate if they are customers of SVCE.

(b) The ability for interested parties to submit required documents to participate in Silicon Valley Clean Energy Incentive Project, including application forms, payment requests, and appropriate documentation.

2.4. The user and application dashboards will include:

(a) The capability for incentive participants to access, in real time, the status of incentive applications and payments.
The capability for incentive participants to designate collaborators on their application for purposes of authorizing others to track and submit information on their behalf.

2.5. **Deliverables:**

(a) Peninsula - Silicon Valley Incentive Project Landing Page design and content
(b) Online application form and process
(c) User and application dashboards
(d) Ongoing system maintenance and minor adjustments

3. **TASK 3: EV CHARGER INCENTIVE PROJECT MARKETING, EDUCATION, OUTREACH & TECHNICAL ASSISTANCE**

3.1. The goal of this task is to market the Silicon Valley Clean Energy Incentive Project to relevant target audiences, and to provide basic support to applicants to file applications and pursue their EV charging installation projects. To accomplish this CONTRACTOR will:

(a) Develop an Integrated Communications Plan for the Silicon Valley Clean Energy Incentive Project. The plan will be developed in coordination with SVCE. The plan will identify the goals of the marketing and outreach effort, target audience(s), methods/tactics/channels to be used, and will include a schedule to coordinate the marketing activities.

(b) Develop marketing and outreach materials to reflect the communication plan developed in 3.1(a). Marketing and outreach material development will be coordinated with SVCE.

(c) Develop a marketing budget and technical assistance budget through coordination with SVCE. The budget will cover all costs necessary for executing on the communications plan developed in Task 3.1(a) and providing SVCE specified technical assistance, in accordance with Exhibit B.

3.2. The goal of this task is to provide technical assistance to Silicon Valley Clean Energy Incentive Project applicants. To accomplish this CONTRACTOR will:

(a) Develop FAQs and other similar EV charging information resources for applicant use in pursuing EV charging installation projects.

(b) Develop curated ‘EV charging 101’ resources on:
   (1) EV charger capabilities;
   (2) EV charger network characteristics and capabilities;
   (3) Ballpark EV charger load considerations;
   (4) Typical EV charger installation requirements and best practices;
   (5) Typical utility connection requirements; and
(6) Similar common EV charger basic information.

(7) Link to SVCE webpages, as appropriate.

(c) Provide email and phone support of basic inquiries that applicants have on EV chargers and EV charging installation.

(d) Availability of CONTRACTOR staff typically providing EV Expert services to field incoming inquiries (e.g. desk top site assessments, charger layouts, equipment selection, etc.), as mutually agreed to with SVCE.

(e) Provide log of basic EV charging installation project inquiries.

3.3. Deliverables:

(a) Integrated Communications Plan (updated annually)

(b) Marketing / Outreach materials

(c) Marketing budget

(d) Ongoing marketing, education and outreach activities

(e) Technical assistance budget

(f) FAQs

(g) EV charging 101 resources

(h) Ongoing technical assistance, including Tracking Log

4. TASK 4: EV CHARGER INCENTIVE PROJECT ADMINISTRATION

4.1. The goal of this task is to administer the Silicon Valley Clean Energy Incentive Project as defined in Tasks 1-3. CONTRACTOR will:

(a) Receive, evaluate, and process Incentive Payments requests.

i. For all Incentive Payments to applicants, the process will include:

(1) Requirement that applicant indicate if they have filed for bankruptcy within the last five years and, if so, to provide relevant details certifying under penalty of perjury that the information provided is accurate and complete.

(a) If bankruptcy is identified and has occurred within 5 years of the date of the application, CONTRACTOR shall inform SVCE of any such applications and shall refrain from issuance any Incentive Payments unless and until such payment is authorized in writing by SVCE.
(2) Requirement that applicant indicate if they have any threatened or pending legal actions by or against them, loan defaults, or unpaid judgments against them.

(a) If any threatened or pending legal actions, loan defaults, or unpaid judgments are identified, CONTRACTOR shall inform SVCE of any such applications and shall refrain from issuance any Incentive Payments unless and until such payment is authorized in writing by SVCE.

(3) Tracking and timely reporting in writing to SVCE of any:

(a) complaints about the Peninsula - Silicon Valley Incentive Project

(b) Problematic issues arising in the operation of the Peninsula - Silicon Valley Incentive Project

(c) knowledge of any threatened or actual legal actions involving any Peninsula - Silicon Valley Incentive Project or incentive applicants, applications, payments (e.g., alleged false information provided in an incentive application or threatened or actual lawsuits over the Peninsula - Silicon Valley Incentive Project).

(d) As needed, CONTRACTOR shall provide SVCE personnel or other personnel as directed by SVCE with all project documents, files and records requested in support of the Commission investigating and resolving any such issues.

(4) Prohibition against applicant submission of materials marked as confidential without prior written approval and instructions from the SVCE. SVCE is a public agency, and as such is subject to the Public Records Act. CONTRACTOR shall not agree to keep any incentive application information confidential.

(5) Fair and impartial Project administration, including provision of information in a public manner that avoids giving advantage to any applicant or group of applicants.

ii. For each incentive applicant, prior to the issuance of an Incentive Payments the evaluation will include:

(1) confirmation that the applicant is currently licensed to do business in California;

(2) confirmation of “active” status for businesses required to register with the California Secretary of State;

(3) confirmation of initial site eligibility and Disadvantaged and/or Low Income status for rebate calculation;

(4) review of documentation and verification of eligible project costs for any milestone and / or final payments; coordination with SVCE to validate each installation site as a SVCE customer; and
(5) issue checks for milestone and final payments.

4.2. **Deliverables**: Processed applications.

5. **TASK 5 – DATA COLLECTION**

5.1. The goal of this task is to collect data on the project applications, implementation and charger utilization. **CONTRACTOR** will:

   (a) Collect, analyze and compile data on the Peninsula - Silicon Valley Incentive Project, which may include without limitation:

   (1) Type of organizations receiving Incentive Payments;
   (2) Timelines to complete each Incentive Payments project;
   (3) Time frames associated with EV charger installations;
   (4) EV charger utilization.
   (5) Other data defined by SVCE

   (b) Share collected data with SVCE. Data will be shared with SVCE in both aggregate and down to the site and application level.

5.2. **Deliverables**:

   (a) Data Collection Reports covering all Peninsula - Silicon Valley Incentive Project applications (i.e. aggregate and site/application specific data)

6. **TASK 6: ADMINISTRATIVE**

6.1. **Monthly progress reports**: The goal of this task is to provide the reporting that will allow monthly verification that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget. **CONTRACTOR** will collaborate with SVCE to determine reasonable content to include in monthly reports.

6.2. **Deliverables**: The monthly reporting will consist of:

   (a) Summary of activity during the reporting period for the purpose of determining whether invoices are consistent with the work performed
   (b) Summary of activities planned for the next reporting period.
   (c) KPI reports for marketing and technical assistance activities (Task 3)
   (d) Complaints, programmatic issues and actual or threatened litigation regarding applicants or the Peninsula - Silicon Valley Incentive Project (as identified in Task 4.1(a)(i)(3)(a)).

6.3. **Final Report**

1/8/2020 19 Contract Number: ______________
(a) CONTRACTOR will prepare up to two final reports for SVCE. CONTRACTOR will collaborate with SVCE to determine reasonable content to include in the final reporting. The documents will be of a professional standard appropriate for review by elected officials, SVCE board members and members of the public. A final report will be submitted no later than two months after Silicon Valley Clean Energy Incentive Project funds have been exhausted and applicants that have received incentives have completed installation. A final report will also be submitted no later than two months after Peninsula - Silicon Valley Incentive Project funds have been exhausted and applicants that have received incentives have completed installation. These two final reports may be combined if they are due to be submitted to SVCE within three weeks of one another, or with written approval from SVCE.

(b) Deliverable. The Final Report(s) shall include, as desired by SVCE:

1. Data about the EV chargers and applicants participating in the project during implementation of the Peninsula - Silicon Valley Incentive Project.

2. Survey of a reasonable percentage of site hosts to assess their satisfaction with the project and recommendations for improvement.

3. Calculations of GHG emission reductions and other environmental benefits from installation and usage of EV charging infrastructure.

4. Recommendations for future project including operational improvements and considerations associated with the changing EV market.

5. Other elements as mutually determined and codified by an amendment revising this Section 6.3 of the Scope of Services.

6.4. Invoicing

(a) CONTRACTOR will periodically prepare an invoice for the advancement of funds designated for the Incentive Payments, based on the projected need. CONTRACTOR shall keep the funds in an interest-bearing account. The interest earned shall only be used for this Agreement upon written approval from SVCE.

7. PROJECT REPRESENTATIVES

7.1. CONTRACTOR’s Project Representative shall be Andy Hoskinson.

7.2. SVCE’s Project Representative shall be Aimee Bailey.

8. ACCOUNT AND FUNDS MANAGEMENT

8.1. CONTRACTOR shall deposit and maintain separate accounts for CEC Funds available for funding Incentive Payments (the “CEC Account”) and Client Funds available for funding Incentive Payments (the “SVCE Account”). The CEC Account and SVCE Account are collectively referred to as the “Incentive Funds Accounts”.

8.2. Except for the Services Fee, CONTRACTOR shall utilize the funds in the SVCE Account (Client Funds) solely for the payment of eligible Incentive Payments claims submitted by SVCE customers.
and in accordance with other requirements applicable to the Silicon Valley Clean Energy Incentive Project. The requirements for a person or business to be deemed to be a SVCE customer shall be set forth in the Project design that will be established pursuant to Section 1.2.(a)(vii) of the Scope of Services.

8.3. CONTRACTOR shall inform SVCE within five business days after the end of each calendar month the amount of Funds in the SVCE Account and the CEC Account.

8.4. On an as needed basis, CONTRACTOR shall provide to SVCE a written request for funding from Client Funds (a “Funding Request”) to the SVCE Account, and SVCE shall endeavor to promptly, but no later than 180 days after receipt of a Funding Request, send funds to the SVCE Account in the amount requested in the Funding Request; provided that SVCE is under no obligation to fund amounts that would result in funding to the SVCE Account an aggregate amount greater than the agreed to monies intended to be used to fund Incentive Payments.

8.5. If an Incentive Payments applicant meets the CEC’s eligibility requirements but not the eligibility requirements of the Silicon Valley Clean Energy Incentive Project, CONTRACTOR may only select the applicant to receive Incentive Payments if: (a) the application is for Incentive Payments for a DC Fast Charger; and (b) the applicant is within SVCE’s service territory. Incentive Payments to such an applicant may only be made from the CEC Account. CONTRACTOR will monitor the value of Incentive Payments made to applicants only meeting CEC’s eligibility requirements and inform SVCE through the monthly progress reporting.
Exhibit B

Payment Terms

SVCE shall compensate CONTRACTOR 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 only exception to calculation of costs based on hourly rates shall be a one-time payment of $22,750 to CONTRACTOR for a License Fee. The License Fee shall be used to cover the incremental increase of users (applicants and prospective applicants) to the CALeVIP incentive processing system, as included within the CSE Software, as a result of the incentives offered from SVCE’s financial commitment. The License Fee shall be paid to the CONTRACTOR within 30 days upon receipt of CONTRACTOR invoice, which will follow official public launch of the Peninsula-Silicon Valley Incentive Project.

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 four hundred and twenty thousand dollars ($420,000), as set forth below and including the License Fee. 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 SVCE unless previously approved in writing by SVCE.

Summary of Tasks

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<td>2. Development and Configuration of Incentive Processing Website</td>
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Invoices

Monthly Invoicing: In order to request payment, CONTRACTOR shall submit monthly invoices to SVCE 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 SVCE.

Additional Services

CONTRACTOR shall provide additional services outside of the services identified in Exhibit A (such as work to support SVCE’s independent evaluation, measurement and verification efforts) only by advance written authorization from SVCE’s Chief Executive Officer prior to commencement of any additional services. CONTRACTOR 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.
Item 1e: Approve and Authorize the Chief Executive Officer to Execute an Amended and Restated Engagement Letter with Hall Energy Law PC for Legal Services Related to SVCE’s Energy and Capacity Transaction Needs and Long-term Power Purchase Agreements Not-to-Exceed $300,000 for a Three-Year Term

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources

Date: 1/8/2020

RECOMMENDATION
Authorize the Chief Executive Officer to execute the attached Amended and Restated Hall Energy Law PC Engagement Letter (“Amended and Restated Agreement”) for legal representation related to energy and capacity transactions and negotiations and implementation of long-term Power Purchase Agreements on behalf of Silicon Valley Clean Energy Authority in an amount Not-to-Exceed (“NTE”) $300,000 for a three-year term from the effective date.

BACKGROUND
Starting in 2017 SVCE retained the law firm of Troutman Sanders LLP, for legal support services including review, development and negotiations of power supply contracts to meet SVCE’s carbon-free goals and mandated RPS and resource adequacy needs. Stephen Hall was the primary attorney at Troutman Sanders assigned to SVCE.

Towards the end of 2018, Stephen Hall left Troutman Sanders and formed Hall Energy Law PC (“HEL”). Under the CEO’s signing authority, SVCE executed a three-year Engagement Letter Agreement with Hall Energy Law PC for legal support services effective January 14, 2019 through January 13, 2022 with an NTE amount of $100,000 (“Prior Agreement”). Subsequently, SVCE terminated its agreement with Troutman Sanders.

The Prior Agreement scope of work provides for legal support services for the three existing long-term renewable energy Power Purchase Agreements (PPA) executed in 2018; negotiation and development of new PPAs as a result of the April 2019 Monterey Bay Community Power and Silicon Valley Clean Energy Carbon-free Power Request for Offers (2019 Joint RFO); and various on-going power supply legal support to meet mandates and SVCE’s goals for hedging, Renewable Portfolio Standard (RPS), carbon-free and resource adequacy (RA) capacity. The full $100,000 NTE has been expended so no further work may be performed unless the NTE is increased.

ANALYSIS & DISCUSSION
SVCE staff rely exclusively on outside legal counsel for development, review and assistance in negotiating all power supply agreements. Stephen Hall has been SVCE’s primary attorney for all power supply agreements since 2017. Given Steve’s in depth understanding of SVCE’s needs and its existing power supply agreements, Hall Energy Law PC is very well suited to provide on-going legal support for power supply contracts and development of the new PPAs for resources selected through the 2019 Joint RFO.

Staff underestimated the amount of legal support needed over the next three years when assessing the scope of work and NTE for the existing HEL agreement. For starters, under the 2019 Joint RFO only four PPAs were
initially contemplated; however, to cover the likelihood of one or more existing and/or new PPAs having delays, six PPAs are now being negotiated. Second, two of the three PPAs executed in 2018 are slated for amendments not previously contemplated requiring extensive legal support. Lastly, staff did not adequately factor in the quantity and complexity of resource adequacy transactions necessary to be executed in 2019 to meet the California Public Utilities Commission’s (CPUC) program requirements, which included a new three-year procurement mandate; disaggregation of local resource adequacy into seven instead of six areas; and several last minute regulation changes to the RA program rules for import and demand response RA. All these factors contributed to staff expending the full NTE of a three-year contract in the first year.

Outside legal support is still needed for on-going contract negotiations for both existing and new long-term renewable energy PPAs and the various short-term energy and capacity transactions needed to meet programmatic and compliance needs. Staff expects the amount of legal support needed in 2019 is a good indicator of the amount of legal services to expect on an annual basis going forward.

HEL continues to be the law firm which can best provide legal support for power supply contracts and negotiations given Steve Hall’s extensive knowledge of SVCE’s needs, understanding of all SVCE’s existing supply contracts and relevant experience in negotiating PPAs on SVCE’s behalf. The proposed Amended and Restated Agreement, increases the NTE to from $100,000 to $300,000, provides slight modifications to the scope of work and reflects the effective date to be the actual date of execution.

STRATEGIC PLAN
The recommendation supports the Power Supply goals of the strategic plan.

ALTERNATIVE
Staff does not feel there is a prudent alternative than to continue using Hall Energy Law PC to complete negotiations for the five remaining PPAs and provide on-going legal support for power supply contracts.

FISCAL IMPACT
Enough funds have been budgeted for legal support services as part of the current fiscal year. Appropriations of funds through the term of the Amended and Restated Agreement will be requested in upcoming budgets.

ATTACHMENTS
1. Amended and Restated Engagement Letter for Hall Energy Law PC Representation of Silicon Valley Clean Energy Authority
2. Existing Engagement Letter for Hall Energy Law PC Representation of Silicon Valley Clean Energy Authority
December 18, 2019

VIA EMAIL

Silicon Valley Clean Energy Authority
Attention: Girish Balachandran
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Re: Amended and Restated Engagement Letter for Hall Energy Law PC
   Representation of Silicon Valley Clean Energy Authority

Dear Girish:

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

The Firm and SVCEA entered into an engagement letter dated January 14, 2019 (the “Prior Agreement”). Once fully executed, this amended and restated engagement letter (the “Agreement”) shall amend, replace and supersede in its entirety the Prior Agreement.

This Agreement sets forth the scope of our engagement, the financial terms of our engagement, and all other aspects of this engagement, as follows:

1. **Scope of Engagement.** By means of this Agreement, SVCEA is engaging the Firm to continue to provide the following legal services: SVCEA’s procurement of energy, renewable energy and related products, including the review, drafting, revision, negotiation, amendment, and finalization of (i) EEI Master Agreements and Cover Sheets, amendments to the WSPP agreement, confirmations and any supporting credit documentation such as parent guarantees and letters of credit (collectively, the “Energy Supply Agreements”), (ii) the deposit account control agreement, intercreditor and collateral agency agreement, and security agreement entered into by SVCEA in its 2016 Energy Services Request for Proposals (the “Lockbox Agreements”), (iii) development of a Coordinated Operations Agreement (“COA”) for administration and implementation of long-term power purchase and sale agreements (PPAs) acquired in the 2017 Joint RFO with Monterey Bay Community Power Authority, and continued support in connection with the PPAs already acquired, and additional negotiations, if any, arising from the 2017 Joint RFO (“2017 RFO Additional Follow-Up”), (iv) PPAs currently under negotiation in the 2019 Joint RFO with Monterey Bay Community Power Authority (“2019 Joint RFO”), and (v) procurement of additional renewable energy, resource adequacy, energy storage, and miscellaneous legal advice and analysis, including but not limited to, advice related to any potential bankruptcy by Pacific
Gas & Electric, or services related to any of the foregoing (“Other Services”). The legal services relating to the Energy Supply Agreements, the Lockbox Agreements, the 2017 RFO Additional Follow-Up, the 2019 Joint RFO, and the Other Services are collectively referred to below as the “Engagement.”

2. **Term.** The term of this Agreement shall commence on January 14, 2019 and will remain in full force and effect through January 13, 2022 (the “Term”), subject to termination by either SVCEA or the Firm by providing thirty (30) days’ written notice of its intent to terminate this Agreement, subject to payment of any amounts owed for services previously rendered and, if requested by SVCEA, completion of any partially completed projects.

3. **Fees and Hourly Rates.** Our billing practice is to charge for our legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals involved. These hourly rates are based upon these professionals’ experience, expertise, and standing. I will be the attorney responsible for the performance of the Engagement and my hourly rate for this work is $595/hr. Where appropriate, I may use junior attorneys on this Engagement and the hourly rates for their work would typically range from $375-$540/hr. These rates are modified by the Firm from time to time, and any new rates would be implemented on a prospective basis and would apply only to legal services rendered after the effective date of the new rates.

   The Firm and SVCEA agree that SVCEA will be responsible for only fifty-five percent (55%) of the total fees associated with the following portions of the Engagement: 2017 RFO Additional Follow-Up.

   The Firm and SVCEA agree that SVCEA will be responsible for only fifty percent (50%) of the total fees associated with the following portions of the Engagement: 2019 Joint RFO.

   The total amount of legal services for the Engagement for the Term shall not exceed three hundred thousand dollars ($300,000) (the “NTE Cap”) without prior written approval of SVCEA. SVCEA will not be responsible for any fees incurred in excess of the NTE Cap unless expressly authorized by SVCEA in writing. If additional legal services are required that extend beyond the NTE Cap, SVCEA and the Firm shall agree in writing to the scope and cost of such additional services.

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

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

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

5. **Monthly Statements and Payment Terms.** Our practice will be to send a monthly statement of our charges for legal services and for reimbursement of payments made on our client’s behalf for outside additional services. The detail in the monthly statement will inform you of the nature and progress of our work and of the charges and expenditures being incurred.

Unless otherwise agreed, each monthly statement is fully due and payable upon receipt, but in no event later than thirty (30) days after its issuance date.

We specifically reserve the right to withdraw from representation of you and to cease performing immediately all services if we do not receive full payment of any amounts owed to us within forty-five (45) days of any statement.

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

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

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

8. Document Storage Policies. The Firm’s policy with regard to documents and other materials at the conclusion of a matter is to maintain them in storage for a period of no more than ten (10) years. All documents and other materials in our file will then be destroyed or discarded without notice to you. Accordingly, if there are any documents or other materials you wish to have retrieved from your file at the conclusion of a matter, it will be necessary for you to advise us of that request to ensure that they are not destroyed.

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

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

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

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

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

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

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

I look forward to continuing to work with you and thank you once again for the opportunity to be of service.

Sincerely,
Stephen Hall
Principal

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

SILICON VALLEY CLEAN ENERGY AUTHORITY:

Dated: ________________, 2020

By: _______________________
Name: Girish Balachandran
Title: CEO
HALL ENERGY LAW PC

Stephen Hall | 503-477-9354 (O) | 503-313-0755 (M) | steve@hallenergylaw.com

January 11, 2019

VIA EMAIL

Silicon Valley Clean Energy Authority
Attention: Girish Balachandran
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Re: Hall Energy Law PC Representation of Silicon Valley Clean Energy Authority

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recording fees, messenger services, service of process, and court fees. When there are substantial expenditures involving vendors (such as for discovery management, document production, depositions, expert witnesses, exhibit preparation, or airfare) or substantial out-of-pocket expenditures (such as extended field expenses, large outside copying jobs, or jury fees), we will require either that you pay those sums to us before we expend them, that you provide an advance deposit for such expenditures, or that you directly contract with and pay the vendor. You will not be billed for any internal Firm costs incurred on your behalf, such as telephone (including long distance charges), telecopy charges, word processing, secretarial overtime, firm couriers, postage (including FedEx, UPS or similar overnight delivery services), printing and photocopying performed in-house.

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

Sincerely,
Stephen Hall
Principal

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

SILICON VALLEY CLEAN ENERGY AUTHORITY:

Dated: 1/1/19, 2019

By: [Signature]
Name: Girish Balachandran
Title: CEO
Staff Report – Item 1f

**Item 1f:** Receive Q4 2019 Decarbonization Programs Update

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

**Prepared by:** Aimee Bailey, Director of Decarbonization and Grid Innovation Programs

**Date:** 1/8/2020

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**RECOMMENDATION**

Staff recommends the Board accept the Q4 2019 Update of the Decarbonization Strategy & Programs Roadmap.

**BACKGROUND**

To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable and reliable electricity and innovative programs for the community, SVCE adopted Strategy 5.2 of the Strategic Plan, to establish an SVCE decarbonization strategy and programs roadmap (abbv. “Roadmap”). In December 2018, the Board approved the Roadmap, and since that time, staff have been working on implementation.

**ANALYSIS & DISCUSSION**

Attachment 1 is the fourth quarterly update since Roadmap adoption, covering October through December of 2019. The quarterly update includes bulleted highlights, a timeline of the status of the development of all programs in the portfolio, a budget summary, and a table with brief updates and next steps for each initiative.

There were no revisions to the program briefs this quarter. All current versions of program briefs can be found as an attachment to the Q2 2019 Update in the August board packet.

**STRATEGIC PLAN**

SVCE’s Strategic Plan Goal 5 is to work with the community to achieve energy and transportation GHG emissions reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030. This work is being carried out to support Strategy 5.2, which is to execute and maintain the Roadmap to achieve community-wide emissions reduction targets.

**ALTERNATIVE**

N/A

**FISCAL IMPACT**

Accepting the Q4 2019 Update of the Decarbonization Strategy & Programs Roadmap has no fiscal impact.

**ATTACHMENTS**

1. Decarbonization Strategy & Programs Roadmap – Q4 2019 Update
Decarbonization Strategy & Programs Roadmap
Q4 2019 Update
January 8, 2020 BOD Meeting

Highlights:

- **Regional Reach Code Effort:** With five member agencies having passed reach codes, SVCE & PCE, along with our consulting partners TRC and DNVGL, are working on implementation support starting January 2020. With growing engagement from developers and community stakeholders, SVCE provided even greater levels of information about the process, important dates, and commonly asked questions on our own website (svcleanenergy.org/reach-codes) as well as the regional one (siliconvalleyreachcodes.org). With the lawsuit filed in response to the Berkeley gas ban by the Restaurant Association, SVCE and PCE engaged the same legal team who originally wrote the process for a gas ban to provide a guidance document moving forward. That document is pending.

- **Supporting Local Resiliency:** SVCE joined forces with East Bay Clean Energy, Peninsula Clean Energy and the City of Santa Clara/Silicon Valley Power to release a joint solicitation for over 30MW of capacity from customer-sited storage and solar+storage systems. The program aims to help provide resiliency to approximately 6,000 homes and hundreds of businesses in Alameda, San Mateo, and Santa Clara counties, including those hit by recent Pacific Gas & Electric (PG&E) power shutoffs. The solicitation was issued on November 5, with a proposal due December 23. The program will target both residential and commercial buildings. Partner vendor(s) will be selected in early 2020, with the intent of announcing the program details in spring 2020, and projects to be underway soon after to preempt the next fire season.

- **Innovation Onramp:** On November 1, the second call for applications closed for Innovation Onramp, SVCE’s program to fund innovative pilot projects that address key technical, market and policy barriers to eliminating fossil fuel use. The focus of this application cycle was *innovative mobility solutions*. Thirty-one total applications were received, including 7 proposals offering creative solutions to catalyze EV charger deployment in multi-unit developments (MUDs), a historically challenging segment. Staff are currently finalizing the selection of up to five pilots by early 2020 to support transportation decarbonization across our communities.

- **Silicon Valley Transportation Electrification Clearinghouse:** In December, SVCE launched the Silicon Valley Transportation Electrification Clearinghouse (SVTEC) and held the first quarterly meeting. The SVTEC is a working group made up of member agencies, electric vehicle and charging companies, local employers and regional organizations – all focused on accelerating transportation electrification in our region by solving the critical issues and developing needed resources. Members help each other by sharing best practices and removing barriers, creating a supportive ecosystem for rapid electrification. SVCE enables this collaboration, solicits input on our programs, addresses key challenges identified by members and plans to leverage a professional grant writing firm to attract additional funding.
Figure: Timeline by program and quarter
<table>
<thead>
<tr>
<th>Sector</th>
<th>Program</th>
<th>Q4 Activities</th>
<th>Q1 2020 Outlook</th>
</tr>
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<tbody>
<tr>
<td>Power Supply</td>
<td>PS1: C&amp;I Clean Power Offerings</td>
<td>- Define and implement detailed pricing policy</td>
<td>- Develop financial proposal(s) and underlying analysis for presentation of</td>
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<td>- With key customers, continue to define/refine alternative offers, including</td>
<td>financial offer(s) to customers</td>
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<td></td>
<td>GreenPrime Direct (PPA Sleeve), and Electrification Co-investment Program</td>
<td>- Further develop and finalize contract</td>
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<td>- Conduct meetings with additional eligible C&amp;I customers to further define</td>
<td>templates for Eco-Investment, and</td>
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<td>needs, alternative products of interest</td>
<td>GreenPrime Direct offerings</td>
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<td></td>
<td>- Develop detailed cost models to assess economics of current and alternative</td>
<td>- Model ideal SVCE supply portfolio(s) for minimizing carbon emissions on a</td>
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<td></td>
<td></td>
<td>customer offerings</td>
<td>24x7x365 basis</td>
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<td></td>
<td>- Delivery annual reports to key C&amp;I accounts, and outline of alternative</td>
<td>- With key customers, continue to define/refine alternative offers, including</td>
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<td></td>
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<td>offerings</td>
<td>GreenPrime Direct (PPA Sleeve), and Electrification Co-investment Program</td>
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<td></td>
<td></td>
<td>- Begin drafting of contract agreement templates for Eco-Investment and</td>
<td>- Finalize pilot agreement(s)</td>
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<td></td>
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<td>GreenPrime Direct</td>
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<tr>
<td>Built Environment</td>
<td>BE1: Reach Codes</td>
<td>- 5 cities have passed Reach Codes</td>
<td>- Continue to support stakeholder</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- All but one member agency still actively engaged</td>
<td>engagement meetings held by the cities and to participate in City Council</td>
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<td></td>
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<td>- Posted all tools, presentations, etc., at SiliconValleyReachCodes.org</td>
<td>sessions</td>
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<td></td>
<td></td>
<td>- Continue to support stakeholder</td>
<td>- Support post-implementation</td>
</tr>
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<td></td>
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<td>engagement meetings held by the cities and to participate in City Council</td>
<td>tool/training development for city staff</td>
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<td></td>
<td></td>
<td>sessions</td>
<td></td>
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<tr>
<td></td>
<td>BE2: All-Electric Showcase Grants</td>
<td>- All residential project profiles are complete and available on the SVCE</td>
<td>- Begin conceptualizing program design for phase two and evaluate impact</td>
</tr>
<tr>
<td>Built Environment</td>
<td></td>
<td>website:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="https://www.svcleanenergy.org/all-electric-award/">https://www.svcleanenergy.org/all-electric-award/</a></td>
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<td></td>
<td></td>
<td>- Continuing to promote profiles on social media</td>
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<td></td>
<td></td>
<td>- Completing commercial profiles by end of quarter</td>
<td></td>
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</tbody>
</table>
### BE3: FutureFit Heat Pump Water Heaters
Provide incentives for electric heat pump water heaters and service panel upgrades to residents using natural gas currently

- 42 systems installed and operational
- 5 CARE/FERA reservations available, all others on a Waiting list
- SMUD managing customer inquiries and reservations
- Worked with consultant ADM to completed evaluation, measurement and verification plan that will be carried out upon completion of the program

- Monitor participation and adjust outreach efforts accordingly
- Receive data from data partner on HPWH usage (kWh & time of day)
- Evaluate next steps (e.g. expand SVCE program, join regional effort, etc.)

### BE4: Workforce Development
Help build an industry-leading workforce that can accelerate decarbonization by advising on, installing, maintaining, and repairing low-carbon technologies

- Continued informational interviews and site visits with key stakeholders in the workforce development space, including organized labor, community workforce development centers, and nonprofits.
- Reviewed informational interview results thus far and brainstormed program structures in response
- Sought initial feedback from stakeholders on program ideas

- Conclude background interviews
- Provide update to Executive Committee and Board on preferred program structures
- Make final program structure selection and develop program implementation plan

### MO1: EV Infrastructure Strategy & Plan
Develop a near- to mid-term strategy for EV infrastructure and a set of program implementation plans

- Worked with CEC and their administrative consultant to discuss and finalize some requirements for the California Electric Vehicle Infrastructure Project (CALeVIP)
- Worked with CEC and their administrative consultant on SVCE’s contract for participation in CALeVIP
- Formed the Silicon Valley Transportation Electrification Clearinghouse (SVTEC) and launched the first quarterly meeting
- Finalized the program design for the Regional Recognition Program
- Engaged member agencies for input on Priority Zones for the Priority Zone DC Fast Charging program, and began working through site selection criteria and final program design

- Work to launch the Regional Recognition and Priority Zone DC Fast Charging programs
- Finalize contract for participation in CALeVIP and hold public meetings on requirements
<table>
<thead>
<tr>
<th><strong>MO2: EVSE Incentive Program</strong></th>
<th>Incentivize EV charging infrastructure development to support various use cases</th>
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<tbody>
<tr>
<td></td>
<td>• Launched SVTEC and worked on finalizing program design for other priority programs</td>
</tr>
<tr>
<td></td>
<td>• On track for launch of remaining two priority programs</td>
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</tbody>
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<table>
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<tr>
<th><strong>GI1: Virtual Power Plant</strong></th>
<th>Support “virtual power plants” made up of cloud-based aggregations of customer-sited resources to support grid integration and monetize value from connected, controllable loads</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Selected and contracted with Camus Energy and E3 to carry out the DER/electrification assessment (approved in Decarb Roadmap) - results will underpin DERs assumptions in SVCE’s integrated resource plan, inform our VPP program approach, and guide broader Decarb Roadmap implementation</td>
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<td></td>
<td>• Completed initial phase of VPP valuation assessment with Ascend Analytics to guide VPP program design</td>
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<td></td>
<td>• Joined EBCE, PCE and Silicon Valley Power in the joint issuance of an RFP for over 30MW of resource adequacy from behind-the-meter solar and storage systems (aka “Resilience RFP”) – deadline for applications Dec 23, 2019</td>
</tr>
<tr>
<td></td>
<td>• Evaluate proposals from the Resilience RFP, select partners and bring contracts for resource adequacy forward for Board review and approval in spring 2020 – planned program launch in spring/summer 2020</td>
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<tr>
<td></td>
<td>• Complete DER/electrification assessment and VPP valuation assessment, to inform next steps with VPP program post-Resilience RFP</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th><strong>EO1: Customer Resource Center</strong></th>
<th>Develop customer resource center to enable engagement and awareness-building, education and action related to understanding energy usage, vehicle and building electrification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Concluded RFP for SVCE online Customer Resource Center (CRC) encompassing new SVCE website elements, and tools supporting electrification of mobility and built environment</td>
</tr>
<tr>
<td></td>
<td>• Conducted interviews and shortlisting of solution providers for CRC components</td>
</tr>
<tr>
<td></td>
<td>• Web design and marketing firm selected</td>
</tr>
<tr>
<td></td>
<td>• Finalizing negotiations and contracting for EV comparison tool, solar+storage concierge service and appliance marketplace</td>
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<td></td>
<td>• Begin work on strategic messaging for revamped SVCE website and build out of the CRC</td>
</tr>
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<td></td>
<td>• Implement solution provider tools into SVCE website</td>
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<td></td>
<td>• Develop marketing plan for CRC with expected launch in April 2020</td>
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</table>

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<thead>
<tr>
<th><strong>EO2: Community Engagement Grants</strong></th>
<th>Partner with local organizations in under-reached customer segments to promote SVCE accomplishments and programs</th>
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<tbody>
<tr>
<td></td>
<td>• Grant cycle concluded on Oct. 31; all 6 grantees submitted final reports</td>
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<td></td>
<td>• Total engagement with 3,024 customers from grantees for the 2019 cycle</td>
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<td>• Total reach was 308,534 from all promotional activities, including a Chinese broadcast radio station</td>
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<td></td>
<td>• Program evaluation is ongoing</td>
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<td></td>
<td>• Initiate design for 2020 grant cycle</td>
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<td></td>
<td>• Future launch date TBD, likely to be in summer 2020</td>
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<td>IN1: Innovation Partners</td>
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<td>--------------------------</td>
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<tr>
<td><strong>Engage with key strategic partners to participate in the local innovation ecosystem and provide a voice for SVCE customers and the decarb mission</strong></td>
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<tr>
<td>• Carry out preparations with Powerhouse for the first SVCE organized hackathon called GridShift, scheduled for Jan 31-Feb 1, 2020</td>
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<tr>
<td>• Finalized sponsorship from regional peers for the SVCE hackathon - sponsors include San Jose Clean Energy, Peninsula Clean Energy, Palo Alto Utilities and East Bay Clean Energy</td>
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<tr>
<td>• Support and mentor Stanford ME170 students (Stanford’s mechanical engineering undergraduate capstone course) for SVCE-sponsored projects for 2019/2020 academic year</td>
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<tr>
<td>• Finish preparations for SVCE’s GridShift hackathon, scheduled for Jan 31-Feb 1, 2020</td>
<td></td>
</tr>
<tr>
<td>• Continue support and mentorship for Stanford ME170 students for SVCE-sponsored projects</td>
<td></td>
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<tr>
<td>• Seek external stakeholder input on initial draft “innovation strategy” developed to supplement the Decarb Roadmap in guiding SVCE’s innovation activities</td>
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<table>
<thead>
<tr>
<th>IN2: Innovation Onramp</th>
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<tbody>
<tr>
<td><strong>Provide small grants to support innovation through pilot projects with external partners</strong></td>
</tr>
<tr>
<td>• Complete partnership agreements and launch pilots with first cohort of pilots from Spring 2019 application cycle</td>
</tr>
<tr>
<td>• Ongoing management of first cohort of pilots</td>
</tr>
<tr>
<td>• Evaluate responses to the second call for applications that closed Nov 1, 2019, with a focus on innovative mobility solutions</td>
</tr>
<tr>
<td>• Selected second cohort of pilots</td>
</tr>
<tr>
<td>• Negotiate, finalize and execute partnership agreements for second cohort of pilots</td>
</tr>
<tr>
<td>• Prepare for third call for applications for Spring 2019</td>
</tr>
<tr>
<td>• Ongoing management of pilots</td>
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</table>
Item 1g: Adopt Resolution to Approve Allocation of Additional $500,000 for FY2020 and Approve Associated Program Brief to Extend the FutureFit Heat Pump Water Heater Program with Modifications

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation
                John Supp, Manager of Account Services

Date: 1/8/2020

RECOMMENDATION
Staff recommends the Board adopt Resolution No. 2020-01 (Attachment 1) to approve the budget request totaling $500,000 for FY2020 and associated program brief (Attachment 2) for extending the FutureFit Heat Pump Water Heater program with modifications.

BACKGROUND
To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable and reliable electricity and innovative programs for the community, Silicon Valley Clean Energy (SVCE) adopted Strategy 5.2 of the Strategic Plan, to establish an SVCE decarbonization strategy and programs roadmap (abbv. “Roadmap”). In December 2018, the Board approved the Roadmap and an initial $6M budget to begin implementation. Additional budget requests were approved in February 2019 for electric vehicle service equipment (EVSE) incentives and in April 2019 for workforce development and training activities.

The FutureFit Heat Pump Water Heater program was identified in the Roadmap as a 2019 priority program. The total budget for the program is $650,000, which includes $325,000 of Board-approved program funds and 1-to-1 matching funds from the Bay Area Air Quality Management District (BAAQMD) Climate Protection Grant.

The FutureFit HPWH program launched in June 2019 on our website, followed by four community meetings (Morgan Hill, Milpitas, Mountain View, and Campbell), and a general mention of SVCE programs on the SVCE section of the utility bill. We had two written outreach efforts – a short description of the pending program was included in our annual letter to solar customers and an email/letter campaign was directed to CARE/FERA customers once the program launched. SMUD was contracted to support program administration duties and continues to perform application processing and customer inquiries.

More information on the FutureFit HPWH program including detailed program statistics can be found at the following website: https://www.svcleanenergy.org/water-heating/.

ANALYSIS & DISCUSSION
Key Results from the FutureFit HPWH Co-Funded with BAAQMD
Interest appears high for our community to reduce fossil fuel usage for water heating. Without a lot of outreach, the program has filled 95 reservation spots (5 of the 10 dedicated to low-income customers are still open) of the total 100 budgeted. We are specifically engaging CARE/FERA customers via email, mail, and outreach for the final five spots.
As predicted in our original design, the retrofit heat pump water heater market is growing quite slowly given three major areas – cost to install the unit itself, identifying competent contractors, and outdated/undersized electrical service panels. The incentive amount provided for both the unit and optional service panel upgrade (33% of completed projects) appear to make the overall price cost competitive with a natural gas water heater replacement as intended. By working with BayREN to highlight contractors with specific HPWH experience within their contractor finder tool and by publishing the contractor name (and price) on our website for all completed projects, the early concerns of who could do the work have subsided.

Proposed Extension
Given the expansion of fuel-switching capabilities for Investor Owned Utilities (IOUs), the pending inclusion of HPWH within the statewide Self-Generation Incentive Program (SGIP), and the current market momentum, SVCE staff recommends continuing the retrofit HPWH program with modifications through fiscal year 2020 until there is more clarity in the overall HPWH marketplace. This bridge program allows for some market continuity both for the customers and contractors who are invested in this marketplace in preparation for a local, regional, or statewide effort.

Proposed modifications include reducing administrative burden and incentive levels by incenting only wifi-enabled HPWH units to ensure compatibility with our pending Virtual Power Plant (VPP) initiative, establishing the unit incentive at $2,000 (no adders for monitoring, mixing valves, or wifi-connectivity), reducing the service panel upgrade from $2,500 to $1,500, and eliminating the mandatory data monitoring.

<table>
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<tr>
<th>Performance Package</th>
<th>Current</th>
<th>Proposed</th>
<th>Notes</th>
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<tbody>
<tr>
<td></td>
<td>$2,000</td>
<td>n/a</td>
<td>Dropped - not VPP compatible</td>
</tr>
<tr>
<td>Smart Performance</td>
<td>$3,500</td>
<td>$2,000</td>
<td>VPP compatible</td>
</tr>
<tr>
<td>Service Panel Upgrade</td>
<td>$2,500</td>
<td>$1,500</td>
<td>Remove 200A cap</td>
</tr>
<tr>
<td>CARE/FERA customer</td>
<td>$1,500</td>
<td>$1,500</td>
<td>No change</td>
</tr>
<tr>
<td>Data Monitoring</td>
<td>$ 300</td>
<td>n/a</td>
<td>Not required outside of BAAQMD grant</td>
</tr>
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</table>

STRATEGIC PLAN
The proposal supports SVCE’s Strategic Plan Goal 5, which is to work with the community to achieve energy and transportation GHG emissions reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030. The proposal also supports specifically Strategy 5.3 to develop and conduct SVCE programs that promote decarbonization via grid innovation and fuel switching.

ALTERNATIVES
There are two primary alternatives.

1. *Continue the program without modification*. Staff does not recommend this option because the existing program contains aspects that were important for our initial grant design and not necessary beyond that point to establish a healthy retrofit market. Now that we have seen almost 100 contracts, installation configurations, and hundreds of photos to help SVCE develop our understanding of the market, those soft costs of participation can be reduced, lowering both the customer and SVCE administrative burdens. Further, considering the overwhelming interest in the higher incentive and higher cost Smart Performance package (92% of installed projects to date), SVCE may have established an incentive higher than necessary for market participation.

2. *Sunset the program after existing budget is expended*. Staff does not recommend this option because other statewide efforts to support HPWH are not quite ready. Having generated both customer and contractor interests in this fledgling market, sunsetting this program without any other continuity effort has the effect of whipsawing the market. Having incentives for a short duration, sunsetting, then later
re-establishing them increases market uncertainty via a feast/famine cycle of short-term incentives rather than a gradual decline of incentives.

**FISCAL IMPACT**

Figure 1 shows existing and proposed funding commitments for programs including this budget request of $500k for FY20. The figure also includes a band representing the total programs budget approved by the Board through the budgeting process of 2% of annual operating revenues, which is approximately $5-5.5M annually. As shown in the figure, program commitments collectively remain within the Board-approved programs budget.

![Programs budget by program area and fiscal year](image)

**ATTACHMENTS**

1. Resolution 2020-01 to approve the budget request totaling $500,000 for FY20 for the FutureFit HPWH program extension with modifications
2. Program Brief for FutureFit HPWH Program Extension with Modifications
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2020-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING INCREASING THE FUTUREFIT HEAT PUMP WATER HEATER PROGRAM BUDGET

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

WHEREAS, the Board adopted 2021, 2025 and 2030 greenhouse gas emissions reduction targets; and

WHEREAS, the Board adopted the Decarbonization Strategy and Programs Roadmap and initial budget for the implementation of decarbonization programs pursuant to the Roadmap on December 12, 2018 by Resolution No. 2018-20; and

WHEREAS, Resolution 2018-20 included an initial budget of $150,000 in Fiscal Year 2019 and $175,000 in Fiscal year 2020 for the FutureFit Heat Pump Water Heater Program; and

WHEREAS, SVCE staff has returned to the Board with additional budget requests as decarbonization programs are developed consistent with the SVCE Decarbonization Strategy & Programs Roadmap;

WHEREAS, the Board amended the initial budget for approving an allocation of $8 million for the electric vehicle service equipment (EVSE) incentive program for activities starting in Fiscal Year 2020 and running through Fiscal Year 2023 by Resolution No. 2019-02; and

WHEREAS, the Board amended the amended budget for approving an allocation of $200,000 for workforce development and training activities starting in Fiscal Year 2019 and running through Fiscal Year 2020 by Resolution No. 2019-07; and

WHEREAS, the Board desires to allocate an additional $500,000 for the extension of the FutureFit Heat in Fiscal Year 2020.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby amend the budget for decarbonization programs adopted by Resolution No. 2018-20 and amended by Resolution Nos. 2019-02 and No. 2019-07.
by approving the allocation of an additional $500,000 to the FutureFit Heat Pump Water Heater program budget in Fiscal Year 2020.

PASSED AND ADOPTED this 8th day of January, 2020, by the following vote:

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<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<td>City of Campbell</td>
<td>Director Gibbons</td>
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<td>City of Cupertino</td>
<td>Director Sinks</td>
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<td>City of Gilroy</td>
<td>Director Tovar</td>
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<td>City of Los Altos</td>
<td>Director Fligor</td>
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<td>Town of Los Altos Hills</td>
<td>Director Corrigan</td>
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<td>Town of Los Gatos</td>
<td>Director Rennie</td>
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<td>City of Milpitas</td>
<td>Director Montano</td>
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<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
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<td>Director Abe-Koga</td>
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<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
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<td>City of Saratoga</td>
<td>Director Miller</td>
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<td>City of Sunnyvale</td>
<td>Director Smith</td>
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__________________________________________
Chair

ATTEST:

__________________________________________
Andrea Pizano, Board Secretary
SVCE Program Brief – Heat Pump Water Heaters (BE2)
January 8, 2020

Summary
Continue modified heat pump water heater incentive initiative through fiscal year 2020 as regional and statewide support materializes. Simplify participation requirements from earlier pilot, adjust incentives downward, and expand target participants to help transition into a self-sustainable marketplace.

Key Challenges
• Limited supply available locally, limited contractor experience, potentially higher retrofit cost based on common home designs, lack of customer awareness, lack of clearly quantified economic and non-economic benefits, no clear leaders in proactive sales in water heater market

Goals
• Install 150 residential HPWHs to replace existing natural gas water heaters, each with data loggers
  o 135 market rate, 15 CARE/FERA
• Upgrade 50 electrical service panels to support future whole-home electrification
• Showcase economic benefits derived from HPWH/BAAQMD pilot to bolster market interest

Program Approach
General
• Incentive = $2000 for HPWH
• Incentive = $1,500 for Service Panel upgrade (only if existing service panel is less than 200A)
• Incentive adder for CARE/FERA customers = $1,500

Target Participants
• Single family and multi-tenant buildings

Participation Criteria
• Existing buildings utilizing natural gas water heaters
• CARE/FERA enrollment required for 15 installations using the CARE/FERA adder
• SVCE enrollment required for all installations

Program Evaluation, Measurement & Verification Plan
• Current rate of adoption of HPWH during remodels, rate during, rate after initiative window.

Third-Party Support
• BayREN providing Contractor list
• SMUD providing Program Administration support
• ADM providing Evaluation, Measurement, and Valuation (EM&V) service

Resources
• SVCE = $500,000 in FY2020
  SVCE  $425,000 for Incentives
  SMUD  $ 65,000 for Administration
  ADM   $ 10,000 for EM&V

Staff Support
• 0.25 FTE in FY2020

Timeline
• February 2020 Launch
• Fall 2020 Rampdown/Sunset

Program Sector & Activity Type

<table>
<thead>
<tr>
<th>Sector(s)</th>
<th>Activity Type(s)</th>
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<tbody>
<tr>
<td>Built Environment</td>
<td>Public Policy</td>
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</table>

Leverage

Partnerships
Continue working with BayREN on training opportunities and contractor identification. Expand messaging of HPWH though our Community Engagement grant participants.

Innovation
Including the service panel upgrade simultaneously reduces the first cost barrier and provides a prepared target market for future all-electric initiatives.

Data
Leverage data collection metrics from HPWH/BAAQMD pilot to establish estimated performance and impact figures for this initiative. Publish installation contractor and pricing to assist market transformation.
Prioritization Criteria

Electric Heat Pump Water Heaters provide improved safety and air quality improvements. Further, leveraging time-of-use rates, HPWHs can provide ongoing bill savings.

Each HPWH expects to reduce 1 MT CO2e per unit annually with an expected useful life of 15 years. HPWH typically constitute 40-45% of a home’s GHG emissions.

The matching of optimal building characteristics with time-of-use rates already provides a similar cost-effectiveness to natural gas water heater retrofits. Leveraging data and the reduced installation costs form the foundation for future financing and market transformative models beyond incentives.

Improvements in air quality and safety typically are more impactful to the disadvantaged community. Specifically, 15 units are allocated to CARE/FERA customers during this program window. Increasing contractor experience and product supply reduces everyone’s cost to decarbonize.

Identifying and sharing improvements with and between member agencies. Also, SVCE’s role as a regional facilitator enables a larger economy of scale than our member agencies working on this market in a fragmented fashion.
Staff Report – Item 1h

Item 1h: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

No report as the Executive Committee has not met since November 22, 2019. The next meeting of the group is scheduled for January 31, 2020, 9:00 a.m., at the SVCE Office.
Staff Report – Item 1i

Item 1i: Legislative Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

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

Item 1j: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

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.
No report as the Audit Committee has not met since December 4, 2019. The next meeting of the group is scheduled for January 27, 2020, 1:00 p.m., at the SVCE Office.
Staff Report – Item 2

Item 2: Receive Lobbyist Update

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

This item will be provided as a presentation to the Board from SVCE lobbyist Steve Baker of Aaron Read & Associates.
Staff Report – Item 3

Item 3: Climate Youth Ambassador Program Recap

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

This item will be provided as a presentation to the Board from Kaushik Tota, Climate Youth Ambassador.
Staff Report – Item 4

Item 4: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 1/8/2020

REPORT

SVCE Staff Update
Freya Chay joined SVCE on January 6th as a Decarb & Grid Innovation Analyst Intern. She will be working on equity and access, resilience, and building decarbonization policy and program design. Freya holds an M.S. in Earth Systems and a B.S. in Computer Science from Stanford University. The most meaningful projects she's worked on over the last several years include teaching climate science, cultivating a more complex understanding of California's energy and climate policies, and collaborating on projects to positively position her home state of Alaska with respect to the coming decades' promised changes.

Customer Resource Center Contracts Update
Staff is currently negotiating software agreements with two solution providers for the SVCE online Customer Resource Center (CRC). The first is for a solar+storage concierge service that offers a comprehensive suite of educational materials about solar and storage, and connects customers to receive quotes from local installers. The approximate two-year contract amount is forty-five thousand ($45,000).

The second agreement is for an EV education and comparison tool, for ninety-five thousand ($95,000) for two years, through 2021. The solution will offer ways for customers to compare EVs with traditional internal combustion vehicles and to locate available EVs at regional dealerships.

The CEO intends to sign the two software agreement contracts for the CRC in January.

Separately, staff plans to bring a contract for an appliance marketplace solution to the board at the Feb. 12 meeting.

Civic Education Training Program
Staff is working with a consultant (Bruce Karney) to finalize a proposal for a ‘Civic Education Training Program’ for local high school students. The program would aim to help students acquire and demonstrate the skills needed to effectively advocate a local level (e.g. city, county, special district) on issues they care deeply about. As currently envisioned, training content would focus on environmental and sustainability-related issues as examples. Three levels of training would be developed, ranging from 2 hours of self-study at the lowest level to 10-18 hours of study and instructor-led training at the higher levels. Staff is also reviewing recommendations related to organization, roll-out, roles, staffing and budgetary requirements. When complete in January, the proposal will be presented to the Executive Committee for initial review.

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

1) SAE Communications: Presentation training; not to exceed $6,750
2) MRG: Organizational Team Training Services; not to exceed $19,230
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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<tr>
<th>Counter Party Name</th>
<th>Execution Date</th>
<th>Transaction Type</th>
<th>Product</th>
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<td>11/30/2020</td>
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These agreements are included in the Board packet as Appendix A.

Presentations & Relevant Meetings Attended by CEO
- Participated in weekly PG&E Restructuring Steering Committee calls
- Met with Joint Venture Silicon Valley with SJCE and PCE CEOs to discuss regional decarbonization efforts
- Met with Assemblymember Ash Kalra and Assemblymember Marc Berman with SVCE Directors to discuss SVCE matters

ATTACHMENTS
1. Decarb & Grid Innovation Programs Update, January 2020
2. Account Services & Community Relations Update, January 2020
3. Regulatory and Legislative Update, January 2020
4. Agenda Planning Document, January – April 2020
Decarb & Grid Innovation Programs Update

January 2020
1. Reach Code Initiative (1 of 2)

- **Five cities have adopted Reach Codes** – Morgan Hill, Mountain View, Milpitas, Saratoga, and Monte Sereno.

- **One more has approved at 1st Readings** – Los Gatos

- **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
1. Reach Code Initiative (2 of 2)

Communities are Evaluating Reach Codes

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>Status</th>
<th>Next Meeting</th>
<th>Date of Next Meeting</th>
<th>Code Language</th>
<th>Building Reach</th>
<th>EV Reach</th>
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<td>Jan. 21</td>
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<td>Gilroy</td>
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</table>

Key

**Status**
- Approved
- 2nd Reading
- 1st Reading
- Staff Proposal
- Council Briefing

**Building Reach**
1. All-electric buildings
2. Mixed fuel has higher requirements
2A. Mostly electric/electric heating only

<sup>1</sup>Reach code proposes wiring all homes for electric appliances and battery storage
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
  - **42 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
- Proposed FutureFit HPWH program extension on consent calendar

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<td>Heat Pump Water Heater Only</td>
<td>$2,000</td>
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<tr>
<td>Data Monitor</td>
<td>$300</td>
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<table>
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<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** was 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 1\(^{st}\) - **29 applications received**
- Staff currently finalizing pilot selection and will soon notify awardees
4. Innovation Programs (2 of 2)

- SVCE partnered with Powerhouse to organize **GridShift**, an SVCE-organized hackathon
- Date: Jan 31-Feb 1
- Location: Google Launchpad
- Event sponsored by EBCE, SJCE, PCE, and Palo Alto Utilities
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
- Staff currently carrying out review
- **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 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

• SVCE provided input on a research proposal to the Sloan Foundation on the **impact of CCAs on renewables deployment**, led by Missouri University of Science & Technology and National Renewable Energy Laboratory. Award decision anticipated Spring 2020.
SVCE took electrification information to customers this month through presenting to many different audiences. SVCE showed how cool induction cooking is with a hot chocolate cooking demonstration on an induction cooktop as well as introduced electric vehicle infrastructure plans to local multifamily property owners.

Past and upcoming events:

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<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
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</thead>
<tbody>
<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 - presentation</td>
<td>Mountain View City Hall</td>
</tr>
<tr>
<td>Jan. 11</td>
<td>12 – 5 PM</td>
<td>Robots on Ice at the Sunnyvale Winter Ice Rink - tabling</td>
<td>Downtown Sunnyvale</td>
</tr>
<tr>
<td>Jan. 22</td>
<td>7 – 9 PM</td>
<td>2020 Stanford Energy Club Networking Night - tabling</td>
<td>Stanford Campus</td>
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## 2. Customer Participation

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<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
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<tbody>
<tr>
<td>Residential</td>
<td>96.04%</td>
<td>96.08%</td>
</tr>
<tr>
<td>Commercial</td>
<td>96.47%</td>
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</table>
4. Member Agency Working Group Update

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

• SVCE Updates
  o Gridshift Hackathon

• SVCE Initiatives
  o Reach Code Updates
  o Heat Pump Water Heater Updates
  o Virtual Power Plant and Resiliency
  o Silicon Valley Transportation Electrification Clearinghouse (SV-TEC)
5. Community Engagement

Taking Charge Podcast

• SVCE launched an original podcast series that is taking a deep dive into the electric grid to better understand the unseen processes that power our lives.
• The first episode was released Dec. 20, 2019 and is available at: https://www.svcleanenergy.org/takingcharge/
• The podcast is a project of Climate Corps Fellow, Lauren Goldfarb.

DIY Energy Savings Toolkits

• SVCE is continuing the DIY Energy Savings Toolkits, previously administered by Silicon Valley Energy Watch/City of San Jose, for all libraries in our service area.
• The toolkits help customers identify and fix energy waste to improve efficiency and comfort for their homes and save on energy bills.
• Residents can check out the toolkits for free at local libraries. More info: svcleanenergy.org/diy-toolkits/
6. Media

Latest SVCE News

• Milpitas City Council Votes to Protect Air Quality for Future Generations with Clean Buildings, Press Release, 12-05-2019

• SV Clean Energy Offers New $80,000 Education Fund for Student Climate Projects, Press Release, 12-17-2019

Media Mentions

• SVCE Education Fund, The Mercury News, 01-03-2020
SVCE Regulatory and Legislative Update
January 2020
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.** Nothing new to report here. The additional 67.2 MW of capacity that SVCE needs to procure has been incorporated into our procurement operations and decision-making, including the selection process for the Power Purchase Agreements that will come before the Board for approval in 2020.

2) **2020 Reference System Plan.** CalCCA submitted comments on the Draft Reference System Plan (DRSP) on 12/17. Our comments critiqued both the modeling behind the DSRP and the CPUC’s interpretation of the results, as many of 2019’s most talked-about regulatory narratives made an appearance in the DSRP materials. For example, the Commission’s concern about the availability of imported resources, addressed this year in the new restrictions on imported RA and the procurement track of this proceeding, manifested in the DSRP as a hard-coded limit on imports that CalCCA argues is unnecessary given the provisions for resource retirement already included in the model. The comments also address the treatment of battery storage, proposing more geographically and temporally granular modeling to provide better information on the locations and durations at which storage will be most valuable in the future. Reply comments are due 1/6/2020.

3) **Internal development of SVCE’s 2020 IRP.** We continue to work with Ascend Analytics on modeling SVCE’s IRP portfolios. We still need one important piece from the CPUC: the 2020 versions of the resource templates and GHG calculator that are the core IRP compliance materials we must submit to the CPUC. The CPUC forecasts releasing those by the end of 2019.

**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 original schedule for this proceeding called for the CPUC to release and vote on a Proposed Decision addressing the settlement and the central buyer structure more broadly by the end of 2019. However, we are still waiting for the Proposed Decision, so the original timeline is no longer valid and we have yet to receive updates on its intended release date.

2) **2020 Year-Ahead RA Compliance Filing and Waivers.** No updates here. 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.** Following the 10/10/19 Decision, Working Group 1 is still on 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.** Having concluded workshops and other opportunities for stakeholder input, Working Group 2 submitted a final report to the CPUC on 12/11/19. The report proposed several methods by which CCAs and ESPs could potentially prepay their portions of the PCIA, and highlights areas where the working group co-leads agreed and disagreed. Comments and reply comments on the report are due Jan 6 and Jan 13, and a Decision from the CPUC on prepayment is expected at the end of Q1 2020.

3) **Working Group 3: Portfolio Optimization.** This working group is developing 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) beginning in 2021, with an interim proposal for distributing GHG-free resources in 2020. The last workshop for Working Group 3 issues was held on 12/11 at the CPUC. After informal comments on the workshop presentation, a final draft is due Jan 20th and a final report is due Jan 30 to the CPUC. A final Decision from the Commission on these proposals is expected in Q2 2020 and effective 2021.

Regarding the interim 2020 allocation of GHG-free resources, 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. The final AB 1110 regulations passed by the California Energy Commission on 12/11 will allow LSEs to count these allocations on their power content labels (PCLs), with the exception of allocations made prior to CPUC approval of PG&E’s advice letter.

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 had until 12/11/19 to negotiate with the settling parties and decided to decline joining the settlement coalition. A settlement motion will be filed 12/20/19 with comments due 1/21/20 and replies due 2/5/20. Opening briefs on disputed issues are due 1/6/20 and replies are due 1/27/20. A final decision on the settlement and disputed issues in the GRC phase 1 are expected March 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. SVCE is evaluating regulatory engagement in Phase 2. Protests to the Application are due 1/6/20.

In the ERRA forecast proceeding, there has been no new information since PG&E issued its final 2020 PCIA forecast on 11/8. SVCE staff discussed the steep forecasted PCIA increases with the Board at the December Board meeting. Since then, the Joint CCAs met with CPUC staff to discuss these PCIA
increases on 12/18 and had an ex parte meeting with Commissioner Guzman Aceves’s advisor on 12/20. A final decision is expected in February 2020, with the new rates expected to become effective 3/1/2020.

**Direct Access (“DA”; R.19-03-009)**

CPUC staff scheduled a workshop on 1/8/20 and a ruling is expected in advance. SVCE is leading the CalCCA efforts in this proceeding and expects to actively participate in the development of the workshop agenda and provide analysis on the impacts to CCAs on direct access expansion. The study is currently due to the legislature on June 1, 2020.

**Legislative**

In the final weeks of recess, SVCE has met with the following members of our legislative delegation (or their staff) in preparation for the 2020 session:

Assemblymember Marc Berman  
Assemblymember Evan Low  
Assemblymember Mark Stone  
Assemblymember Kansen Chu  
Assemblymember Ash Kalra

We will continue to meet with the remaining members of our delegation early in 2020, and schedule SVCE’s annual lobby day in Sacramento for later in the spring after all bills have been introduced. The 2020 legislative session begins on January 6, 2020.
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<td><strong>Board of Directors, April 8:</strong></td>
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<td>Receive Financial Audit Results</td>
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**Staff Report – Item 5**

**Item 5:** Elect a Chair and Vice Chair of the SVCE Board of Directors for 2020

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

---

**RECOMMENDATION**

Staff recommends that the Board elect a Chair and Vice Chair of the Silicon Valley Clean Energy Board of Directors to serve for 2020.

**BACKGROUND**

Section 4.11.1 of the SVCEA Joint Powers Agreement specifies that the Directors shall select, from among themselves, a Chair who shall be the presiding officer of all board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Agreement also specifies that the term of office continues for one year and there is no limit on the number of terms held by either office.

The Executive Committee received a proposed process and timeline at their October 25, 2019 meeting, which was then recommended and received at the Board at the November 13, 2019 Board meeting. The process and timeline included the following:
- November 13, 2019: Discussion of process and timeline with SVCE Board as part of the Regular Agenda;
- December 11, 2019: SVCE Board Chair reminds Board of the process and timeline at the December 11 Board meeting;
- December 13, 2019: Board Clerk will send a request for letters/indications of interest for the Chair/Vice Chair positions as well as indications of interest from members interested in serving on the Executive Committee for 2020;
- December 19, 2019: Letters of interest for Chair/Vice Chair and expression of interest for Executive Committee membership responses due to Board Clerk; and,
- January 8, 2020: Chair, Vice Chair, and Executive Committee selections made at the Board of Directors meeting.

Emails were distributed to Directors December 13th and 18th, 2019 with the above information.

**ANALYSIS & DISCUSSION**

The Directors listed below have formally expressed interest in serving as Chair or Vice Chair of the Board:

**Chair**
Director Howard Miller, Saratoga

**Vice Chair**
Director Nancy Smith, Sunnyvale

These letters of interest are attached to the report.
STRATEGIC PLAN
The recommendation supports SVCE’s overall strategic plan.

ALTERNATIVE
N/A

FISCAL IMPACT
There is no fiscal impact to the agency as a result of selecting a Chair and Vice Chair of the Board.

ATTACHMENTS
1. Director Statement of Interest
   - Howard Miller
   - Nancy Smith
Andrea Pizano

From: Howard Miller <hmiller@saratoga.ca.us>
Sent: Sunday, December 15, 2019 11:04 PM
To: Andrea Pizano
Cc: Girish Balachandran
Subject: Re: SVCE - 2020 Board Chair/Vice-Chair and Executive Committee Appointments

First, yes, I would like to continue to serve on the executive committee.

And second, here is my letter of interest in the Chair position

Thanks!

Howard…..

I respectful submit my name for consideration for the position of Chair of Silicon Valley Clean Energy for 2020. I have a lifetime of experience in the area of energy generation, distribution and conversation. I have installed 2 solar systems on my past two houses; own an EV and a Plug-in Hybrid. I have led efficiency policies and Reach Code efforts in Saratoga. I hold degrees in Engineering and have some technical knowledge of the systems used through the US that make up our energy generation and distribution systems.

On the SVCE board, I have served since the first full board was established. I served as the SVCE Vice Chair, on the Executive committee, Chair of the Finance Committee and as a member of the Risk Oversight Committee. I have served on the Finance and Risk oversight committee since their inceptions. I was involved with both CEO searches on both interview teams. I have been a regional advocate for SVCE even frequenting Milpitas council meetings to help persuade them to join. I am very engaged in supporting the SVCE mission.

The coming year will be challenging for SVCE and CCAs in general. The PG&E bankruptcy has increased uncertainty within the CCA ecosystem. State legislative efforts could damage our ability to deliver on our “Carbon Free for Less than PG&E” promise. But our legislative efforts are the strongest they have ever been and in concert with CalCCA, I am optimistic we can navigate this environment. In addition, as the Chair of the Finance Committee, I am actively working with staff on, and am looking forward to, SVCE’s first Investment Grade Credit rating.

My passion, experience, technical knowledge and proven track record have been an asset to SVCE. As the Chair, I feel that I could contribute even more to help build and secure the futures of this great organization.

Thank you for your consideration!

Howard Miller
Andrea Pizano

<table>
<thead>
<tr>
<th>From:</th>
<th>Nancy Smith <a href="mailto:SmithCouncil@sunnyvale.ca.gov">SmithCouncil@sunnyvale.ca.gov</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sent:</td>
<td>Wednesday, December 18, 2019 8:09 AM</td>
</tr>
<tr>
<td>To:</td>
<td>Andrea Pizano</td>
</tr>
<tr>
<td>Subject:</td>
<td>Letter of Interest Regarding Serving as SVCE Vice Chair in 2020</td>
</tr>
</tbody>
</table>

Dear Ms. Pizano,

I'm writing to let you know of my interest in seeking the position of Vice Chair of the Board of Silicon Valley Clean Energy. My commitment and experience would serve the organization well.

During my two years of service on the SCVE Board, I worked hard on the Legislative Action committee to advocate for the interests of not just the local agency, but CCAs throughout the state. Also, I succeeded in building connections between CalCCA and state municipal leaders through the California League of California Cities Conference last September. As often as possible, I work to help SVCE in its role to reduce GHG emissions while providing benefits to our customers and community.

If the other members of the Board of Directors of Silicon Valley Clean Energy elect me as Vice Chair, I would be honored as I continue to commit enthusiasm and experience to service of SVCE and its mission.

Yours in service,

NANCY SMITH  
City Councilmember  
City of Sunnyvale  

Phone: 408-455-8672
Staff Report – Item 6

Item 6: Appoint Directors to the SVCE Executive Committee for 2020

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 1/8/2020

RECOMMENDATION
Staff recommends that the Board select and appoint SVCE’s Executive Committee for 2020.

BACKGROUND
The SVCE Joint Power Agreement Section 4.6 specifies that the Board may establish an executive committee consisting of a smaller number of Directors and that the Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations specified in the Agreement or in the Operating Rules and Regulations. SVCE’s Operating Rules and Regulations state the Executive Committee shall consist of five Board members.

The duties of the Executive Committee will continue to 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.

ANALYSIS & DISCUSSION
Following is a snapshot of the 2019 Executive Committee as well as members who have expressed interest in serving for 2020:

<table>
<thead>
<tr>
<th>Frequency of Meetings</th>
<th>Composition</th>
<th>2019 Members</th>
<th>Directors who have Expressed Interest for 2020</th>
</tr>
</thead>
</table>
| Monthly, Currently Fourth Friday | Chair
Vice Chair
Three Additional Board members (5 total) | Chair Abe-Koga
Vice Chair Miller
Director Gibbons
Director Sinks
Director Smith | Chair Abe-Koga
Vice Chair Miller
Director Gibbons
Director Sinks
Director Smith |

STRATEGIC PLAN
The recommendation supports SVCE’s overall strategic plan.

ALTERNATIVE
N/A

FISCAL IMPACT
There is no fiscal impact to the agency as a result of selecting members of the Executive Committee.
ATTACHMENTS
1. Director Notes of Interest to Continue Serving on the Executive Committee
   - Liz Gibbons
   - Rod Sinks
Andrea, please accept my application to continue on the Executive Board of SVCE. I have served on this board since it’s origination. Continuity and knowledge are a significant benefit as the organization grows and transition of board members naturally occurs.
Please reflect my interest for appointment to the Executive Board in the staff report to the board.

With appreciation,

Elizabeth “Liz” Gibbons, AIA, LEED AP
Councilmember, City of Campbell
Retired AIA Strategic Counselor, At-Large

Sent from my iPhone

On Dec 13, 2019, at 2:17 PM, Andrea Pizano <Andrea.Pizano@svcleanenergy.org> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links.

Hello SVCE Directors,

A friendly reminder that the Board will be voting to appoint the 2020 Chair, Vice Chair, and Executive Committee at the January 8, 2020 Board meeting.

1) If you are interested in serving as the 2020 Board Chair or Vice Chair, please submit a letter of interest to me by next Thursday, December 19th;
2) Those who would like to serve/continue to serve on the Executive Committee, please also let me know by Thursday, December 19th, so that I may indicate your interest in the staff report to the board.

Following is more information about our Executive Committee:

The Executive Committee consists of five Board members (no Alternates). The duties of the Executive Committee are 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.

This group meets monthly; the regular meeting schedule is typically set the first meeting of the group in January.

Please let me know if you have any questions. Information regarding our remaining committee appointments will be provided following the January board meeting; attached is the appointment timeline distributed at the December board meeting for reference.
December 18, 2019

Dear SVCE Colleagues:

I am seeking reappointment to the Executive Committee for my final year in office and would appreciate your support.

Bringing SVCE into existence and guiding it through its initial years with many of you has been a passion of mine. We started in 2014 at the Cities Association, continued with the mayors of Mountain View and Sunnyvale in 2015, invited 12 cities and the county to join in 2016, and started operation in 2017. I served as the first board chair, worked to recruit our former and current CEO, and have been actively involved in Executive, Risk and Legislative Committees since their inception. I have also spent time in San Francisco, Sacramento and in other parts of the State helping defend, support and grow Community Choice Energy.

We can all take pride in our nearly 3 years of success serving carbon-free electricity at lower cost, in moving forward with programs and initiatives such as reach codes, and in helping the CCE movement to grow throughout the State. As chair of the Bay Area Air Quality Management District in 2020, I will explore furthering the Air District’s cooperation with SVCE and CalCCA on decarbonization programs and legislative matters.

I am grateful for the continuing opportunity to serve on the board with you to make SVCE strong, sustainable and ready to fulfill our mission while weathering the challenges ahead.

Sincerely,

Rod Sinks
Staff Report – Item 7

Item 7: Approve Formation of Ad Hoc Committee of the Board for 2020 to Address Legislative and Regulatory Responses to Industry Transition

To: Silicon Valley Clean Energy Board of Directors

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

Date: 1/8/2020

RECOMMENDATION
Staff recommends that the SVCE Board of Directors vote to approve the formation of an Ad Hoc Board Committee on Legislative and Regulatory Responses to Industry Transition to address the following priorities through the end of the 2020 legislative session (September 30, 2020):

- PG&E Restructuring and Reform
- Public Safety Power Shutoffs & Wildfire Prevention and Cost Recovery
- Centralization of Resource Procurement
- Expansion of Direct Access
- Transparency and Accountability in Ratemaking

BACKGROUND
The Legislative Ad Hoc Committee of the Board was created on January 10, 2018 to provide input to staff on legislative and regulatory matters pending at that time; this committee was then renewed in 2019.

Given the continued need for advice on legislative and regulatory matters, staff brought the following two approaches to the December 11, 2019 Board meeting that would allow a committee of less than a quorum of Directors to meet privately with staff to provide confidential input on pending legislation and regulatory matters: 1) Focused and Time-Limited Ad Hoc Board Committee, and 2) CEO Appointed Committee.

The Board voted unanimously to select staff’s first option, Focused and Time-Limited Ad Hoc Board Committee, to have the Board set priorities on a periodic basis and have it run from commencement until the end of the legislative session.

ANALYSIS & DISCUSSION
Based on the 2019 Legislative session, staff is recommending that the new Ad Hoc Board Committee address the following priorities for 2020:

- **PG&E Restructuring and Reform**
  PG&E is a large enough stakeholder in the electricity sector that its business model, operational priorities, and governance structure affect the entire industry. After PG&E exits Chapter 11 bankruptcy, it is very possible that legislation in 2020 may seek to change PG&E’s role in the industry and thus those of other stakeholders as well. Even if a full transition to a customer-owned governance structure is not achieved in 2020, SVCE is very interested in engaging with legislation that brings PG&E’s incentives more into alignment with customer interests. Engaging with such legislation will require system-level thinking and vision definition that benefit strongly from Board insight.
• **Public Safety Power Shutoffs & Wildfire Prevention and Cost Recovery**
  The PSPS events impacted millions of Californians in 2019, and there is widespread interest in ensuring that future outages are both minimized and better executed. Legislation that regulates PSPS events or, like AB 1054 in 2019, addresses wildfire prevention and cost recovery, are of interest to SVCE from both financial and customer advocate perspectives. Through their roles as local councilmembers, SVCE Board members are particularly well suited to advising on the customer and community impacts of such legislation.

• **Centralization of Resource Procurement**
  Though AB 56 was defeated and SB 350 withdrawn in 2019, bills attempting to set up centralized statewide procurement for Resource Adequacy, RPS resources, and/or procurement related to the Integrated Resource Plans are expected to resurface in 2020. Depending on their content, SVCE may be either supporting or opposing such bills. Either way, this issue affects all CCAs and could have a significant impact on SVCE’s future procurement planning.

• **Expansion of Direct Access**
  SB 237, the direct access expansion bill passed in 2018, requires the California Public Utilities Commission to submit a report on the impacts of full nonresidential direct access reopening to the legislature for consideration by June 2020. Should the legislature respond by taking up legislation to implement such a re-opening, this will become a major legislative priority for SVCE with large financial and procurement implications.

• **Transparency and Accountability in Ratemaking**
  The sharp increase in 2020’s Power Charge Indifference Adjustment (PCIA) and the PCIA’s recent year-to-year volatility highlight the need for improved transparency and accountability in the ratemaking process. Such legislation could be part of PG&E reform (see priority #1) or pursued independently. Either way, SVCE would need to review and engage with it.

Staff recommends appointing members of this committee at the February 12, 2020 Board of Directors meeting when SVCE’s other committees are appointed to allow any potential new Directors an opportunity to participate. This committee will sunset on September 30, 2020.

**STRATEGIC PLAN**
Establishing a committee to provide input to the CEO and staff on legislative and regulatory matters directly supports Goal 8 of the SVCE Strategic Plan: Engage regulators and legislators in developing policy that protects CCA rights and facilitates CCA contributions to decarbonization, grid reliability, affordability and social equity.

**ALTERNATIVE**
Staff is open to suggestions from the Board on the priorities which the ad hoc committee will address.

**FISCAL IMPACT**
No fiscal impact as a result of approving the ad hoc committee and its objective.
Staff Report – Item 8

Item 8: Adopt Resolution Authorizing the Chief Executive Officer to Execute Renewable Power Supply Power Purchase Agreements with ORNI 50 LLC, and Any Necessary Ancillary Agreements and Documents

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources

Date: 1/8/2020

RECOMMENDATION

Adopt Resolution No. 2020-02 (Attachment 1) authorizing the CEO to execute in substantial form the Power Purchase Agreement (PPA) with ORNI 50, LLC., ("Ormat") for geothermal renewable supply from its Mammoth Casa Diablo IV Project (Attachment 2) and any necessary ancillary documents. Power delivery term: December 31, 2021 to December 30, 2031, in an amount not to exceed $42,500,000.

BACKGROUND

In April 17, 2019, Silicon Valley Clean Energy (SVCE) and Monterey Bay Community Power (MBCP) issued its second Joint Request for Offers (Joint RFO) for long-term power supply. The goal of the Joint RFO was to secure enough renewable energy through long-term PPAs to meet SVCE’s RPS and carbon-free objectives, while also complying with California’s long-term procurement requirements as established by the Senate Bill 350 ("SB 350"). Qualifying proposals, among other things, had to deliver Power Content Category One ("PCC1") under the California Energy Commission’s (CEC) Renewable Portfolio Standard (RPS) eligibility criteria, have a contract start date of no later than January 1, 2023 and a minimum PPA term of 10 years¹.

The RFO closed on May 17, 2019 with more than one-hundred and eighty-seven (187) offers submitted from fifty-four (54) distinct projects including renewable energy from new and existing solar, solar plus storage, small hydroelectricity, wind and geothermal. Most of these proposed projects are located in California, while some were in neighboring states. SVCE and MBCP undertook an extensive screening, evaluation, ranking and economic analysis to develop a short-list of projects for further consideration and negotiations. Ormat’s Mammoth Casa Diablo IV geothermal project was selected through this process and negotiations started in August 2019.

Five other projects were short-listed and negotiations continue with these five developers and/or project owners. All shortlisted projects qualify as PCC1 RPS resources and are expected to come on-line by 2023.

DISCUSSION/ANALYSIS:

ORNI 50, LLC’s parent company is Ormat Technologies, Inc ("Ormat"), an experienced geothermal developer in North America. Ormat has over five decades of experience designing, building, owning and operating geothermal generation plants. The new plant will be called Mammoth Casa Diablo IV Geothermal Project ("Project"), a 30 MW geothermal plant, of which 14 MW will be sold to SVCE & MBCP and the other 16 MW is being sold to another off taker. The Project will feature a state-of-the-art "binary", closed-loop design which means no water is used for cooling, using conservation technologies instead, and thus will have no

greenhouse gas emissions and thus produce carbon-free\(^2\) electricity. The Project is located at Mammoth Lakes, California within Mono County and has an expected on-line date of December 31, 2021. SVCE’s share of the Project is 7 MW. The attached PPA reflects only SVCE’s share of that output.

**Project Summary**

<table>
<thead>
<tr>
<th>Counterparty</th>
<th>ORNI 50, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent Company</td>
<td>Ormat Technologies, Inc.</td>
</tr>
<tr>
<td>Product</td>
<td>Bucket 1 (PCC1) Renewable Energy, binary geothermal</td>
</tr>
<tr>
<td>Delivery Term</td>
<td>10 years (December 31, 2021 through December 30, 2031)</td>
</tr>
<tr>
<td>Project Name</td>
<td>Mammoth Casa Diablo IV</td>
</tr>
<tr>
<td>Contract Capacity</td>
<td>7 MW</td>
</tr>
<tr>
<td>Location</td>
<td>Mono County, California</td>
</tr>
<tr>
<td>Percentage of Retail Load Served</td>
<td>1.4%</td>
</tr>
</tbody>
</table>

**Project Value**

Because geothermal is a baseload resource, it is expected to operate 24x7 unlike solar and wind resources which are considered intermittent. The baseload nature of the resource will better position SVCE to deliver carbon-free electricity in more hours of the day throughout the year while also helping meet SVCE’s RPS requirements. Further, geothermal’s generation profile is complementary to photovoltaic solar resources.

The carbon-free energy generated from the Project will be sufficient to meet a little more than one percent (1.4%) of SVCE’s energy needs and the 7 MW share of capacity will meet less than one percent of SVCE’s peak needs. On an annual basis, 84 MW of system resource adequacy (RA) capacity is expected from the Project, which based on current California Public Utility Commission (CPUC) rules would count towards SVCE’s overall RA requirements and provide reliability capacity to California’s grid.

**RPS Compliance**

SB350, passed in 2016, requires Load Serving Entities (LSE) such as SVCE to acquire a minimum of 65% of the state mandated RPS requirement through long-term PPAs (10 years or greater) starting with Compliance Period No. 4 “CP4” (2021-2024). The mandated overall RPS for CP4 is 40%, thus the long-term RPS procurement requirement is 26%. SVCE’s three PPAs executed in 2018 will achieve a combined 20% RPS in CP4. The inclusion of the recommended Project will bring SVCE’s long-term RPS in CP4 to 21.4%.

\(^2\) Conventional geothermal resources produce small anthropogenic greenhouse gas emissions associated with the process of generating electricity. The Climate Registry’s default emission factor for conventional geothermal for 2018 is 56.57 pounds of CO2 per MWh. By comparison the CAISO’s 2018 emission intensity for the grid is 532 pounds of CO2 per MWh.
Table 1: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period

<table>
<thead>
<tr>
<th>1. State Mandated RPS per Compliance Period - % of Retail Sales</th>
<th>2021-2024</th>
<th>2025-2028</th>
<th>2029-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</td>
<td>26%</td>
<td>33%</td>
<td>39%</td>
</tr>
<tr>
<td>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (wind &amp; solar)</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>5. SVCE: Proposed Compliance with Row #3: RPS Achieved with Proposed Geothermal Project</td>
<td>21.4%</td>
<td>21.4%</td>
<td>21.4%</td>
</tr>
</tbody>
</table>

Figure 1: SVCE Renewable Portfolio with Ormat Geothermal Project (2021-2030)

Figure 1 illustrates SVCE’s progress towards meeting the Board directed goal of 100% carbon-free on an annual basis, including 50% RPS and state mandated RPS requirements. The geothermal Project is depicted as “New RPS Resource” in the graph. Additional long-term RPS resources are necessary to meet long-term procurement mandates and SVCE’s overall carbon-free goals. Staff intends to bring to the Board up to five additional PPAs for consideration in the next few months.

STRATEGIC PLAN
SVCE’s Strategic Plan, Goal #10; Strategies 10.1.2 and 10.3.1, directs staff to acquire long-term agreements to meet California’s long-term renewable mandate and diversify deployment of renewable technologies. Approval of the resolution and execution of the ORNI 50, LLC PPA will help satisfy Goal #10.

ALTERNATIVE
The Joint RFO selection criteria considered all submitted offers against quantitative and qualitative criteria. The ORNI 50, LLC project was selected as part of this competitive process. MBCP and SVCE have conducted
and completed good faith negotiations with this developer over the last four months, all with the intent to execute the attached PPA.

An alternative to the staff recommendation is to direct staff to re-negotiate specific contract terms with the supplier or reject the PPA to pursue other alternatives. Given the amount of lead time necessary to negotiate and execute long-term PPAs, staff is not confident it would have sufficient time to do so and meet the long-term procurement requirements during the 2021-2024 compliance period thus exposing SVCE to significant non-compliance penalties.

**FISCAL IMPACT**
The fiscal impact of SVCE’s share of ORNI 50, LLC Project will not exceed $40,585,000 over the term of the PPA. Costs associated with the project will be included in the budget beginning in fiscal year 2021-2022.

**ATTACHMENTS**
1. Resolution 2020-02 Delegating Authority to the CEO to execute a PPA for Renewable Supply (PCC1) with ORNI 50 LLC., and any necessary ancillary documents
2. SVCE/ORNi 50, LLC Redacted Power Purchase Agreement
SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2020-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE A POWER PURCHASE AGREEMENT WITH ORNI 50, LLC AND TO EXECUTE SUCH OTHER ANCILLARY DOCUMENTS AS MAY BE NECESSARY

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

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

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

WHEREAS, SVCE is purchasing energy, renewable energy, carbon free energy, and related products and services (the “Products”);

WHEREAS, in Spring 2019, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, SVCE administered a competitive process to select one or more power supply providers;

WHEREAS, one of the providers selected by SVCE through this competitive process is ORNI 50, LLC, based on its desirable offering of Products, pricing, and terms;

WHEREAS, Staff has presented to the Board, and the Board has reviewed, the negotiated form of a Power Purchase Agreement between SVCE and ORNI 50, LLC;

WHEREAS, because of the timing of the execution of the Power Purchase Agreement with ORNI 50, LLC, the Board recognizes that it may be impractical to bring such agreement back to the Board prior to execution. Accordingly, the Board wishes to delegate to the Chief Executive Officer the authority to approve any non-material changes, additions, variations or deletions (“Changes”) to the form of the Power Purchase Agreement between SVCE and ORNI 50, LLC;

WHEREAS, the Board also wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Power Purchase Agreement and to do all things necessary or appropriate for the execution and delivery of, and the performance of SVCE’s obligations under, the Power Purchase Agreement and any other ancillary documents required for said purchase of power from ORNI 50, LLC.
NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The Board hereby delegates authority to the Chief Executive Officer to execute the Power Purchase Agreement with ORNI 50, LLC with terms consistent with those presented to the Board, in a form approved by the General Counsel, subject to Changes that the Chief Executive Officer may deem necessary or appropriate. The total contract cost shall not exceed forty-two million five hundred thousand dollars ($42,500,000.00) over the ten-year term.

Section 2. The Board hereby delegates authority to the Chief Executive Officer to negotiate, enter into and deliver, and to do all things necessary or appropriate for the execution and delivery of, and the performance of SVCE’s obligations under, the Power Purchase Agreement (including any other instruments, documents, certificates and agreements executed by SVCE in connection therewith) and such other ancillary documents, in a form approved by General Counsel, as may be necessary to effectuate purchase of such power from ORNI 50, LLC.

ADOPTED AND APPROVED this 8th day of January, 2020.

________________________________
Chair

ATTEST:

________________________________
Clerk

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<tbody>
<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
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<td>City of Cupertino</td>
<td>Director Sinks</td>
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<td>City of Gilroy</td>
<td>Director Tovar</td>
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<td>City of Los Altos</td>
<td>Director Fligor</td>
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<td>Town of Los Altos Hills</td>
<td>Director Corrigan</td>
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<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
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<td>City of Milpitas</td>
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<tr>
<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
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<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
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<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
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<tr>
<td>City of Saratoga</td>
<td>Director Miller</td>
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<tr>
<td>City of Sunnyvale</td>
<td>Director Smith</td>
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</tbody>
</table>
Proposed Execution Version

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** ORNI 50 LLC

**Buyer:** Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCE”)

**Description of Facility:** A geothermal project located in Mono County, California with a generating capacity of approximately 30 MW, subject to adjustment as described in Section 4 of Exhibit B.

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required: CEQA [X] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR</td>
<td>Complete</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Seller delivery to Interconnection Provider of Seller-Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>[ ]</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>Complete</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>[ ]</td>
</tr>
<tr>
<td>Network Upgrades completed</td>
<td>[ ]</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>[ ]</td>
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</tbody>
</table>

**Delivery Term:** Ten (10) Contract Years.
**Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
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**Contract Capacity:** 7 MW

**Contract Price:** The Contract Price of the Product shall be:

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<th>Contract Price</th>
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**Product:**
- ✔ Delivered Energy
- ✔ Green Attributes (Portfolio Content Category 1) associated with Delivered Energy
- ✔ Capacity Attributes
- ✔ Ancillary Services

**Scheduling Coordinator:** Seller /Seller Third Party

**Security and Damage Payment**

**Development Security:**

**Performance Security:**

**Damage Payment:** See definition of “Damage Payment”
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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of December __, 2019 (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.12.

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

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

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

“Ancillary Services” means all ancillary services, products and other attributes, if any, associated with the Contract Capacity of the Facility.
“Available Generating Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

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

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

“Buyer” means Silicon Valley Clean Energy Authority, a California joint powers authority.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s Capacity Share” means a percentage equal to (a) Contract Capacity, divided by (b) Installed Capacity.

“Buyer’s Energy Share” means (a) for any hour in which total electric energy generated by the Facility is less than or equal to and (b) for any hour in which total electric energy generated by the Facility is greater than .

“Buyer’s Share of Installed Capacity” has the meaning set forth in Exhibit B.

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

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Delivered Energy delivered to the Delivery Point.
“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

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

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

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:
(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns at least fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Claim” has the meaning set forth in Section 16.2.

“COD Certificate” has the meaning set forth in Exhibit B.

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

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

“Commercial Operation Delay Damages” has the meaning set forth in Section 3.12.

“Compliance Actions” has the meaning set forth in Section 3.12.

“Compliance Costs” has the meaning set forth in Section 3.12.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

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

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

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

“Contract Capacity” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 4 of Exhibit B.

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

“Contract Term” has the meaning set forth in Section 2.1(a).

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

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

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

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

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

“Curtailment Cap”.

“Curtailment Order” means any of the following:

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

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.
“Daily Delay Damages” means the dollar amount that equals the amount of the Development Security.

“Damage Payment” means the dollar amount that equals the amount of the Development Security.

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

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

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

“Deemed Delivered Energy” means the dollar amount of Energy that the Facility delivers to the Delivery Point, as measured by the Facility Meter, is in excess of.

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

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

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivered Energy” means for each hour, the product of (a) the as-available electric energy generated by the Facility, which is net of Electrical Losses and Station Use and delivered to the Delivery Point, as measured by the Facility Meter, that is in excess of.

“Delivery Point” has the meaning set forth in Exhibit A.

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

“Development Cure Period” has the meaning set forth in Exhibit B.
“Development Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

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

“Electrical Losses” means all transmission or transformation losses or gains between the Facility and the Delivery Point, including losses or gains associated with delivery of Delivered Energy to the Delivery Point.

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

“Energy” means electrical energy generated by the Facility.

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

“Excess MWh” has the meaning set forth in Exhibit C.

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“Existing PPA” has the meaning set forth in Exhibit A.

“Expected Commercial Operation Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“Expected Construction Start Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“Expected Energy” means the quantity of Energy attributable to the Contract Capacity that Seller expects to be able to deliver from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the geothermal generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

“Facility Meter” means the CAISO Approved Meter that will measure all electric energy generated by the Facility, including Delivered Energy. Without limiting Seller’s obligation to deliver Delivered Energy to the Delivery Point, the Facility Meter may be located at the low voltage or the high voltage side of the main step up transformer, and Delivered Energy will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.
“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

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

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

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

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” shall mean any and all emissions, air quality or other environmental attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to
Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

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

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

“Guaranteed Energy Production” means, with respect to Seller, a Person that is reasonably acceptable to Buyer or any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.
“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Indemnifiable Loss(es)**” has the meaning set forth in Section 16.1(a).

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

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW(AC) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as **Exhibit I** hereto.

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

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


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

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

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

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

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

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

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

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

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

“Lost Output” has the meaning set forth in Section 4.7.

“Major Project Development Milestone” has the meaning set forth in Exhibit B.

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price; provided, that the duration of any Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.
“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

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

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than Zero dollars ($0).

“**Negative LMP Strike Price**” means

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

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

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

“**Notice of Claim**” has the meaning set forth in Section 16.2.

“**NP 15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit O.

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

“Party” or “Parties” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each Contract Year during the Delivery Term.

“Performance Security” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty or (iv) subject to Buyer’s approval, a surety bond in a form acceptable to Buyer, in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than [REDACTED]; and

(b) At least [REDACTED] of experience in the ownership and operations of power generation facilities similar to the Generating Facility with a generating capacity of [REDACTED], or has retained a third-party with such experience to operate the Generating Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

“Planned Outage” has the meaning set forth in Section 4.6(a).

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

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

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

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

“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 utility and independent power producer industry.
during the relevant time period with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement 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 industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the month commencing after the RA Guarantee Date during which (a) for such month due to (i) a Forced Facility Outage, (ii) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance) or (iii) a Planned Outage occurring in more than one (1) calendar month per Contract Year.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity or hourly expected Delivered Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the
Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 or SP 15 and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area as the Facility.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

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

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

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” has a corollary meaning.

“Scheduled Energy” means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

“Security Interest” has the meaning set forth in Section 8.9.

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).
“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SP 15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means:

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

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

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total Facility Capacity” means thirty (30) MW (net, at the Delivery Point).

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

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


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

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

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

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

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

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

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

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

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

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

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

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

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

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

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

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

(d) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, provided, that, Seller may demonstrate satisfaction of this subsection 2.2(d) by delivery to Buyer of a copy of a temporary or final certificate of occupancy (or equivalent) for the Facility;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being complete prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE
service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

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

(h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages, and Commercial Operation Delay Damages.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with Buyer’s Capacity Share or Buyer’s Energy Share, as applicable, of the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver
to Buyer all the Product produced by or associated with Buyer’s Capacity Share or Buyer’s Energy Share, as applicable, of the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, subject to and without limiting Seller’s right to retain CAISO revenues as described in Exhibit D, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, purchased hereunder from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer’s obligation to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product for which the associated Delivered Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 Sale of Green Attributes. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Delivered Energy generated by the Facility.

3.3 Imbalance Energy. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

3.4 Ownership of Renewable Energy Incentives. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.
(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay the “**Test Energy Rate**” (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, subject to Section 3.8 and Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility associated with the Contract Capacity.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer.

(c) Throughout the Delivery Term, subject to Section 3.8 and Section 3.12, Seller hereby covenants and agrees to transfer all of the Resource Adequacy Benefits and other Capacity Attributes associated with the Contract Capacity of the Facility to Buyer.

(d) For the duration of the Delivery Term, subject to Section 3.8 and Section 3.12, Seller shall take all reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.
(b) **RA Deficiency Amount Calculation.** Commencing on the Commercial Operation Date, for each RA Shortfall Month Seller shall pay to Buyer (the “RA Deficiency Amount”); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Subject to Section 3.12, within one hundred eighty (180) days after the Commercial Operation Date, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

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

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.
(c) 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.

(d) 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.

3.12 Compliance Expenditure Cap. If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (“Compliance Costs”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] (“Compliance Expenditure Cap”). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Term.

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

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Delivered Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. The Delivered Energy will be scheduled to the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Delivered Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Delivered Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss

(a) Energy. Title to and risk of loss related to the Delivered Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

4.3 Forecasting. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer’s designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day expected Delivered
Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Delivered Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 (**Monthly Delivery Forecast**).

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Delivered Energy, in each case, for each hour of the immediately succeeding day (**Day-Ahead Forecast**). A Day-Ahead Forecast provided in a day prior to any non-Business Day shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s non-binding best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Delivered Energy. Seller shall provide the Day-Ahead Forecast in the form of a CSV file delivered to Buyer’s File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) **Real-Time Forecasts.** Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System (**OMS**) based on CAISO protocols, and (ii) with respect to hourly expected Delivered Energy quantities, via the Facility’s EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer. Among other information provided through such procedures, Buyer shall be notified if, past the deadlines for Day-Ahead Forecasts provided in Section 4.3(c), there are change(s) in such Day-Ahead Forecasts of one (1) MW/ (1) MWh or more, as applicable, in (i) Available Generating Capacity or (ii) hourly expected Delivered Energy, in each case, whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause including (as appropriate) information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Delivered Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) **CAISO Tariff Requirements.** Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data.

### 4.4 Dispatch Down/Curtailment

(a) **General.** Seller agrees to reduce the amount of Delivered Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, provided that
Seller is not required to reduce such amount to the extent such Curtailment Order or notice is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

4.5  **Reserved.**

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

(a)  **Facility Maintenance.** Seller shall provide to Buyer written schedules for scheduled maintenance for the Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) Business Days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of schedule maintenance no later than ten (10) Business Days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any such period of scheduled maintenance on the Facility, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than , unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practice, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

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

(c)  **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Market Curtailment Period, curtailment by Other Offtaker under the Existing PPA, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d)  **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e)  **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

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

4.7  **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Buyer’s Default or other failure to perform, Curtailment Periods, or Market Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Delivered Energy and Replacement Product delivered by Seller during the
applicable Performance Measurement Period Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer’s Default or other failure to perform, Market Curtailment Periods, or Curtailment Periods (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G. 

4.8 WREGIS. Seller shall, subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

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

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

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

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

4.9 *Green-e Certification.* Seller shall, at its sole expense but subject to Section 3.12, execute all documents or instruments reasonably required by Buyer in order for the Facility to be eligible for Green-E certification.

**ARTICLE 5**

**TAXES**

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

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

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

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

ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.
7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

**ARTICLE 8**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Delivered Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Delivered Energy, Deemed Delivered Energy, Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice, or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month LIBOR rate published on the date of the invoice in The Wall Street Journal or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with
California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that except to the extent recognized by and resulting in an adjustment by CAISO, there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted
under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is a Guaranty, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):
(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

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

**ARTICLE 9**

**NOTICES**

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.
ARTICLE 10
FORCE MAJEURE

10.1 Definition.

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

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

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, unless caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to
perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

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

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);
(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

(i) if at any time during the Delivery Term, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(iii) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(v) if, in any consecutive five (5) day period after any Notice from Buyer specified under Section 11.1 or 11.2, the Seller does not cure or attempt to cure any of the following:

   (a) the failure by such Party to deliver electric energy to the Delivery Point for sale in accordance with this Agreement, within ten (10) days after Notice thereof.

   (b) the failure by such Party to deliver a Remedial Action Plan required under Section 2.4.

   (c) the failure by such Party to deliver a Remedial Action Plan required under Section 2.4.

   (d) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

   (e) if, in any consecutive five (5) day period after any Notice from Buyer specified under Section 11.1 or 11.2, the Seller does not cure or attempt to cure any of the following:

      (a) the failure by such Party to deliver electric energy to the Delivery Point for sale in accordance with this Agreement, within ten (10) days after Notice thereof.

      (b) the failure by such Party to deliver a Remedial Action Plan required under Section 2.4.

      (c) the failure by such Party to deliver a Remedial Action Plan required under Section 2.4.

      (d) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;
(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance; or

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

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.
11.3 **Termination Payment.** The termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect the Damage Payment or Termination Payment (as applicable) as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.
THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, including to the extent applicable, Seller will be the applicant on any CEQA documents.
13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.
13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals, and permits necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

**ARTICLE 14**

**ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, such consent not to be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys’ fees. Except to the extent expressly set forth in Section 14.2, Buyer will have no obligation to provide any consent or enter into any agreement that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under this Agreement.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility, Buyer shall in good faith work
with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, which such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller (or Lender, if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or
(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender’s cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof and, promptly after Lender’s written request, Buyer must enter into such replacement agreement with Lender or Lender’s designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer’s written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement,
within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, 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 Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnity. Each Party (the “Indemnifying Party”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an “Indemnified Party” and collectively, the “Indemnified Group”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “Indemnifiable Losses”).

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“Claim”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which
would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party’s rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [insert amount] per occurrence, and an annual aggregate of not less than [insert amount], endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [insert amount]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than [insert amount] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [insert amount] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [insert limits] per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor’s Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of [insert amount] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers’ compensation insurance and employers’ liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
(h) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

**ARTICLE 18**

**CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “Disclosing Party”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges
that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Disclosure to Lenders, Etc. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent
set forth herein, any Lender or Indemnified Party).

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Agreement by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.

19.8 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

19.10 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or...

19.11 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**ORNI 50 LLC, a Delaware limited liability company**

By: ____________________________
Name: __________________________
Title: __________________________

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

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Mammoth Casa Diablo IV Geothermal Project

Site includes all or some of the following APNs:

County: Mono

CEQA Lead Agency: Great Basin Unified Air Pollution Control District

Type of Facility: Binary geothermal

Operating Characteristics of Facility: The Facility is subject to a long-term PPA ("Existing PPA") with a municipal utility ("Other Offtaker") for sixteen (16) MW of capacity. During each hour, the Other Offtaker will be entitled to the first 16 MWh of Facility electric energy output under the Existing PPA.

Contract Capacity: 7 MW (net, at the Delivery Point), as the same may be adjusted pursuant to Section 4 of Exhibit B

Total Facility Capacity: 30 MW (net, at the Delivery Point)

Delivery Point: the PNode designated by the CAISO for the Facility

Participating Transmission Owner: Southern California Edison Company
EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

a. “Construction Start” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. “Major Project Development Milestone” means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller on or before the Executed Interconnection Agreement Milestone, Seller shall pay Daily Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Daily Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Daily Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestones. If Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall be entitled to collect all accrued Daily Delay Damages on the Guaranteed Commercial Operation Date and Buyer shall invoice Seller for all accrued Daily Delay Damages, and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the full amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. Buyer’s failure to respond to Seller’s Notice within five (5) Business Days shall be deemed approval of Seller’s COD Certificate. If Buyer disagrees
that Commercial Operation has occurred following receipt of the Notice, it shall within such five (5) Business Day period, deliver to Seller a valid detailed explanation as to why it believes that Commercial Operation has not occurred. Seller shall then remedy Buyer’s concern, if valid, and the Notice process of above shall repeat until Buyer has approved Seller’s COD Certificate or a deemed approval occurs. The “Commercial Operation Date” shall be the date specified in the Seller’s COD Certificate that has been approved or deemed approved by Buyer; provided, however, that the Commercial Operation Date shall not occur prior to sixty (60) days prior to the Expected Commercial Operation Date. Upon Buyer’s approval or deemed approval, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date upon request.

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves the Commercial Operation Date by the Guaranteed Commercial Operation Date, all accrued Daily Delay Damages will be waived.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. Commercial Operation Delay Damages shall be paid in advance on a monthly basis by Seller to Buyer. A prorated amount of Commercial Operation Delay Damages will be returned to Seller if the Commercial Operation Date occurs during a month in which the Commercial Operation Delay Damages were paid in advance. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances:

a. a Force Majeure Event occurs; or

b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the date that is
ninety (90) days prior to the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or

c. Buyer has not made all necessary arrangements to receive the Delivered Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a) and 4(b) above under the Development Cure Period shall not exceed [redacted], for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

Seller shall give Buyer notice promptly following Seller’s receipt of notice of any delays with respect to the Interconnection Facilities and/or the Network Upgrades that would reasonably be expected to lead to a Development Cure Period.

4. Failure to Reach Contract Capacity. If, at Commercial Operation, the result of (a) [redacted] (such result, “Buyer’s Share of Installed Capacity”) is less than one hundred percent (100%) of the Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Buyer’s Share of Installed Capacity is equal to (but not greater than) the Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Contract Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, [redacted].

5. Buyer’s Right to Draw on Development Security. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof and Buyer shall replenish the Development Security to its full amount within five (5) Business Days after such draw.
EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Delivered Energy. For each MWh of Delivered Energy in each Settlement Period, Buyer shall pay Seller

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller

(c) Excess Contract Year Deliveries Over . If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds , the price to be paid for additional Delivered Energy or Deemed Delivered Energy shall be equal to

(d) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price;

(e) Reserved.

(f) Curtailment Payments.

(g) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.
(h) **Tax Credits.** The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Delivered Energy and Product, shall be effective regardless of whether the sale of Delivered Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point, and bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. The Delivered Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator) for Buyer’s account.

(b) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller’s responsibility.

(c) CAISO Settlements. Seller (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law and reporting on small business activities pursuant to the Small Business section of the RFP.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
**EXHIBIT F-2**

**AVAILABLE CAPACITY**

[Available Generating Capacity, MWh Per Hour] – [Insert Month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|       |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[(A - B) \times (C - D)\]

where:

\[A = \text{the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh}\]
\[B = \text{the Adjusted Energy Production amount for the Performance Measurement Period, in MWh}\]
\[C = \text{Price for Replacement Product for the Contract Year, in $/MWh, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.}\]
\[D = \text{the Contract Price for the Contract Year, in $/MWh}\]

No payment shall be due if the calculation of \((A - B)\) or \((C - D)\) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

As used above:

**Adjusted Energy Production** shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

**Lost Output** has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

**Replacement Energy** means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

**Replacement Green Attributes** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the

Exhibit G - 1
Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _______ [licensed professional engineer] ("Engineer") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _______ ("Agreement") by and between ORNI 50 LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _______[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than _______ of the Total Facility Capacity.

3. The Facility’s testing included a performance test demonstrating peak electrical output of no less than _______ of the Total Facility Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was _______[peak output in MW].

4. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on___[DATE]_____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _______[DATE]_____.

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _______[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: ________________________________

Date: ________________________________
EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by [licensed professional engineer] ("Engineer") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between ORNI 50 LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(i) The performance test for the Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("Installed Capacity");

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: ____________________________

Its: ____________________________

Date: ____________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by ORNI 50 LLC ("Seller") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ___________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

2. the Construction Start Date occurred on _____________ (the "Construction Start Date"); and

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: __________________________________________________________.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

ORN 50 LLC

By: ____________________________________

Its: ____________________________________

Date: ________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:
Silicon Valley Clean Energy Authority
Attn: Girish Balachandran, CEO
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date ] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.
We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]
[Insert officer title]
DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

_______________________________
Name and Title of Authorized Representative

_______________________________
Date
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [____], a [______] (“Guarantor”), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and [SELLER ENTITY], a [________] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such
failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

   (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

   (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

   (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

   (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s
organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

```plaintext
[___]
Attn: [___]
Fax: [___]
```

If delivered to Guarantor, to it at

```plaintext
[___]
Attn: [___]
Fax: [___]
```

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Santa Clara, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to
reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_______]

By: _______________________________

Printed Name: ______________________

Title: ______________________________

BUYER:

[_______]

By: _______________________________

Printed Name: ______________________

Title: ______________________________
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by ORNI 50 LLC (“Seller”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

<table>
<thead>
<tr>
<th>Name</th>
<th>CAISO Resource ID</th>
<th>CAISO Resource ID</th>
<th>CAISO Resource ID</th>
<th>CAISO Resource ID</th>
<th>CAISO Resource ID</th>
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</thead>
<tbody>
<tr>
<td>Location</td>
<td>CAISO Resource ID</td>
<td>CAISO Resource ID</td>
<td>CAISO Resource ID</td>
<td>CAISO Resource ID</td>
<td>CAISO Resource ID</td>
</tr>
<tr>
<td>UNIT SCID</td>
<td>Prorated Percentage of Unit Factor</td>
<td>Resource Type</td>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
<td>Path 26 (North or South)</td>
<td>LCR Area (if any)</td>
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<tr>
<td></td>
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<table>
<thead>
<tr>
<th>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</th>
<th>Run Hour Restrictions</th>
<th>Delivery Period</th>
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<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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<tr>
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<td>February</td>
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<tr>
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<td></td>
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</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

To be repeated for each unit if more than one.
ORNI 50 LLC

By: __________________________

Its: __________________________

Date: __________________________
### ORNI 50 LLC
(“Seller”)

**All Notices:**

<table>
<thead>
<tr>
<th>Street</th>
<th>6140 Plumas Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Reno</td>
</tr>
<tr>
<td>Attn</td>
<td>CEO</td>
</tr>
<tr>
<td>Phone</td>
<td>(775) 356-9029</td>
</tr>
<tr>
<td>Facsimile</td>
<td>(775) 356-039</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
</tr>
</tbody>
</table>

With a copy to:

<table>
<thead>
<tr>
<th>Street</th>
<th>6140 Plumas Street</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Reno</td>
</tr>
<tr>
<td>Attn</td>
<td>Asset Manager</td>
</tr>
<tr>
<td>Phone</td>
<td>(775) 356-9029</td>
</tr>
<tr>
<td>Facsimile</td>
<td>(775) 356-039</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
</tr>
</tbody>
</table>

### Silicon Valley Clean Energy Authority
(“Buyer”)

**All Notices:**

<table>
<thead>
<tr>
<th>Street</th>
<th>333 W. El Camino Real, Suite 290</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>Sunnyvale, California</td>
</tr>
<tr>
<td>Zip</td>
<td>94087</td>
</tr>
<tr>
<td>Attn</td>
<td>Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone</td>
<td>(408) 721-5301</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

With a copy to:

<table>
<thead>
<tr>
<th>Street</th>
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<tbody>
<tr>
<td>City</td>
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<td>Phone</td>
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<td>Facsimile</td>
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<td>Email</td>
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### Reference Numbers:

**Duns:**

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*Federal Tax ID Number: [redacted]*

**Duns:**

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*Federal Tax ID Number: [redacted]*

### Invoices:

**Attn:** Asset Manager

<table>
<thead>
<tr>
<th>Phone</th>
<th>(775) 356-9029</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facsimile</td>
<td>(775) 356-039</td>
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<tr>
<td>Email</td>
<td><a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
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</table>

### Scheduling:

**Attn:** ZGlobal

<table>
<thead>
<tr>
<th>Phone</th>
<th>(916) 221-4327</th>
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</thead>
<tbody>
<tr>
<td>Email</td>
<td><a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
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### Confirmations:

**Attn:** Asset Manager

<table>
<thead>
<tr>
<th>Phone</th>
<th>(775) 356-9029</th>
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</thead>
<tbody>
<tr>
<td>Facsimile</td>
<td>(775) 356-039</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
</tr>
<tr>
<td><strong>ORNi 50 LLC</strong></td>
<td><strong>Silicon Valley Clean Energy Authority (“Buyer”)</strong></td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>(“Seller”)</td>
<td></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: Asset Manager</td>
<td>Attn: Finance Group</td>
</tr>
<tr>
<td>Phone: (775) 356-9029</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile: (775) 356-9039</td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
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<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
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<td>ACCT:</td>
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<tr>
<td><strong>With additional Notices of an Event of Default to:</strong></td>
<td><strong>With additional Notices of an Event of Default to:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td>Phone:</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>E-mail:</td>
<td>Phone: (503) 313-0755</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
</tr>
<tr>
<td>With a copy to:</td>
<td></td>
</tr>
<tr>
<td><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn: Asset Manager</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone: (775) 356-9029</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile: (775) 356-9039</td>
<td>Facsimile:</td>
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<tr>
<td>E-mail: <a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
<td>E-mail:</td>
</tr>
</tbody>
</table>
EXHIBIT O

OPERATING RESTRICTIONS

• Nameplate capacity of the Project: [ ] MW
• Minimum capacity: [ ] MW
• Ramp rate: [ ] MW/minute
Silicon Valley Clean Energy
Board of Directors Meeting

January 8, 2020

Appendix A

Power Resource Contracts Executed by CEO
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 December 6, 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 Capacity 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, 08-08-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 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 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>
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<tbody>
<tr>
<td>Location</td>
<td>TBD</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>TBD</td>
</tr>
<tr>
<td>Resource Type</td>
<td>TBD</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>Kern</td>
</tr>
<tr>
<td>Product Type</td>
<td>Generic</td>
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<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):</td>
<td>Varies By Month</td>
</tr>
<tr>
<td>Flexible Capacity Category (Base/Peak/Super-peak):</td>
<td></td>
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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
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 of each Unit for the Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month / Year</th>
<th>Local RA Capacity Quantity (MW)</th>
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<tr>
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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 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 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/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 shall 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 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.

13.6 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: [Signature]
Name: Warren Byrne
Title: Director, Origination and Power Supply
Date: 12/5/19

Silicon Valley Clean Energy, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
Date: [Signature]
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 December 6, 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 4.6.

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, 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 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>
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</thead>
<tbody>
<tr>
<td>Location</td>
<td>Pittsburg, CA</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td>DELTA_2_PL1X4</td>
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<tr>
<td>Resource Type</td>
<td>Natural Gas</td>
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<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>
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<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>
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</tr>
<tr>
<td>If yes: Local Capacity Area (as of the Confirmation Effective Date):</td>
<td>N/A</td>
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<tr>
<td>Product Type</td>
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<tr>
<td>If Generic: Unit NOC (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>
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</tr>
<tr>
<td>Flexible Capacity Category (Base/Peak/Supercap):</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
DELIBERATION 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 of each Unit for the Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Month / Year</th>
<th>System RA Capacity Quantity (MW)</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 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 Alternate 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>
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<tbody>
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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 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 shall notify 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

By: [Signature]
Name: Warren Byrne
Title: Director, Origination and Power Supply
Date: 12-5-19

Silicon Valley Clean Energy, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
Date: 12/5/2019
MASTER POWER PURCHASE AND SALE AGREEMENT
RESOURCE ADEQUACY CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority
("PARTY A")
AND
Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions ("PARTY B")

This confirmation letter ("Confirmation") confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

ARTICLE 1
TRANSACTION TERMS

Buyer: Party B

Seller: Party A

Product: The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller's local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: [REDACTED]

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

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Firm RA Product

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

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

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

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

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

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

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

2.3 **Seller To Provide Alternate Capacity**

(a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.

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

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

2.4 Delivery of Product

(a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:

(i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.

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

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

(b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.
2.5 **Damages for Failure to Provide Capacity**

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

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

2.6 **Indemnities for Failure to Deliver Contract Quantity**

(a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:

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

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

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

2.7 **Buyer’s Re-Sale of Product**

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

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

ARTICLE 3
PAYMENT

3.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

Monthly Payment = Q \times P \times CF

where:

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

P = The Contract Price for the Showing Month, expressed in dollars per kW-month, as stated in Appendix B

CF = The conversion factor equal to 1,000 kW per MW

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

3.2 Allocation of Other Payments and Costs

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

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

Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys’ fees) incurred by or brought against Buyer in connection with Environmental Costs.

(b) In order to verify the accuracy of such revenues, Buyer has the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity and in accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement.

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

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

ARTICLE 4
CAISO OFFER REQUIREMENTS

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

ARTICLE 5
OTHER BUYER AND SELLER COVENANTS

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

5.2 **Representations, Warranties and Covenants**

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

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

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

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

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

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

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

(c) Seller covenants as follows:

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

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

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

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

ARTICLE 6
CONFIDENTIALITY

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

ARTICLE 7
HOLD-BACK AND SUBSTITUTE CAPACITY

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

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

ARTICLE 8
COLLATERAL REQUIREMENTS

8.1 Seller Collateral Requirements

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

(b) If the conditions in subsections (i) and (ii) of this Section 8.1(b) are satisfied throughout the Delivery Period, then this Confirmation's Fixed Independent Amount shall not apply for that time period during which all such conditions are satisfied:

(i) Seller's customers are PG&E's distribution or transmission customers and PG&E is the billing agent for those customers; and

(ii) PG&E is the provider of last resort pursuant to Cal. Pub. Util. Code Section 451 et seq. and applicable law for Seller's retail electric customers.
(e) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and Buyer has provided Seller with written notice of such failure to satisfy (Condition Notice), then Seller shall comply with the credit requirements of Section 8.1(a), above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.

8.2 Buyer Collateral Requirements

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

8.3 Current Mark-to-Market Value

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

ARTICLE 9
ADDITIONAL MASTER AGREEMENT AMENDMENTS

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

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

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

Silicon Valley Clean Energy Authority, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
Date: 12/11/2019

Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

By: [Signature]
Name: [Name]
Title: [Title]
Date: [Date]
APPENDIX A
DEFINED TERMS

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

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

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

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

(a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;

(b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and

(c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.
“Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM), which are being jointly administered.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation: Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by
which all reductions in the emission of air contaminant that are to be used to offset certain future increases in the emission of air contaminant shall be banked prior to use to offset future increases in emissions.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

"FERC" means the Federal Energy Regulatory Commission.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

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

"FCR Contract Quantity" means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

"Flexible Capacity Category" has the meaning set forth in the Tariff.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include "market participants" as defined in the CAISO’s Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

"Hold-Back Capacity" is defined in Article 7 of this Confirmation.

"Local Capacity Area" has the meaning set forth in the Tariff.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
"LSE" means "Load Serving Entity" as such term is defined in the Tariff.

"Marketable Emission Trading Credits" means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b(a) to (f)).

"Master Agreement" is defined in the introductory paragraph of this Confirmation.

"Monthly Payment" is defined in Section 3.1 of this Confirmation.

"MW" means megawatt.

"Outage" has the meaning set forth in the Tariff.

"Path" refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

"Planned Outage" means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

"Procurement Review Group" has the meaning set forth in CPUC Decision D.02-08-071.

"Product" is defined in Article 1 of this Confirmation.

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

"Re-sale Plan" is defined in Section 2.7(b) of this Confirmation.

"Resold Product" is defined in Section 2.7 of this Confirmation.

"Resource Adequacy Capacity" has the meaning set forth in the Tariff. "Scheduling Coordinator" has the meaning set forth in the Tariff.

"SCID of Benefitting LSE" means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

"Scheduling Coordinator ID Code (SCID)" has the meaning set forth in the Tariff.

"Showing Month" means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes
only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

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

"Substitute Capacity" means "RA Substitute Capacity" as defined in the Tariff.

"Supply Plan" has the meaning set forth in the Tariff.

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

"Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

"Unit EFC" means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

"Unit NQC" means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.
APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Path (North, South)</th>
<th>Local RAR Quantity (MW)</th>
<th>Local Capacity Area*</th>
<th>FCR Quantity, if any (MW)</th>
<th>Flexible Capacity Category (1,2,3)</th>
<th>Contract Price ($/kW-Month)</th>
<th>SCID of Benefiting LSE</th>
</tr>
</thead>
</table>

* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura
APPENDIX C
SUBSEQUENT SALE INFORMATION

<table>
<thead>
<tr>
<th>Contract Key ID:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benfitting LSE SCID:</td>
</tr>
<tr>
<td>Generic Volume (in MW):</td>
</tr>
<tr>
<td>Local Volume (in MW and by local area):</td>
</tr>
<tr>
<td>Flexible Volume (in MW):</td>
</tr>
<tr>
<td>Term:</td>
</tr>
</tbody>
</table>
APPENDIX D
NOTICE INFORMATION

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

All Notices:

Delivery Address:
Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale  State: CA  Zip: 94087

Mail Address: (if different from above)

Attn: Monica Padilla
(email) monica.padilla@svcleanenergy.org
Phone: (408) 721-5301 x1009

Invoices and Payments:
Attn: SVCE Power Settlements
(email): powersettlements@svcleanenergy.org
Phone: (408) 721-5301

Scheduling:
Attn: Eric Vaa
(email): ericv@global.biz
Phone: (916) 221-4327

Wire Transfer:
BNK: River City Bank
ACCT Title: 
ABA: 
ACCT: 
DUNS: 
Federal Tax ID Number: 

Credit and Collections:
Attn: SVCE Power Settlements
(email): powersettlements@svcleanenergy.org
Phone: (408) 721-5301

Contract Management
Attn: SVCE Power Settlements
(email): powersettlements@svcleanenergy.org
Phone: (408) 721-5301

With additional Notices of an Event of Default to Contract Manager:
Attn: Girish Balachandran, CEO
(email): girish@svcleanenergy.org
Phone: (408) 721-5301 x1001

Supply Plan Contact:

---

Name: Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Power Functions
("Buyer" or "Party B")

All Notices:

Delivery Address:
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177

Attn: Candice Chan (candice.chan@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780

Invoices and Payments:
Attn: Fuel Settlements
(emailssettlements@pge.com)
Manager, Fuel Settlements
Phone: (415) 973-0795

Outages:
Attn: Outage Coordinator:
(ESMOutageCoordinator@pge.com; RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:
BNK: The Bank of NY Mellon
ACCT Title: 
ABA: 
ACCT: 
DUNS: 
Federal Tax ID Number: 

Credit and Collections:
Attn: Credit Risk Management
(PGERiskCredit@pge.com)
Phone: (415) 972-5188

Contract Management
Attn: Elizabeth Motley
(email: elizabeth.motley@pge.com)
Contract Management
Phone: (415) 973-2368

With additional Notices of an Event of Default to
Contract Manager:
Attn: Ted Yura (ted.yura@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660

Supply Plan and Hold-Back Request:
EPP-RAFilingsMailbox@pge.com

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PG&E Resource Adequacy (Log No. 33B230S03)
2019 Bilateral Resource Adequacy (RA)