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 January 8, 2019, Board of Directors Meeting

1b) Receive November 2019 Treasurer Report

1c) Approve Cancellation of July Board of Directors Meeting, and Reschedule of November Board of Directors Meeting

1d) Approve 2020 Updates to Exhibit C, Annual Energy Use, and Exhibit D, Voting Shares, of the SVCE Joint Powers Agreement

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

Regular Calendar

2) Receive Financial Audit Report from Pisenti & Brinker, LLP (Action)

3) CEO Report (Discussion)

4) Appoint Board Committee Members (Action)

5) Clean Energy Procurement and Integrated Resource Planning Update (Discussion)

6) Adopt Resolutions Authorizing the Chief Executive Officer to Execute an Amended and Restated Renewable Power Supply Power Purchase Agreement with RE Slate 1 LLC and If Shortlisted, Authorizing the Chief
Executive Officer to Execute a Confirmation with PG&E for Long-term RPS Bundled Energy (Action)

7) Adopt Resolution Approving the Revised SVCE Decarbonization Strategy and Programs Roadmap, New Program Briefs, and Budget Allocation Adjustments (Action)

8) Executive Committee Report (Discussion)

9) Finance and Administration Committee Report (Discussion)

10) Audit Committee Report (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Adjourn
Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, January 8, 2020
7:00 pm
Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Call to Order
Chair Abe-Koga called the meeting to order at 7:01 p.m.

Roll Call
Present:
Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Howard Miller, City of Saratoga
Director Carmen Montano, City of Milpitas
Director Javed Ellahie, City of Monte Sereno
Director Rob Rennie, Town of Los Gatos
Director Nancy Smith, City of Sunnyvale
Director Rod Sinks, City of Cupertino
Alternate Director George Tyson, Town of Los Altos Hills
Director Courtenay Corrigan, Town of Los Altos Hills (arrived at 7:06 p.m.)
Director Liz Gibbons, City of Campbell
Alternate Director Neysa Fligor, City of Los Altos
Director Susan Ellenberg, County of Santa Clara
Alternate Director Anthony Eulo, City of Morgan Hill
Director Fred Tovar, City of Gilroy (arrived at 7:07 p.m.)

Absent:
None.

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

Consent Calendar
Director Sinks requested to pull Item 1f and Director Miller requested to pull Item 1g from the Consent Calendar.

MOTION: Director Sinks moved and Director Gibbons seconded the motion to approve the Consent Calendar with the exception of Items 1f and 1g.

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

The motion carried unanimously with Director Tovar absent.
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 Chief Executive Officer to Execute Agreement 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
1h) Executive Committee Report
1i) Legislative Ad Hoc Committee Report
1j) Finance and Administration Committee Report
1k) Audit Committee Report

1f) Receive Q4 2019 Decarbonization Programs Update

Director Sinks commented on the experience of an esteemed member of the public who had to replace a water heater, and the preparation work for panel infrastructure needed to convert to an electric heat pump water heater; Director Sinks requested staff and the Board consider a change to the SVCE Heat Pump Water Heater program that would enable an electric heat pump water heater conversion.

Vice Chair Miller requested to address Item 1g with a similar comment to Director Sinks; there were no objections from the Board.

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

Vice Chair Miller commented on the grant allocation reimbursement amount, and noted he agreed with Director Sinks’ fundamental premise of the importance of laying the groundwork for people to put themselves in a path of decarbonizing their homes.

Director Corrigan arrived at 7:06 p.m. and Alternate Director Tyson left the meeting.

Manager of Account Services John Supp responded to questions from the Board regarding the reimbursement incentive and emergency water heater replacements.

Directors discussed the maturation of the heat pump water heater program. Director Gibbons suggested being flexible with grants for special circumstances, and Director Ellahie suggested including a hotline number on the newly installed heat pump water heaters.

MOTION: Director Smith moved and Director Sinks seconded the motion to approve Item 1f) Receive Q4 2019 Decarbonization Programs Update and 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.

The motion carried unanimously.

Regular Calendar

2) Receive Lobbyist Update (Discussion)
Steve Baker of Aaron Read & Associates, LLC provided an overview of 2019 lobbying efforts and a look-ahead on upcoming 2020 regulatory and legislative matters; Baker responded to Board member questions.

CEO Girish Balachandran responded to a question regarding suggestions for legislation for 2020.

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

3) **Climate Youth Ambassador Program Recap (Discussion)**

CEO Balachandran introduced and recognized Kaushik Tota of Climate Youth Ambassadors with who presented a PowerPoint presentation; Tota responded to questions from the Board.

Directors commended Tota on his work on the Climate Youth Ambassadors program and provided suggestions including visiting south county students, developing metrics for success, working with Directors within their respective city/county roles and leverage their contacts at local school districts, leveraging SVCE programs, using creative ways to reach the youth, and getting involved and affecting policy change.

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

4) **CEO Report (Discussion)**

CEO Balachandran provided a CEO report which included an introduction of new staff members Zoe Elizabeth, Senior Energy Consultant, Kevin Armstrong, Administrative Services Manager, and Freya Chay, Decarbonization and Grid Innovation Analyst Intern, who provided brief comments.

CEO Balachandran recognized Chair Abe-Koga for her service as Chair of the SVCE Board in 2019 and presented her with a plaque; the Board shared their appreciation for Chair Abe-Koga and gathered for a group photo. Chair Abe-Koga thanked the Board and staff.

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

5) **Elect a Chair and Vice Chair of the SVCE Board of Directors for 2020 (Action)**

Board Clerk Andrea Pizano introduced the item.

**MOTION:** Director Gibbons moved and Director Rennie seconded the motion to nominate Director Howard Miller for Chair of the SVCE 2020 Board of Directors.

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

The motion carried unanimously.

Following the selection of Chair, the newly appointed Chair Miller presided over the remainder of the meeting.
MOTION: Director Corrigan moved and Director Rennie seconded the motion to nominate Director Nancy Smith for Vice Chair of the SVCE 2020 Board of Directors.

The motion carried unanimously.

Newly appointed Vice Chair Smith provided brief comments.

6) **Appoint Directors to the SVCE Executive Committee for 2020 (Action)**

Board Clerk Andrea Pizano introduced the item.

MOTION: Director Corrigan moved and Director Ellahie seconded the motion to appoint Chair Howard Miller, Vice Chair Nancy Smith, Director Abe-Koga, Director Gibbons, and Director Sinks to the 2020 SVCE Executive Committee.

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

The motion carried unanimously.

7) **Approve Formation of Ad Hoc Committee of the Board for 2020 to Address Legislative and Regulatory Responses to Industry Transition (Action)**

CEO Balachandran introduced the item.

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

MOTION: Director Sinks moved and Director Tovar seconded the motion 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

The motion carried unanimously.

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)**

Director of Power Resources Monica Padilla introduced the item and a presentation; Director of Power Resources Padilla responded to Board member questions.

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

MOTION: Director Abe-Koga moved and Director Tovar seconded the motion to adopt Resolution No. 2020-02 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 and any necessary ancillary documents. Power delivery term: December 31, 2021 to December 30, 2031, in an amount not to exceed $42,500,000.

The motion carried unanimously.

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

Vice Chair Smith announced Sunnyvale’s City Manager included the 2019 Community Benefits Summary in the December City Manager’s biweekly report, *Update Sunnyvale*.

Director Gibbons announced the American Institute of Architects (AIA) adopted a decarbonization policy and the Santa Clara Valley AIA would be holding a meeting next Wednesday night to discuss reach codes and how local architects would be implementing them.

Director Sinks announced the City of Cupertino passed the first reading of their reach codes, which are similar to Menlo Park and Mountain View’s first readings.

Director Corrigan announced the meeting would be her last and thanked the Board and staff for being a pleasure to work with. Director Corrigan announced George Tyson would be representing the City of Los Altos Hills at next month’s Board of Directors meeting.

**Adjourn**

Chair Miller adjourned the meeting at 9:06 p.m.
ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Silicon Valley Clean Energy Authority

Management is responsible for the accompanying financial statements of Silicon Valley Clean Energy Authority (a California Joint Powers Authority) which comprise the statement of net position as of November 30, 2019, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. Silicon Valley Clean Energy Authority’s annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user’s conclusions about the Authority’s financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy
San Rafael, CA
January 15, 2020
# TREASURER REPORT

Fiscal Year to Date  
As of November 30, 2019  

*(Preliminary & Unaudited)*  

Issue Date: February 12, 2020

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<td>Statement of Net Position</td>
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<td>Statement of Revenues, Expenses &amp; Changes in Net Position</td>
<td>4-5</td>
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<td>Statement of Cash Flows</td>
<td>6-7</td>
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<td>Investments Report</td>
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<td>Weather Statistics</td>
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<td>Accounts Receivable Aging Report</td>
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</table>
## STATEMENT OF NET POSITION
As of November 30, 2019

### ASSETS

#### Current Assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>$146,676,417</td>
</tr>
<tr>
<td>Accounts Receivable, net of allowance</td>
<td>21,969,170</td>
</tr>
<tr>
<td>Accrued Revenue</td>
<td>15,340,756</td>
</tr>
<tr>
<td>Other Receivables</td>
<td>55,213</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>2,476,991</td>
</tr>
<tr>
<td>Deposits</td>
<td>2,264,830</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>5,000,000</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>193,783,377</strong></td>
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</table>

#### Noncurrent assets

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital assets, net of depreciation</td>
<td>144,906</td>
</tr>
<tr>
<td>Deposits</td>
<td>129,060</td>
</tr>
<tr>
<td><strong>Total Noncurrent Assets</strong></td>
<td><strong>273,966</strong></td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>194,057,343</strong></td>
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</table>

### LIABILITIES

#### Current Liabilities

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>807,731</td>
</tr>
<tr>
<td>Accrued Cost of Electricity</td>
<td>28,681,356</td>
</tr>
<tr>
<td>Accrued Payroll &amp; Benefits</td>
<td>338,216</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>44,000</td>
</tr>
<tr>
<td>User Taxes and Energy Surcharges due to other gov'ts</td>
<td>998,697</td>
</tr>
<tr>
<td>Supplier Security Deposits</td>
<td>28,320</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>30,898,320</strong></td>
</tr>
</tbody>
</table>

### NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net investment in capital assets</td>
<td>144,906</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>5,000,000</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>158,014,117</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>$163,159,023</strong></td>
</tr>
</tbody>
</table>
## STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2019 through November 30, 2019

### OPERATING REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$ 52,579,855</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>215,097</td>
</tr>
<tr>
<td>Other Income</td>
<td>93,294</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>52,888,246</strong></td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>30,597,864</td>
</tr>
<tr>
<td>Contract services</td>
<td>1,315,944</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>684,113</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>338,989</td>
</tr>
<tr>
<td>Depreciation</td>
<td>8,750</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>32,945,660</strong></td>
</tr>
<tr>
<td><strong>OPERATING INCOME(LOSS)</strong></td>
<td><strong>19,942,586</strong></td>
</tr>
</tbody>
</table>

### NONOPERATING REVENUES (EXPENSES)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>365,901</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(144,419)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING EXPENSES</strong></td>
<td><strong>221,482</strong></td>
</tr>
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</table>

### CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>142,994,957</td>
</tr>
<tr>
<td>Net Position at end of period</td>
<td><strong>$ 163,159,025</strong></td>
</tr>
</tbody>
</table>
STATEMENT OF CASH FLOWS
October 1, 2019 through November 30, 2019

CASH FLOWS FROM OPERATING ACTIVITIES
Receipts from customers $ 66,398,384
Other operating receipts 283,508
Payments to suppliers for electricity (35,492,196)
Payments for other goods and services (1,790,251)
Payments for staff compensation and benefits (701,089)
Tax and surcharge payments to other governments (1,304,738)
Net cash provided (used) by operating activities 27,393,618

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES
Finance costs paid (125,788)
Net cash provided (used) by non-capital financing activities (125,788)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Acquisition of capital assets (5,620)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Interest income received 365,901

Net change in cash and cash equivalents 27,628,111
Cash and cash equivalents at beginning of year 124,048,306
Cash and cash equivalents at end of period $ 151,676,417
STATEMENT OF CASH FLOWS (Continued)
October 1, 2019 through November 30, 2019

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

Operating Income (loss) $ 19,942,586

Adjustments to reconcile operating income to net cash provided (used) by operating activities

Depreciation expense 8,750
Revenue reduced for uncollectible accounts 212,028
(Increase) decrease in net accounts receivable 8,095,616
(Increase) decrease in energy settlements receivable 166,657
(Increase) decrease in other receivables (37,313)
(Increase) decrease in accrued revenue 4,231,344
(Increase) decrease in prepaid expenses (1,161,707)
(Increase) decrease in current deposits (4,274)
Increase (decrease) in accounts payable (138,316)
Increase (decrease) in accrued payroll & benefits (16,976)
Increase (decrease) in energy settlements payable 115,260
Increase (decrease) in accrued cost of electricity (3,566,213)
Increase (decrease) in accrued liabilities (213,530)
Increase (decrease) in taxes and surcharges due to other governments (240,294)

Net cash provided (used) by operating activities $ 27,393,618
### BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through November 30, 2019

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2019-20</th>
<th>FY 2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Budget</td>
<td>$</td>
<td>%</td>
<td>Budget</td>
</tr>
<tr>
<td>Energy Sales</td>
<td>$52,579,855</td>
<td>$51,427,016</td>
<td>$1,152,839</td>
<td>2%</td>
<td>$317,230,000</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>215,097</td>
<td>154,344</td>
<td>60,753</td>
<td>39%</td>
<td>940,000</td>
</tr>
<tr>
<td>Other Income</td>
<td>93,294</td>
<td>8,333</td>
<td>84,961</td>
<td>1020%</td>
<td>50,000</td>
</tr>
<tr>
<td>TOTAL OPERATING REVENUES</td>
<td>52,888,246</td>
<td>51,589,694</td>
<td>1,298,552</td>
<td>3%</td>
<td>318,220,000</td>
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<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td>Power Supply</td>
<td>30,597,864</td>
<td>39,324,126</td>
<td>(8,726,262)</td>
<td>-22%</td>
<td>245,340,000</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>22,290,382</td>
<td>12,265,567</td>
<td>10,024,815</td>
<td>82%</td>
<td>72,880,000</td>
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</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th></th>
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<tbody>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td>Data Management</td>
<td>582,209</td>
<td>587,585</td>
<td>(5,376)</td>
<td>-1%</td>
<td>3,530,000</td>
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<tr>
<td>PG&amp;E Fees</td>
<td>191,947</td>
<td>224,351</td>
<td>(32,404)</td>
<td>-14%</td>
<td>1,350,000</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>684,113</td>
<td>915,560</td>
<td>(231,447)</td>
<td>-25%</td>
<td>5,490,000</td>
</tr>
<tr>
<td>Professional Services</td>
<td>377,615</td>
<td>605,071</td>
<td>(227,456)</td>
<td>-38%</td>
<td>3,710,000</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>119,927</td>
<td>187,955</td>
<td>(68,028)</td>
<td>-36%</td>
<td>960,000</td>
</tr>
<tr>
<td>Notifications</td>
<td>18,856</td>
<td>23,500</td>
<td>(4,644)</td>
<td>-20%</td>
<td>160,000</td>
</tr>
<tr>
<td>Lease</td>
<td>54,862</td>
<td>100,000</td>
<td>(45,138)</td>
<td>-45%</td>
<td>600,000</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>157,274</td>
<td>170,000</td>
<td>(12,726)</td>
<td>-7%</td>
<td>1,150,000</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSES</td>
<td>2,186,803</td>
<td>2,814,021</td>
<td>(627,218)</td>
<td>-22%</td>
<td>16,950,000</td>
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<table>
<thead>
<tr>
<th>OPERATING INCOME/(LOSS)</th>
<th></th>
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<td></td>
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<tr>
<td></td>
<td>20,103,579</td>
<td>9,451,546</td>
<td>10,652,033</td>
<td>113%</td>
<td>55,930,000</td>
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</table>

<table>
<thead>
<tr>
<th>NON-OPERATING REVENUES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td>365,901</td>
<td>244,917</td>
<td>120,984</td>
<td>49%</td>
<td>1,470,000</td>
</tr>
<tr>
<td>Grant Income</td>
<td>27,083</td>
<td>27,083</td>
<td>0%</td>
<td>160,000</td>
<td>160,000</td>
</tr>
<tr>
<td>TOTAL NON-OPERATING REVENUES</td>
<td>365,901</td>
<td>272,000</td>
<td>93,901</td>
<td>35%</td>
<td>1,630,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING EXPENSES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing</td>
<td>144,419</td>
<td>102,965</td>
<td>41,454</td>
<td>40%</td>
<td>180,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>5,617</td>
<td>33,333</td>
<td>(27,716)</td>
<td>-83%</td>
<td>400,000</td>
</tr>
<tr>
<td>Refund of Bond (Cash Inflow)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0%</td>
<td>(100,000)</td>
</tr>
<tr>
<td>Financial Security Requirement</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0%</td>
<td>147,000</td>
</tr>
<tr>
<td>Transfer to Program Fund</td>
<td>6,360,000</td>
<td>6,360,000</td>
<td>-</td>
<td>0%</td>
<td>6,360,000</td>
</tr>
<tr>
<td>TOTAL OTHER USES</td>
<td>6,365,617</td>
<td>6,393,333</td>
<td>(27,716)</td>
<td>0%</td>
<td>6,807,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$13,959,444</td>
<td>$3,227,248</td>
<td>$10,732,196</td>
<td>333%</td>
<td>$50,573,000</td>
</tr>
</tbody>
</table>
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through November 30, 2019

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</th>
<th>BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>ACTUAL/BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$6,360,000</td>
<td>$6,360,000</td>
<td>$0</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES &amp; OTHER USES:</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Expenditures</td>
<td>6,360,000</td>
<td>152,243</td>
<td>6,207,757</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance

| Fund balance at beginning of period | $0 | $6,207,757 | |
| Fund balance at end of period | | | $6,207,757 |

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

Net Increase (decrease) in available fund balance per budgetary comparison schedule $13,959,444

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

- Subtract depreciation expense (8,750)
- Subtract program expense not in operating budget (152,243)
- Add back transfer to Program fund 6,360,000
- Add back capital asset acquisition 5,617

Change in Net Position 20,164,068
# Personnel Report for November 2019

<table>
<thead>
<tr>
<th>Position</th>
<th>Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Account Services and Community Relations</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Account Services Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Energy Consultant</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Energy Associate</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Communications Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Community Outreach Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Communications Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Board Clerk/Executive Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Finance and Administration</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Services Manager</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Rates Manager</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Management Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Power Resources</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Planner</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Power Settlements &amp; Compliance Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Manager of Regulatory and Legislative Affairs</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Decarboniation and Grid Innovation</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Data Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Analyst</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>27</strong></td>
<td><strong>21</strong></td>
<td><strong>6</strong></td>
</tr>
</tbody>
</table>
### INVESTMENTS SUMMARY
October 1, 2019 through November 30, 2019

<table>
<thead>
<tr>
<th>Return on Investments</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market</td>
<td>$178,701</td>
<td>$187,200</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$365,901</td>
</tr>
</tbody>
</table>

### Portfolio Invested
- **Average daily portfolio available to invest**: 114,832,942 124,956,925
- **Average daily portfolio invested**: 102,127,452 120,538,388
- **% of average daily portfolio invested**: 88.9% 96.5%

### Detail of Portfolio

<table>
<thead>
<tr>
<th>Money Market - River City Bank</th>
<th>Opening Rate</th>
<th>November Rate</th>
<th>Carrying Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.26%</td>
<td>1.68%</td>
<td>$130,709,119</td>
</tr>
</tbody>
</table>

*Note: Balance available to invest does not lockbox or debt serve reserve funds.*
CUSTOMER ACCOUNTS

RESIDENTIAL ACCOUNTS

NON-RESIDENTIAL ACCOUNTS
WEATHER STATISTICS

COOLING DEGREE DAYS

HEATING DEGREE DAYS
**ACCOUNTS RECEIVABLE AGING REPORT**

<table>
<thead>
<tr>
<th>Accounts Receivable</th>
<th>Total</th>
<th>Days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$30,962,325</td>
<td>$27,328,535</td>
</tr>
<tr>
<td>Period %</td>
<td>100%</td>
<td>88.3%</td>
</tr>
</tbody>
</table>

*Note: A portion of accounts that are greater than 90 days old have been sent back to PG&E, however the receivable remains outstanding until PG&E writes the account off.
Staff Report – Item 1c

Item 1c: Approve Cancellation of July Board of Directors Meeting, and Reschedule of November Board of Directors Meeting

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/12/2020

RECOMMENDATION
Staff recommends that the Board:
1. Approve the cancellation of the regularly scheduled July 8, 2020 Board of Directors Meeting, and
2. Move the regularly scheduled November meeting, which falls on a holiday, to a date to be determined based on Director availability.

EXECUTIVE COMMITTEE RECOMMENDATION
The Executive Committee met January 31, 2020 and recommended the cancellation of the July Board of Directors meeting.

The committee also recommended the November Board of Directors meeting be rescheduled to a date and time that would work for a majority of board members by distributing an availability poll.

BACKGROUND
In 2018 and 2019, the Board of Directors approved a one-month summer hiatus from meetings; in 2018 it was August, and, based on feedback from the Board that a July recess would be preferable, in 2019 it was July.

The 2020 Board of Directors November meeting falls on Veteran’s Day and will need to be rescheduled.

ANALYSIS & DISCUSSION
Given the Board and staff’s positive feedback received for a summer recess in 2018 and 2019, staff proposed this be duplicated in 2020. Staff suggests July be selected for the summer hiatus, and has reviewed projections for summer workload and identified that taking a one-month recess from the Board of Directors meeting in July will not affect operations. Staff is aware that if the need for Board action arises in July or early August, a special meeting of the Board will be called.

Regarding the November Board meeting reschedule, November 11, 2020 is the Veteran’s day holiday. Based on the recommendation from the Executive Committee, staff would like to distribute a Doodle poll to the Board to find a date, preferably the week of November 9, 2020, to reschedule the Board of Directors meeting. The poll will provide various options, including daytime meeting options.

STRATEGIC PLAN
Not applicable.
ALTERNATIVES
The Board may select an alternative month for a summer hiatus; the Board could also choose not to cancel a summer meeting.

If the Board chooses not to poll for an alternative November meeting, staff is open to suggestions on scheduling an alternative meeting date.

FISCAL IMPACT
None.
Item 1d: Approve 2020 Updates to Exhibit C, Annual Energy Use, and Exhibit D, Voting Shares, of the SVCE Joint Powers Agreement

To: Silicon Valley Clean Energy Board of Directors

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

Date: 2/12/2020

RECOMMENDATION
Approve update to Exhibits C & D in Silicon Valley Clean Energy’s (SVCE) Joint Powers Agreement (JPA) to reflect the member agencies’ energy demand and voting rights.

BACKGROUND
As referenced in Section 4.9.2 Voting Shares Vote of SVCE’s JPA, immediately following an affirmative percentage vote by the Board of Directors, two Directors may request a vote of the voting shares be held. A voting shares vote requires that the sum of all corresponding voting shares of Directors voting in the affirmative exceed a 50 percent majority. Voting shares are determined by the formula outlined in Section 4.9.3 Voting Shares Formula.

The Annual Energy Use (Exhibit C) and Voting Shares (Exhibit D) for each of SVCE’s 13 jurisdictions should be adjusted in SVCE’s JPA annually.

ANALYSIS & DISCUSSION
The Voting Shares Formula outlined in Section 4.9.3 specifies that for the first two years following the Effective Date (March 31, 2016) voting shares are based on annual electricity usage within the Party’s respective jurisdiction. Electricity usage combines quantities of electricity served to customers by SVCE, and by PG&E. Direct Access load is not included in this calculation. For annual Voting Shares calculations after the first two years, Section 4.9.3 specifies that the calculation be based on electric load served by the Authority only.

All Jurisdictions in SVCE territory received service for an entire calendar year in 2019. Each Party’s 2020 voting share was calculated as a percentage of total 2019 load served by SVCE only.

ATTACHMENTS
1. Update to Exhibit C, Annual Energy Use
2. Update to Exhibit D, Voting Shares
EXHIBIT C

ANNUAL ENERGY USE

This Exhibit C is effective as of February 12, 2020.

<table>
<thead>
<tr>
<th>Party</th>
<th>kWh (2019*)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campbell</td>
<td>200,331,650</td>
</tr>
<tr>
<td>Cupertino</td>
<td>215,634,491</td>
</tr>
<tr>
<td>Gilroy</td>
<td>262,922,520</td>
</tr>
<tr>
<td>Los Altos</td>
<td>125,383,862</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>42,375,490</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>179,511,752</td>
</tr>
<tr>
<td>Milpitas</td>
<td>587,261,775</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>15,323,633</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>205,383,075</td>
</tr>
<tr>
<td>Mountain View</td>
<td>535,482,196</td>
</tr>
<tr>
<td>Santa Clara County</td>
<td>347,205,509</td>
</tr>
<tr>
<td>(Unincorporated)</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>117,025,263</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>1,117,875,467</td>
</tr>
</tbody>
</table>

| Total                | 3,951,716,683 |

*Data provided by Calpine Data Solutions
EXHIBIT D

VOTING SHARES

This Exhibit D is effective as of February 12, 2020.

<table>
<thead>
<tr>
<th>Party</th>
<th>kWh (2019*)</th>
<th>Voting Share</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Section 4.9.2</strong></td>
</tr>
<tr>
<td>Campbell</td>
<td>200,331,650</td>
<td>5.1%</td>
</tr>
<tr>
<td>Cupertino</td>
<td>215,634,491</td>
<td>5.4%</td>
</tr>
<tr>
<td>Gilroy</td>
<td>262,922,520</td>
<td>6.6%</td>
</tr>
<tr>
<td>Los Altos</td>
<td>125,383,862</td>
<td>3.2%</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>42,375,490</td>
<td>1.1%</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>179,511,752</td>
<td>4.5%</td>
</tr>
<tr>
<td>Milpitas</td>
<td>587,261,775</td>
<td>14.9%</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>15,323,633</td>
<td>0.4%</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>205,383,075</td>
<td>5.2%</td>
</tr>
<tr>
<td>Mountain View</td>
<td>535,482,196</td>
<td>13.5%</td>
</tr>
<tr>
<td>Santa Clara County</td>
<td>347,205,509</td>
<td>8.8%</td>
</tr>
<tr>
<td>(Unincorporated)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>117,025,263</td>
<td>3.0%</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>1,117,875,467</td>
<td>28.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,951,716,683</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

*Data provided by Calpine Data Solutions*
Staff Report – Item 1e

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

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 2/12/2020

RECOMMENDATION
Staff recommends that the Board approve Resolution 2020-03 Certifying Representatives on River City Loans.

BACKGROUND
At the September 11, 2019 Board of Directors meeting, the Board approved the renewal of a $35 million Revolving Line of Credit with River City Bank with a two-year duration.

ANALYSIS & DISCUSSION
With the adoption of a new Chair and Vice Chair of the Silicon Valley Clean Energy (SVCE) Board of Directors at the January Board meeting, River City Bank requires a formal resolution authorizing the new Chair and Chief Executive Officer to engage in loan agreements on behalf of SVCE. This is an annual process with River City Bank each time a new Chair is appointed.

STRATEGIC PLAN
This report supports the fiscal management goals of the strategic plan.

ALTERNATIVE
There is no alternative to this recommendation as the resolution is required by River City Bank.

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

ATTACHMENTS
1. Resolution 2020-03 Certifying Representatives from SVCE on River City Bank Loans.
RESOLUTION No. 2020-03

RESOLUTION OF SILICON VALLEY CLEAN ENERGY AUTHORITY

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

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

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

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

RESOLUTIONS ADOPTED. At a meeting of the Silicon Valley Clean Energy Authority’s Board of Directors (“Board”), duly called and held on the 12th day of February 2020, by a vote affixed hereto, the resolutions set forth in this Resolution were adopted.

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

<table>
<thead>
<tr>
<th>NAMES</th>
<th>TITLES</th>
<th>SIGNATURES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Howard Miller</td>
<td>Chair of the Board</td>
<td></td>
</tr>
<tr>
<td>Girish Balachandran</td>
<td>Chief Executive Officer</td>
<td></td>
</tr>
</tbody>
</table>

ACTIONS AUTHORIZED. Any one (1) of the authorized representatives listed above may enter into any agreements of any nature with River City Bank (“Lender”), and those agreements will bind the Authority. Specifically, but without limitation, each of the authorized representatives is authorized, empowered, and directed to do the following for and on behalf of the Authority with respect to a loan or loans and any other financial accommodations from Lender:

Borrow Money. To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender, on such terms as may be agreed upon between the Authority and Lender, such sum or sums of money as in its judgment should be borrowed, without limitation.
Execute Notes. To execute and deliver to Lender any loan agreement, promissory note or notes, letter of credit applications, requests, or other evidence of the Authority’s credit accommodations, in form and substance acceptable to Lender, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Authority’s indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

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

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

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

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

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

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

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

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

I have read all the provisions of this Resolution, and I personally and on behalf of the Authority certify that all statements and representations made in this Resolution are true and correct. This Resolution is dated on this 12th day of February 2020.

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

By: ____________________________

Howard Miller
Chair, Silicon Valley Clean Energy Authority

**PASSED AND ADOPTED** this 12th day of February 2020, by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Cupertino</td>
<td>Director Sinks</td>
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<tr>
<td>City of Gilroy</td>
<td>Director Tovar</td>
<td></td>
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<tr>
<td>City of Los Altos</td>
<td>Director Fligor</td>
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<tr>
<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
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<td></td>
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</tr>
<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Milpitas</td>
<td>Director Montano</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>City of Morgan Hill</td>
<td>Alternate Director Eulo</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
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<tr>
<td>City of Saratoga</td>
<td>Director Miller</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>Director Smith</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Staff Report – Item 2

Item 2: Receive Financial Audit Report from Pisenti & Brinker, LLP

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 2/12/2020

RECOMMENDATION

AUDIT COMMITTEE RECOMMENDATION
At the February 5, 2020 meeting of the Audit Committee, committee members received a presentation by the Independent Auditor discussing the status of the audit and the preliminary auditor’s opinion. The Audit Committee also receive a draft of the financial report.

BACKGROUND
In accordance with Financial Policy #1 (FP1), Accounting Policy, the annual audit of the financial statements has been completed and the report prepared by Pisenti & Brinker, LLP has been issued to the Agency. The auditors have rendered a clean opinion and “found the financial statements referred to above present fairly, in all material respects, the financial position of SVCE as of September 30, 2019, and the changes in financial position and cash flows for the periods ended in accordance with accounting principles generally accepted in the United States of America.”

Basic Financial Statements
The Statement of Net Position presents information about assets and liabilities with the difference between the two reported as net position. The change in net position over time is an indicator of whether the financial position of the Agency is improving or deteriorating.

The Statement of Revenues, Expenses and Changes in Net Position reports how net position changed during the year and present a comparison between operating and non-operating revenues and operating and non-operating expenses. Operating revenues and expenses are related to the Agency’s principal business of providing carbon-free electricity.

The Statement of Cash Flows reports the cash provided and used by operating activities, as well as other sources and uses, such as financing and investing activities.

Notes to the Financial Statements
Various notes provide additional information that is essential to a full understanding of the information provided in the basic financial statements. These are found immediately following the financial statements to which they refer.
ANALYSIS & DISCUSSION
The following represents highlights as of September 30, 2019:

- As of September 30, 2019, total assets were $178.0 million, with $177.7 million of current assets. Current assets are mostly comprised of $119.1 million of cash and cash equivalents, $30.3 million in accounts receivable, $20.0 million in accrued revenue, $2.3 million in deposits, and $5.0 million in restricted cash. The total of current assets increased during the fiscal year as a result of SVCE’s operating surplus. The majority of deposits classified as long term at September 30, 2018 were returned ahead of schedule, resulting in a large drop at September 30, 2019.

- As of September 30, 2019, total liabilities were $35.0 million. Current liabilities consist mostly of the cost of electricity delivered to customers that is not yet due to be paid by SVCE. Other components include taxes and surcharges due to other governments and various other accrued liabilities. The largest change in this category is due to changes in accrued cost of electricity. As part of the formation of SVCE, member agencies loaned SVCE $2.7 million for costs during the implementation period and for working capital until payments were collected from customers. The load was repaid in January 2018 resulting in SVCE having no noncurrent liabilities at the end of the fiscal year.

- As of September 30, 2019, total revenues were $293.7 million primarily from the sale of carbon-free electricity. Operating revenues exceeded the cost of electricity by $75.3 million resulting in an operating margin of 25.7% enabling the Agency to maintain competitive rates and build its cash reserves.

- As of September 30, 2019, total expenses were $229.1 million. The increase in operating expenses from fiscal year 2019 to 2018 is largely the result of energy purchases needed to provide for retail customer use. Expenses for staff compensation, consulting, and other general and administrative expenses increased in 2019 as the organization grew to support its operations and meet the challenges of a changing business landscape.

STRATEGIC PLAN
This report supports the fiscal management goals of the strategic plan.

ALTERNATIVE
There is no alternative to this recommendation as the financial audit is a requirement of Board Policy FP1.

FISCAL IMPACT
During Fiscal Year 2018-19, SVCE’s total revenues exceeded total expenses, resulting in an increase to Net Position of $64.6 million.

SVCE’s Auditors, Pisenti & Brinker, LLP, issued an unqualified (“clean”) opinion on the Agency’s financials for the fiscal year ended September 30, 2019.

ATTACHMENTS
SILICON VALLEY CLEAN ENERGY AUTHORITY

Financial Statements

Years Ended:

- September 30, 2019
- September 30, 2018

With Report of Independent Auditors
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  Notes to the Basic Financial Statements .............................................. 14
Independent Auditor’s Report

To the Board of Directors
Silicon Valley Clean Energy Authority
Sunnyvale, California

Report on the Financial Statements

We have audited the accompanying financial statements of Silicon Valley Clean Energy Authority (SVCE), as of and for the years ended September 30, 2019 and 2018, and the related notes to the financial statements, which collectively comprise SVCE’s basic financial statements as listed in the table of contents.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of SVCE as of September 30, 2019 and 2018 and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.
Independent Auditor’s Report (continued)

Other Matters

Accounting principles generally accepted in the United States of America require that the management’s discussion and analysis as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Santa Rosa, California
February 6, 2020
The Management’s Discussion and Analysis provides an overview of Silicon Valley Clean Energy Authority’s (SVCE) financial activities as of and for the years ended September 30, 2019 and 2018. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of SVCE was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

SVCE was created as a California Joint Powers Authority (JPA) on March 31, 2016. SVCE was established to provide electric power at competitive costs as well as to provide other benefits within Santa Clara County, including reducing energy related greenhouse gas emissions, securing energy supply and price stability, and providing energy efficiencies and local economic benefits. Governed by a board of directors (Board) consisting of elected representatives from each jurisdiction, SVCE has the rights and powers to set rates for the electricity it furnishes, incur indebtedness, and issue bonds or other obligations. SVCE is responsible for the acquisition of electric power for its service area. SVCE serves the unincorporated areas of Santa Clara County and the cities and towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, and Sunnyvale.

In April 2017, SVCE began providing service to its first 66,000 customer accounts as part of its initial enrollment phase. SVCE completed its customer enrollment in July 2017 and as of September 30, 2019, SVCE serves approximately 277,000 customer accounts.
Financial Reporting

SVCE presents its financial statements as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with generally accepted accounting principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

Contents of this report

This report is divided into the following sections:

- Management discussion and analysis.

- The basic financial statements:
  
  o The *Statements of Net Position* includes all of SVCE’s assets, liabilities, and net position and provides information about the nature and amount of resources and obligations at a specific point in time.

  o The *Statements of Revenues, Expenses, and Changes in Net Position* report all of SVCE’s revenue and expenses for the years shown.

  o The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as financing and investing activities.

  o Notes to the Basic Financial Statements provide additional details and information related to the basic financial statements.
## FINANCIAL HIGHLIGHTS

The following table is a summary of SVCE’s assets, liabilities, and net position and a discussion of significant changes for the years ending September 30:

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets</strong></td>
<td>$ 177,676,248</td>
<td>$ 108,758,726</td>
<td>$ 61,416,239</td>
</tr>
<tr>
<td><strong>Noncurrent assets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net</td>
<td>148,038</td>
<td>184,319</td>
<td>167,506</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>129,060</td>
<td>6,192,560</td>
<td>128,560</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td>277,098</td>
<td>6,376,879</td>
<td>296,066</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>177,953,346</td>
<td>115,135,605</td>
<td>61,712,305</td>
</tr>
<tr>
<td><strong>Current liabilities</strong></td>
<td>34,958,389</td>
<td>36,700,885</td>
<td>30,666,808</td>
</tr>
<tr>
<td><strong>Noncurrent liabilities</strong></td>
<td>-</td>
<td>-</td>
<td>2,730,000</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>34,958,389</td>
<td>36,700,885</td>
<td>33,396,808</td>
</tr>
<tr>
<td><strong>Net position</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in capital assets</td>
<td>148,038</td>
<td>184,319</td>
<td>167,506</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>5,000,000</td>
<td>2,000,000</td>
<td>4,400,000</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>137,846,919</td>
<td>76,250,401</td>
<td>23,747,991</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>$ 142,994,957</td>
<td>$ 78,434,720</td>
<td>$ 28,315,497</td>
</tr>
</tbody>
</table>

### Current Assets

Current assets were approximately 177,676,000 at the end of 2019 and are mostly comprised of cash, accounts receivable, and accrued revenue. Accrued revenue differs from accounts receivable in that it is the result of electricity use by SVCE customers before invoicing to those customers has occurred. The total of current assets increased during 2018-19 as a result of SVCE’s operating surplus.

The overall increase in current assets comparing 2017-18 with 2016-17 was expected, as fiscal year 2016-17 was the first year of operation.
Capital Assets

Capital assets were approximately $148,000 at the end of 2019, net of accumulated depreciation, primarily consisting of furniture and electronic equipment for use in SVCE’s administrative office. This amount is reported net of depreciation. SVCE does not own assets used for electric generation or distribution.

Other Noncurrent Assets

Other noncurrent assets reached approximately $6,193,000 in 2018 and primarily consists of various deposits for energy supply, regulatory and other operating purposes. The majority of deposits classified as long term at September 30, 2018, were returned ahead of schedule, resulting in the large drop in that category at September 30, 2019.

Current Liabilities

This category consists mostly of the cost of electricity delivered to customers that is not yet due to be paid by SVCE. Other components include taxes and surcharges due to other governments and various other accrued liabilities. The largest change in this category, for both years, relates to changes in accrued cost of electricity.

Noncurrent Liabilities

As part of the formation of SVCE, member agencies loaned SVCE $2,730,000 for costs during the implementation period and for working capital until payments were collected from customers. The loan was outstanding as of September 30, 2017 and was repaid in January 2018.
The following table is a summary of SVCE’s results of operations and a discussion of significant changes for the years ending September 30:

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2018</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues</td>
<td>$292,473,135</td>
<td>$249,948,112</td>
<td>$93,940,264</td>
</tr>
<tr>
<td>Nonoperating revenues</td>
<td>1,230,787</td>
<td>153,840</td>
<td>1,078</td>
</tr>
<tr>
<td>Total income</td>
<td>293,703,922</td>
<td>250,101,952</td>
<td>93,941,342</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>228,999,528</td>
<td>199,967,063</td>
<td>64,366,230</td>
</tr>
<tr>
<td>Nonoperating expenses</td>
<td>144,157</td>
<td>15,666</td>
<td>149,251</td>
</tr>
<tr>
<td>Total expenses</td>
<td>229,143,685</td>
<td>199,982,729</td>
<td>64,515,481</td>
</tr>
<tr>
<td>Change in net position</td>
<td>$ 64,560,237</td>
<td>$ 50,119,223</td>
<td>$ 29,425,861</td>
</tr>
</tbody>
</table>

**Operating Revenues**

SVCE’s major customer enrollment was completed in July 2017, resulting in fiscal year 2018 being the first year with a full customer base which resulted in a sharp increase in revenues during 2017-18. SVCE began serving the City of Milpitas in June 2018 which resulted in approximately 25,000 additional customers. The addition of Milpitas as well as changes in customer rates were the main drivers of the revenue increase in 2018-19.

**Operating Expenses**

SVCE’s largest operating expense is the purchase of electricity for retail customer use. SVCE procure energy from a variety of sources and focuses on purchasing at competitive costs and maintaining a balanced renewable power portfolio. Expenses for staff compensation, consulting, data management and other general and administrative expenses increased in 2018-19 as the organization continued to grow with business demands.
ECONOMIC OUTLOOK

Silicon Valley Clean Energy serves approximately 97% of all eligible customers in Santa Clara County, and that rate of participation is expected to remain stable in 2020.

The core mission is to provide all our customers with carbon-free electricity. Clean electricity from SVCE’s carbon-free resources has contributed to a dramatic 21% reduction in area-wide carbon emissions from energy use compared to 2015 levels. SVCE is also supporting renewable energy technology by investing in new projects. In 2018, SVCE entered into three long-term power agreements, partnering with our neighboring Community Choice Aggregator agency, Monterey Bay Community Power, for the joint-procurements. The three projects range from 15-year to 20-year agreements and will diversify the portfolio by including wind and solar plus storage, bring stability to future power supply costs and create 1,440 jobs during construction.

In 2019, SVCE again engaged with Monterey Bay Community Power for a joint-solicitation for long-term power supply. In January 2020, the Board approved SVCE’s initial geothermal agreement with a 10-year term, located in Mono County, CA that includes technology to eliminate emissions. Geothermal energy not only diversifies SVCE’s power supply portfolio but with its baseload energy attributes, supports SVCE’s long-term vision of providing renewable energy to meet our demands on a 24x7 basis.

SVCE is currently in negotiations in five additional long-term power agreements that will include additional geothermal and solar plus storage energy. Those negotiations are expected to conclude in Spring/Summer 2020.

Senate Bill 237 was passed in 2018 and increased the cap for direct access participation for large commercial and industrial customer load. The impact will be minimal to SVCE with less than 2% of current load at risk and will not materialize until 2021. However, SVCE is being proactive in anticipation of direct access expansion with a Board of Directors approved Commercial Pricing Policy in 2019 that allows SVCE to be innovative in customized contract offerings to customers that supports long-term customer retention.
ECONOMIC OUTLOOK (continued)

SVCE will continue to provide stable and competitive electric rates whenever possible and has identified unpredictable PG&E customer exit fees as a key barrier to this goal. SVCE has prioritized regulatory and legislative work with respect to the exit fee process and has implemented a proactive approach on other regulatory and legislative issues such as the PG&E bankruptcy proceedings. Additionally, SVCE’s commitment to building up healthy cash reserves have placed us in a stable position to manage future regulatory and legislative risk.

SVCE has a strong focus on continuing to build credit capacity through increased cash reserves, engaging lines of credit for increased liquidity, complying with the energy risk management policy and credit guidelines, and entering into favorable energy purchase commitments. SVCE is expected to obtain an investment grade credit rating in Summer 2020. This will help create a stable environment for SVCE and its ratepayers.

REQUEST FOR INFORMATION

This financial report is designed to provide SVCE’s customers and creditors with a general overview of the organization’s finances and to demonstrate SVCE’s accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087.

Respectfully submitted,

Girish Balachandran, Chief Executive Officer
BASIC FINANCIAL STATEMENTS
# SILICON VALLEY CLEAN ENERGY AUTHORITY
## STATEMENTS OF NET POSITION
### SEPTEMBER 30, 2019 AND 2018

The accompanying notes are an integral part of these financial statements.

## ASSETS

<table>
<thead>
<tr>
<th>Item</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$119,048,306</td>
<td>$56,963,340</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>30,276,814</td>
<td>23,661,147</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>19,572,100</td>
<td>16,931,361</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>166,657</td>
<td>-</td>
</tr>
<tr>
<td>Other receivables</td>
<td>17,900</td>
<td>86,261</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>1,333,915</td>
<td>1,123,847</td>
</tr>
<tr>
<td>Deposits</td>
<td>2,260,556</td>
<td>7,992,770</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>5,000,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>177,676,248</strong></td>
<td><strong>108,758,726</strong></td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>148,038</td>
<td>184,319</td>
</tr>
<tr>
<td>Deposits</td>
<td>129,060</td>
<td>6,192,560</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td><strong>277,098</strong></td>
<td><strong>6,376,879</strong></td>
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<tr>
<td><strong>Total assets</strong></td>
<td><strong>177,953,346</strong></td>
<td><strong>115,135,605</strong></td>
</tr>
</tbody>
</table>

## LIABILITIES

<table>
<thead>
<tr>
<th>Item</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>946,047</td>
<td>720,538</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>32,132,309</td>
<td>34,183,673</td>
</tr>
<tr>
<td>Accrued payroll and benefits</td>
<td>355,192</td>
<td>191,289</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>257,530</td>
<td>-</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>1,238,991</td>
<td>1,020,385</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>28,320</td>
<td>585,000</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>34,958,389</strong></td>
<td><strong>36,700,885</strong></td>
</tr>
</tbody>
</table>

## NET POSITION

<table>
<thead>
<tr>
<th>Item</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in capital assets</td>
<td>148,038</td>
<td>184,319</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>5,000,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>137,846,919</td>
<td>76,250,401</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td><strong>142,994,957</strong></td>
<td><strong>$78,434,720</strong></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
SILICON VALLEY CLEAN ENERGY AUTHORITY  
STATEMENTS OF REVENUES, EXPENSES  
AND CHANGES IN NET POSITION  
YEARS ENDED SEPTEMBER 30, 2019 AND 2018

The accompanying notes are an integral part of these financial statements.

| Item 2 | Attachment 1 |

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$ 291,390,036</td>
<td>$ 249,204,377</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>1,018,493</td>
<td>730,235</td>
</tr>
<tr>
<td>Other income</td>
<td>64,606</td>
<td>13,500</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>292,473,135</td>
<td>249,948,112</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>217,237,705</td>
<td>189,905,958</td>
</tr>
<tr>
<td>Contract services</td>
<td>7,136,317</td>
<td>6,460,109</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>3,399,752</td>
<td>2,626,639</td>
</tr>
<tr>
<td>General and administration</td>
<td>1,175,314</td>
<td>934,728</td>
</tr>
<tr>
<td>Depreciation</td>
<td>50,440</td>
<td>39,629</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>228,999,528</td>
<td>199,967,063</td>
</tr>
<tr>
<td>Operating income</td>
<td>63,473,607</td>
<td>49,981,049</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>1,230,787</td>
<td>153,840</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(144,157)</td>
<td>(15,666)</td>
</tr>
<tr>
<td>Total nonoperating revenues, net of expenses</td>
<td>1,086,630</td>
<td>138,174</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net position at beginning of year</td>
<td>78,434,720</td>
<td>28,315,497</td>
</tr>
<tr>
<td>Net position at end of year</td>
<td>$ 142,994,957</td>
<td>$ 78,434,720</td>
</tr>
</tbody>
</table>
### CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Activity</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from customers</td>
<td>$288,642,766</td>
<td>$251,097,382</td>
</tr>
<tr>
<td>Other operating receipts</td>
<td>20,443,825</td>
<td>12,316,255</td>
</tr>
<tr>
<td>Payments to suppliers for electricity</td>
<td>(228,425,552)</td>
<td>(205,070,693)</td>
</tr>
<tr>
<td>Payments for other goods and services</td>
<td>(8,004,130)</td>
<td>(7,678,060)</td>
</tr>
<tr>
<td>Payments for staff compensation</td>
<td>(3,327,364)</td>
<td>(2,436,100)</td>
</tr>
<tr>
<td>Tax and surcharge payments to other governments</td>
<td>(5,272,035)</td>
<td>(4,953,547)</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td>64,057,510</td>
<td>43,275,237</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Activity</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal payments on bank note</td>
<td>-</td>
<td>(2,900,000)</td>
</tr>
<tr>
<td>Principal payments on JPA member loans</td>
<td>-</td>
<td>(2,730,000)</td>
</tr>
<tr>
<td>Interest and financing costs</td>
<td>(209,367)</td>
<td>(22,892)</td>
</tr>
<tr>
<td><strong>Net cash used by non-capital financing activities</strong></td>
<td>(209,367)</td>
<td>(5,652,892)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Activity</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of capital assets</td>
<td>(19,919)</td>
<td>(56,442)</td>
</tr>
<tr>
<td>Proceeds from disposition of assets</td>
<td>25,955</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net cash used by capital and related financing activities</strong></td>
<td>6,036</td>
<td>(56,442)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Activity</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>1,230,787</td>
<td>153,840</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>65,084,966</td>
<td>37,719,743</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of year</td>
<td>58,963,340</td>
<td>21,243,597</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of year</strong></td>
<td>$124,048,306</td>
<td>$58,963,340</td>
</tr>
</tbody>
</table>

### Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Activity</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents (unrestricted)</td>
<td>$119,048,306</td>
<td>$56,963,340</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>5,000,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents</strong></td>
<td>$124,048,306</td>
<td>$58,963,340</td>
</tr>
</tbody>
</table>
## RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income</td>
<td>$ 63,473,607</td>
<td>$ 49,981,049</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided by operating activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>29,290</td>
<td>39,629</td>
</tr>
<tr>
<td>Loss on disposal of capital assets</td>
<td>953</td>
<td>-</td>
</tr>
<tr>
<td>Revenue adjusted for uncollectible accounts</td>
<td>(228,011)</td>
<td>1,255,952</td>
</tr>
<tr>
<td>(Increase) decrease in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(6,387,653)</td>
<td>(3,496,749)</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>(166,657)</td>
<td>266,328</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>(2,640,739)</td>
<td>(1,955,039)</td>
</tr>
<tr>
<td>Other receivables</td>
<td>68,361</td>
<td>113,739</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>(144,859)</td>
<td>(1,052,005)</td>
</tr>
<tr>
<td>Deposits</td>
<td>11,795,714</td>
<td>(10,818,970)</td>
</tr>
<tr>
<td>Increase (decrease) in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>225,509</td>
<td>(129,684)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>(2,051,364)</td>
<td>8,195,562</td>
</tr>
<tr>
<td>Accrued payroll and benefits</td>
<td>163,903</td>
<td>106,266</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>257,530</td>
<td>(20,900)</td>
</tr>
<tr>
<td>User taxes due to other governments</td>
<td>218,606</td>
<td>205,059</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>(556,680)</td>
<td>585,000</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>64,057,510</td>
<td>43,275,237</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

Silicon Valley Clean Energy Authority (SVCE) is a joint powers authority created on March 31, 2016. As of September 30, 2019, parties to its Joint Powers Agreement consist of the following local governments:

Unincorporated areas of Santa Clara County
Campbell
Cupertino
Gilroy
Los Altos
Los Altos Hills
Los Gatos
Milpitas
Monte Sereno
Morgan Hill
Mountain View
Saratoga
Sunnyvale

SVCE is separate from and derives no financial support from its members. SVCE is governed by a Board of Directors whose membership is composed of elected officials representing the member governments.

SVCE was formed to study, promote, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing these objectives. A core function of SVCE is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

SVCE began its energy delivery operations in April 2017. Electricity is acquired from commercial and municipal suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company (PG&E).

BASIS OF ACCOUNTING

SVCE’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

SVCE’s operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted and unrestricted.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CASH AND CASH EQUIVALENTS

For purpose of the Statements of Cash Flows, SVCE has defined cash and cash equivalents to include cash on hand and demand deposits. SVCE has cash that is restricted under various security agreements. This is reported as restricted cash on the Statement of Net Position and the Statement of Cash Flows.

DEPOSITS

Various energy contracts entered into by SVCE require SVCE to provide a supplier with a security deposit. These deposits are generally held for the term of the contract. Deposits are classified as current or noncurrent assets depending on the length of the time the deposits will be held. While these energy contract related deposits make up the majority of this item, other components of deposits include those for regulatory and other operating purposes.

CAPITAL ASSETS AND DEPRECIATION

SVCE’s policy is to capitalize furniture and equipment valued over $1,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, five years for automobiles and seven years for furniture and leasehold improvements.

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. SVCE did not have any outstanding borrowings as of September 30, 2019, and 2018.

Restricted: This component of net position consists of constraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted: This component of net position consists of net position that does not meet the definition of “investment in capital assets” or “restricted.”
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

OPERATING AND NON-OPERATING REVENUE

Revenue from the sale of electricity to customers is considered operating revenue. Interest income is considered non-operating revenue.

REVENUE RECOGNITION

SVCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

ELECTRICAL POWER PURCHASED

During the normal course of business SVCE purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from SVCE’s participation in the California Independent System Operator’s centralized market. The cost of electricity and capacity is recognized as “Cost of Electricity” in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California’s Renewable Portfolio Standards (RPS), SVCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). SVCE obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. An expense is recognized at the point that the cost of the Certificate is due and payable to the supplier.

SVCE purchases capacity commitments from qualifying generators to comply with the California Energy Commission’s Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to the California Independent System Operator to ensure the safe and reliable operation of the grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

STAFFING COSTS

SVCE pays employees bi-weekly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan as they come due. SVCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. SVCE provides compensated time off, and the related liability is recorded in these financial statements.

INCOME TAXES

SVCE is a joint powers authority under the provision of the California Government Code. As such it is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.
2. CASH AND CASH EQUIVALENTS

SVCE maintains its cash in interest and non-interest-bearing accounts. California Government Code Section 16521 requires that banks collateralize amounts of public funds in excess of the FDIC limit of $250,000 by 110%. SVCE monitors its risk exposure on an ongoing basis. SVCE’s investment policy permits the investment of funds in depository accounts, certificates of deposit, and the California Local Agency Investment Funds (LAIF). At September 30, 2019 all of SVCE’s cash and cash equivalents were held in depository accounts.

3. ACCOUNTS RECEIVABLE AND ACCRUED REVENUE

Accounts receivable were as follows at September 30:

<table>
<thead>
<tr>
<th></th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable</td>
<td>$ 31,776,814</td>
<td>$ 25,389,161</td>
</tr>
<tr>
<td>Allowance for</td>
<td>(1,500,000)</td>
<td>(1,728,014)</td>
</tr>
<tr>
<td>uncollectible accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net accounts</td>
<td>$ 30,276,814</td>
<td>$ 23,661,147</td>
</tr>
<tr>
<td>receivable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The majority of account collections will occur within the first few months following customer invoicing. SVCE estimates that a portion of the billed accounts will not be collected. SVCE continues collection efforts on accounts in excess of de minimis balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, SVCE continues to be successful in collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years and is adjusted for write-offs.
4. MARKET SETTLEMENTS RECEIVABLE

SVCE receives generation scheduling and other services from a scheduling coordinator registered with the California Independent System Operator (CAISO). Energy settlements due from the scheduling coordinator were $167,000 and $0 as of September 30, 2019 and 2018, respectively.

5. CAPITAL ASSETS

Capital asset activity for the years ended September 30, 2018 and 2019 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Furniture &amp; Equipment</th>
<th>Accumulated Depreciation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balances at Sept</td>
<td>$ 190,588</td>
<td>$(23,082)</td>
<td>$ 167,506</td>
</tr>
<tr>
<td>30, 2017</td>
<td>56,442</td>
<td>(39,629)</td>
<td>16,813</td>
</tr>
<tr>
<td>Additions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balances at Sept</td>
<td>247,030</td>
<td>(62,711)</td>
<td>184,319</td>
</tr>
<tr>
<td>30, 2018</td>
<td>19,919</td>
<td>(50,440)</td>
<td>(30,521)</td>
</tr>
<tr>
<td>Dispositions</td>
<td>(16,335)</td>
<td>10,575</td>
<td>(5,760)</td>
</tr>
<tr>
<td>Balances at Sept</td>
<td>$ 250,614</td>
<td>$(102,576)</td>
<td>$ 148,038</td>
</tr>
<tr>
<td>30, 2019</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. DEBT

Notes payable to River City Bank

In December 2016, SVCE entered into an agreement with River City Bank to borrow up to $18,000,000 in the form of a Revolving Credit Promissory Note and $2,000,000 in the form of a Non-Revolving Promissory Note. The intended use of funds drawn was to provide cash to pay for energy purchases and operating expenses which were due before revenue was collected from customers. The notes were secured by cash deposit of $1,900,000 as well as guarantees by the County of Santa Clara and the cities of Gilroy, Mountain View and Sunnyvale. Principal could be drawn as needed and interest accrued on the outstanding balance and was payable each month and computed at the one-month LIBOR rate plus an additional 1.25% for the Non-Revolving portion and an additional 1.75% for the Revolving portion. SVCE drew upon both the Revolving and the Non-Revolving lines during fiscal year ended September 30, 2017. All of the funds drawn on the Non-Revolving line were repaid within the year. The outstanding balance on the Revolving line matured in December 2017 and was repaid in full at that time.

In October 2018, SVCE renewed its credit agreement with River City Bank to borrow up to $20,000,000 in the form of a Revolving Credit Promissory Note. The intended use of the Revolving Line of Credit was to provide liquidity flexibility resulting in placing SVCE in a stronger position when negotiating power supply contract.
6. DEBT (continued)

Notes payable to River City Bank (continued)

In response to the PG&E bankruptcy announcement in January 2019, SVCE responded by amending the credit agreement with River City Bank and expanding the line of credit to $35,000,000. In October 2019, SVCE renewed the $35,000,000 line of credit with River City Bank and extended the duration to October 2021.

As of September 30, 2019, SVCE had not drawn any cash proceeds on the line of credit. However, the line of credit was used to issue Letters of Credit to energy suppliers which totaled approximately $6,600,000. These Letters of Credit reduce the available balance on the revolving line of credit.

Loans payable to JPA members

As part of SVCE’s formation agreement, all the members were required to provide initial funding to SVCE to investigate the feasibility of implementing a community choice aggregation program as well as to provide for other working capital needs. The agreement required that SVCE repay the members within four years after formation without interest. The total of these loans was $2,730,000. No principal payments were made through the year ended September 30, 2017. In January 2018, SVCE repaid the loans.

Below is a summary of loans by members as of September 30, 2017:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Campbell</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Cupertino</td>
<td>$ 520,000</td>
</tr>
<tr>
<td>Gilroy</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Los Altos</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>$ 25,000</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>$ 25,000</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Mountain View</td>
<td>$ 520,000</td>
</tr>
<tr>
<td>Santa Clara County (Unincorporated)</td>
<td>$ 520,000</td>
</tr>
<tr>
<td>Saratoga</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>$ 520,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 2,730,000</strong></td>
</tr>
</tbody>
</table>
6. DEBT (continued)

Debt principal activity and balances for all notes and loans were as follows:

<table>
<thead>
<tr>
<th>Year ended September 30, 2017</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Beginning</td>
<td>Additions</td>
<td>Payments</td>
<td>Ending</td>
</tr>
<tr>
<td>Bank note (revolving)</td>
<td>$2,730,000</td>
<td>$2,900,000</td>
<td>$-</td>
<td>$2,900,000</td>
</tr>
<tr>
<td>Bank note (non-revolving)</td>
<td>-</td>
<td>$1,500,000</td>
<td>$(1,500,000)</td>
<td>-</td>
</tr>
<tr>
<td>JPA Member loans</td>
<td>$2,730,000</td>
<td>-</td>
<td>-</td>
<td>$2,730,000</td>
</tr>
<tr>
<td>Total</td>
<td>$5,630,000</td>
<td>$4,400,000</td>
<td>$(1,500,000)</td>
<td>$5,630,000</td>
</tr>
<tr>
<td>Amounts due within one year</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$(2,900,000)</td>
</tr>
<tr>
<td>Amounts due after one year</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$2,730,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year ended September 30, 2018</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$2,900,000</td>
<td>-</td>
<td>$(2,900,000)</td>
<td>-</td>
</tr>
<tr>
<td>JPA Member loans</td>
<td>$2,730,000</td>
<td>-</td>
<td>$(2,730,000)</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>$5,630,000</td>
<td>-</td>
<td>$(5,630,000)</td>
<td>-</td>
</tr>
<tr>
<td>Amounts due within one year</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Amounts due after one year</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$-</td>
</tr>
</tbody>
</table>
7. DEFINED CONTRIBUTION RETIREMENT PLAN

SVCE provides retirement benefits through the Silicon Valley Clean Energy Authority Public Agency Retirement System Defined Contribution Plan. The Plan is a defined contribution 401(a) Retirement Plan established to provide benefits at retirement to employees of certain qualified employers admitted by the Plan. The Plan is administered by the Public Agency Retirement System (PARS). At September 30, 2019 and 2018, SVCE had 23 and 16 plan participants, respectively. SVCE is required to contribute up to 10% of covered payroll as a match to required employee contributions. SVCE contributed approximately $254,000 and $198,000 during the years ended September 30, 2019 and 2018, respectively. Plan provisions and contribution requirements as they apply to SVCE are established and may be amended by the Board of Directors.

8. RISK MANAGEMENT

SVCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, SVCE purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. SVCE has general liability coverage of $2,000,000 with a deductible of $500.

SVCE maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market.

Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties’ financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, SVCE enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counterparties.
9. PURCHASE COMMITMENTS

**POWER AND ELECTRIC CAPACITY**

In the ordinary course of business, SVCE enters into various power purchase agreements to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind and hydro-electric facilities.

SVCE enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products and to ensure stable and competitive electric rates for its customers.

The following table represents the expected, undiscounted, contractual obligations outstanding as of September 30, 2019:

<table>
<thead>
<tr>
<th>Year Ended September 30,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$ 204,000,000</td>
</tr>
<tr>
<td>2021</td>
<td>150,000,000</td>
</tr>
<tr>
<td>2022</td>
<td>93,000,000</td>
</tr>
<tr>
<td>2023</td>
<td>48,000,000</td>
</tr>
<tr>
<td>2024</td>
<td>33,000,000</td>
</tr>
<tr>
<td>2025-2041</td>
<td>418,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 946,000,000</strong></td>
</tr>
</tbody>
</table>

As of September 30, 2019, SVCE had non-cancelable contractual commitments to professional service providers through December 2024, for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be $16.5 million.
10. OPERATING LEASE

Rental expense for SVCE’s office space was $326,000 and $320,000 for the years ended September 30, 2019, and 2018, respectively. During the year ended September 30, 2017, SVCE entered into non-cancelable lease for its office premises through January 31, 2022.

Future minimum lease payments under the lease are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>$329,504</td>
</tr>
<tr>
<td>2021</td>
<td>339,392</td>
</tr>
<tr>
<td>2022</td>
<td>114,240</td>
</tr>
<tr>
<td>Total</td>
<td>$783,136</td>
</tr>
</tbody>
</table>

11. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statement are effective for future fiscal years ending after September 30, 2020:

GASB Statement No. 87, *Leases*, is effective for fiscal years beginning after December 15, 2019. The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments’ financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, thereby enhancing the relevance and consistency of information about governments’ leasing activities.
12. PG&E BANKRUPTCY

PG&E provides transmission and distribution services to SVCE customers and serves as billing agent for SVCE. PG&E is responsible to collect payments on behalf of SVCE. In January 2019, PG&E filed for Chapter 11 bankruptcy protection. SVCE expects the utility will continue to operate in a business-as-usual fashion and the SVCE’s revenues collected by PG&E will continue to flow through to SVCE with no material interruption.

13. CONTINGENCIES

In September 2018, new legislation was passed in the California legislature that expands direct access for commercial customers throughout the State. It is unknown what the impact of this will be on SVCE or how much commercial load might be eligible under this direct access expansion.

On October 11, 2018, the California Public Utilities Commission (CPUC) passed an Alternative Proposed Decision (APD) regarding the calculation of the Power Charge Indifference Adjustment (PCIA). The decision will increase the PCIA for all of SVCE’s customers. SVCE is evaluating the specific changes that will be required to SVCE’s rates as a result of this decision.
Item 3: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 2/12/2020

REPORT

SVCE Staff Workplan

On January 10, 2020, all SVCE staff participated in an all-day offsite meeting at Hakone Gardens in Saratoga to discuss and develop their workplan for 2020. The Board approved Strategic Plan, the Board’s goals for the CEO and the staff workplan are all connected and dynamic. A short presentation will be provided to the Board at the meeting.

Strategic Planning & Work Plan

Board Succession Planning & Orientation

Relevant to the Board, one of the goals for this year is the development of an initiative we are calling, “Technical Fundamentals to Be an Effective SVCE Policy Maker”. This will include a desk reference with lessons learned from past Board members, a series of top-25 topics that will be presented in 5-minute slides for self-paced learning, and annual and individual orientations. Additionally, a bi-monthly update to the Board with upcoming training and conference opportunities will be provided to accommodate each Board member’s specific learning needs.
CEO Agreements Executed
The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

1) Ascend Analytics, Task Order #7: Q1 2020 Portfolio Management Consulting, Modeling Configuration and Model Training, not to exceed $38,544
2) Center for Sustainable Energy, Task Order #2: Innovation Onramp Program Management; not to exceed $144,326
3) Keyes & Fox, Amendment: Legislative support, not to exceed $121,000
4) Energy and Environmental Economics, Amendment, Task #2: SVCE's DER/Electrification Assessment, not to exceed $99,000
5) Colleen Valles: Freelance Writing and Media Relations Services, not to exceed $40,000
6) Energy and Environmental Economics, Task Order #1: Integration of DERS into SVCE’s Long-term Resource Plan, not to exceed $10,000
7) ADM, Task Order #4: Community Engagement Grants Evaluation, not to exceed $7,570

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

<table>
<thead>
<tr>
<th>Counterparty_Name</th>
<th>Execution Date</th>
<th>Transaction Type</th>
<th>Product</th>
<th>Start Date</th>
<th>End Date</th>
<th>Notional Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>PG&amp;E</td>
<td>1/13/2020</td>
<td>Purchase</td>
<td>System RA</td>
<td>3/1/2020</td>
<td>8/31/2020</td>
<td>$185,250.00</td>
</tr>
<tr>
<td>PG&amp;E</td>
<td>1/13/2020</td>
<td>Sale</td>
<td>System RA</td>
<td>3/1/2020</td>
<td>8/31/2020</td>
<td>$185,250.00</td>
</tr>
<tr>
<td>Calpine</td>
<td>1/9/2020</td>
<td>Sale</td>
<td>System RA</td>
<td>5/1/2020</td>
<td>5/31/2020</td>
<td>$97,500.00</td>
</tr>
<tr>
<td>Clean Power Alliance</td>
<td>1/8/2020</td>
<td>Purchase</td>
<td>System RA</td>
<td>4/1/2020</td>
<td>11/30/2020</td>
<td>$88,015.00</td>
</tr>
<tr>
<td>Ormat</td>
<td>1/8/2020</td>
<td>Purchase</td>
<td>Renewable Energy</td>
<td>12/31/2021</td>
<td>12/31/2031</td>
<td>Resolution No. 2020-02</td>
</tr>
<tr>
<td>Ohm Connect</td>
<td>1/28/2020</td>
<td>Purchase</td>
<td>System RA</td>
<td>7/1/2020</td>
<td>7/31/2020</td>
<td>$84,890.00</td>
</tr>
</tbody>
</table>

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

Presentations & Relevant Meetings Attended by CEO
- Participated in CalCCA Monthly Board meetings;
- Participated in weekly PG&E coop steering committee calls;
- Attended working lunch meeting with Berkeley Haas faculty and students to discuss the electricity market;
- Attended Moodys Credit Rating meeting;
- Presented Community Summary results to the City of Milpitas City Council.

ATTACHMENTS
1. Decarb & Grid Innovation Programs Update, February 2020
2. Account Services & Community Relations Update, February 2020
3. Regulatory and Legislative Update, February 2020
Decarb & Grid Innovation Programs Update

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

- **Seven cities have adopted Reach Codes** – Morgan Hill, Mountain View, Milpitas, Saratoga, Monte Sereno, Los Gatos, and Cupertino.

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

- **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
  - Six of the first seven member agencies have included reach codes for EV charging
## 1. Reach Code Initiative (2 of 2)

<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>Encourage Gas Reduction (1 + 2 + 2A)</th>
<th>Limit Gas (1 + 2A)</th>
<th>Ban Gas (1 only)</th>
<th>Higher than CalGREEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain View</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 23</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 45</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Milpitas</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 1132</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 3</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 33</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Los Gatos</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 93</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Cupertino</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Ordinance</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>2nd Reading</td>
<td></td>
<td></td>
<td>Draft Ordinance</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Campbell</td>
<td>2nd Reading</td>
<td></td>
<td></td>
<td>Begins on pg. 41</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Los Altos</td>
<td>1st Reading</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Santa Clara County</td>
<td>Staff Proposal</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>Staff Proposal</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Gilroy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Key

<table>
<thead>
<tr>
<th>Status</th>
<th>Approved</th>
<th>2nd Reading</th>
<th>1st Reading</th>
<th>Staff Proposal</th>
<th>Council Briefing</th>
</tr>
</thead>
</table>

### Building Reach

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

---

1Reach 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
  - **58 Completed.** Currently on a waitlist system.
  - 6 rebate slots available for CARE/FERA customers
    - Scheduling community meetings to address slower uptake with CARE/FERA customers
- Co-funded by BAAQMD

<table>
<thead>
<tr>
<th>Program Rebates</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heat Pump Water Heater Only</td>
<td>$2,000</td>
</tr>
<tr>
<td>Data Monitor</td>
<td>$300</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Optional Additional Rebates</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smart Performance Package</td>
<td>$1,500</td>
</tr>
<tr>
<td>Service Panel, upgrade to 200A</td>
<td>$2,500</td>
</tr>
<tr>
<td>CARE/FERA eligible customer</td>
<td>$7,500</td>
</tr>
</tbody>
</table>
3. EV Programs

- **CALeVIP** scoping is ongoing
- Preparing for second meeting of **Silicon Valley Transportation Electrification Clearinghouse** (March)
- Final development of **Regional EV Leadership Recognition**, with launch in coming months
- **Priority Zone DC Fast Charging** application window to open mid-February

Digital version available at: https://www.svcleanenergy.org/programs/
4. GridShift

- SVCE partnered with Powerhouse to organize **GridShift**, a hackathon
- The sold-out event took place on Jan 31-Feb 1 at **Google Launchpad** in SF
- **Winning teams took home $16k** in prizes for pitching solutions to accelerate EV adoption, understand energy and emissions, and enhance household resilience
5. Resilience RFP & VPP Update

• EBCE, PCE, SVP and SVCE jointly released RFP to support community resilience in Nov 2019

• 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

• Staff currently reviewing proposals and selecting vendors

• Contracts expected to be brought to BOD for review in Spring 2020
6. Other Updates

- **Customer Resource Center** – customer interviews and initial web design in process, vendor contracts being finalized

- SVCE provided a support letter to EPRI for a CEC grant proposal **Spearheading Decarb in Affordable Housing with Retrofit Ready Water Heating**. Award decision anticipated Spring 2020

- SVCE was invited to participate on a **Women in Cleantech and Sustainability** panel on Jan 16 focused on CCAs

*Image: Women in Cleantech and Sustainability panel discussion focused on CCAs, Jan 16, 2020*
1. Outreach Events & Sponsorships

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

Past and upcoming events:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. 11</td>
<td>11 AM – 4:00 PM</td>
<td>Robots on Ice at the Winter Ice Rink – tabling</td>
<td>Downtown Sunnyvale</td>
</tr>
<tr>
<td>Jan. 16</td>
<td>5:30 – 8:30 PM</td>
<td>Bike to the Future Orientation Night – presentation</td>
<td>Sunnyvale Community Center</td>
</tr>
<tr>
<td>Jan. 22</td>
<td>7 – 9 PM</td>
<td>Stanford Energy Club Networking Night – tabling</td>
<td>Stanford Campus</td>
</tr>
<tr>
<td>Jan. 25</td>
<td>10 AM – 2:30 PM</td>
<td>Vietnamese TET Festival – sponsor &amp; tabling</td>
<td>Santa Clara County Fairgrounds</td>
</tr>
<tr>
<td>Feb. 8</td>
<td>12 – 4 PM</td>
<td>Silicon Valley Lunar New Year – sponsor &amp; tabling</td>
<td>San Jose</td>
</tr>
<tr>
<td>Feb. 14</td>
<td>8 AM – 2 PM</td>
<td>2020 State of the Valley Conference – sponsor</td>
<td>San Jose McEnery Convention Center</td>
</tr>
</tbody>
</table>
## 2. Customer Participation

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>96.27%</td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>96.3%</td>
<td>96.3%</td>
</tr>
</tbody>
</table>
4. Member Agency Working Group Update

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

SVCE Updates
- Introduction
  - CRC Program Manager: Beth Trenchard
- Development of Customer Resource Center
- EVI Update
- Decarb Roadmap 1-Year Update
- Building Decarbonization Joint Action Plan RFP
- Resilience RFP
- Community Resilience
- TOU Outreach
- Reach Code/ HPWH Updates
5. Community Engagement Programs

All-Electric Showcase Communications
• 19 profiles of award-winning homes and building available at: www.svcleanenergy.org/all-electric-award
• Yard signs available for award winning homes to display their achievements

Save Energy, Win a Prize! – DIY Energy Toolkit Raffle
• Launched competition for customers who check out a DIY Energy Saving Toolkit to be entered in a raffle
• Winners can choose prizes such as an electric lawn mower, nest thermostat and more

Podcast Update:
Taking Charge Episode 2, History of the Grid: Abridged, is now available on Spotify, Apple Podcast as well as all top streaming services. https://www.svcleanenergy.org/takingcharge/
6. Bike to the Future Update

Schools participants are from:
- Cupertino High School
- Fremont High School
- Gilroy Early College Academy
- Homestead High School
- Leigh High School
- Los Altos High School
- Lynbrook High School
- Milpitas High School
- Monte Vista High School
- Mountain View High School
- Saratoga High School

Communities participants reside:
- Cupertino
- Gilroy
- Los Altos
- Los Gatos
- Milpitas
- Morgan Hill
- Mountain View
- Saratoga
- Sunnyvale
- Unincorporated Santa Clara County
8. Media

Latest SVCE News

- California needs clean energy after sundown. Geothermal could be the answer, Los Angeles Times, 01-22-20
- Sunnyvale Community Briefs, SVCE education fund, The Mercury News, 01-03-20
- City of Cupertino Takes Action to Fight Climate Change, Press Release, 01-29-20
- Saratoga and Sunnyvale Representatives Elected to Lead Clean Energy Agency Board, Press Release, 01-21-20
- Saratoga and Monte Sereno Advance Electrification in New Construction, Press Release, 01-13-20
8. Media

News Mentions

• Largest CCA Renewable Project Comes Online in California, *Commercial Property Executive*, 01-22-20

• Recycled water, community engagement and clean energy: State Senate candidates weigh in on ideas to tackle climate crisis, *Mountain View Voice, Palo Alto Online, The Almanac*, 01-22-20

• CCAs Sign Geothermal PPAs, *California Energy Markets*, 01-17-2019

• Microgrids to the Rescue?, *JDSUPRA*, 01-17-20

• Two California CCAs enter PPAs for geothermal energy, *American Public Power Association*, 01-14-20

• Transitioning Silicon Valley residential PV to solar-plus-storage: optimizers or microinverters? *, *PV magazine*, 12-29-219
January may have a reputation for post-holiday quiet in some circles, but not so in the policy world. The legislative side has obvious reasons: California’s 2020 legislative session kicked off on 1/6/20, and the 2/21/20 introduction deadline for new bills already looms. But the regulatory side has its January reckoning too. Although annual ratesetting is supposed to conclude in time for the new rates and PCIA to go into effect every January 1st, the last few cycles have reliably spilled over into the new year. So, finalizing the new PCIA and PG&E generation rates has become more of a Q1 tradition, and this year is no different. Apart from the annual ratemaking cycle, January is also a washing machine month when the California Public Utilities Commission (CPUC) both closes out consideration of any pre-holiday Proposed Decisions\(^1\) and often drops Scoping Rulings\(^2\) or other documents that map out the new year. The to-do list is long, the whiteboards are full, and the PCIA is expensive but we’re working on that. So, let’s take a look.

**Note:** Since we have some new Board members this time of year, I switched up the format and added extra context and background to this month’s update. Feedback on usefulness and potential improvements is welcome!

**Regulatory Ratesetting, Short- and Long-Term**

As mentioned above, the CPUC is in the final stages of setting the 2020 Power Charge Indifference Adjustment (PCIA) and the PG&E rates that SVCE’s rates compete with. The PCIA is a large fee that SVCE customers pay to PG&E in order to cover the cost of resources PG&E bought for SVCE customers before SVCE’s formation. The PCIA prevents CCA formation from driving up the cost of electricity for PG&E customers in communities that have no CCA. In order to be cost-competitive with PG&E from a customer perspective, SVCE’s rates must be lower than PG&E’s by at least the amount of the PCIA.

Setting the PCIA and PG&E’s rates happens every year via the Energy Resource Recovery Account (ERRA) forecast proceeding. On 1/24/20, the CPUC issued a Proposed Decision (PD) in PG&E’s ERRA proceeding accepting PG&E’s December 20th update as the near-final PCIA and rate numbers for 2020. This update forecasts an uncapped system average PCIA of 4.4 ¢/kWh (a 65% increase over 2019’s PCIA) beginning 5/1/20. However, this large of an increase triggers a “cap” mechanism designed to improve rate stability by limiting the size of year-to-year PCIA spikes. The capped PCIA would be 3.2 ¢/kWh, a 20% increase over 2019. Unfortunately, the cap is a new mechanism created in 2018, and it has not been fully reconciled with older mechanisms in place to protect PG&E from undercollection – in which the actual revenue is less than the forecasted amount. Implementation of the cap is expected to create

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\(^1\) CPUC proceedings are roughly analogous to court cases, with a standardized sequence of stages that most proceedings follow. A Proposed Decision (PD) is released as the end of a proceeding and displays ideas the CPUC intends to codify into new regulation after considering stakeholder proposals and input. Comments on a PD are generally the last opportunity for stakeholders such as SVCE to weigh in on a CPUC proceeding before the PD is voted on by the five CPUC Commissioners. If the PD receives at least three votes, it becomes a Decision and takes effect as new regulatory policy.

\(^2\) A Scoping Ruling or Scoping Memo is one of the first documents released in a new proceeding. It lays out the scope and schedule of the proceeding, and thus is an important document for regulatory planning purposes.
a level of undercollection by August 2020 that will allow PG&E to adjust the PCIA mid-year between ERRA cycles. This could result in the PCIA jumping to 5.3¢/kWh, a 100% increase over 2019, beginning Q3 2020. SVCE and other CCAs will submit comments on the PD this month and are meeting with each CPUC Commissioner’s office to make a final push on the contested items. The CPUC Commissioners are expected to take a final vote on the PD at their 2/27/20 voting meeting, with new rates then becoming effective 5/1/20.

On a longer time horizon, SVCE continues to participate jointly with other CCAs in PG&E’s 2020-2022 General Rate Case (GRC). GRCs are repeating cyclical proceedings like the ERRA, but happen on a three-year cycle instead of annually and always have two phases. In Phase 1, the CPUC establishes PG&E’s total revenue requirement for the three-year period. Phase 1 of PG&E’s current GRC is drawing to a close, but disagreement over several issues led to PG&E presenting a settlement agreement with several other stakeholders in December 2019. The Joint CCAs filed comments and reply comments on the settlement proposal on 1/21/20 and 2/5/20 respectively, along with an opening brief on remaining disputed Phase 1 issues on 1/6/2020. We expect Phase 1 to conclude with a final Decision on the settlement agreement and other issues by March 2020.

Phase 2 of the GRC is where the revenue requirement approved in Phase 1 is divided among the various classes of customer (residential, commercial, industrial, etc.). Phase 2 of PG&E’s current GRC began in November 2019 with PG&E’s opening application. The Joint CCAs filed a Protest on 1/10/20, PG&E replied on 1/21/20, and all parties are now awaiting a Scoping Memo to schedule the rest of Phase 2.

Reliability, aka Resource Adequacy (RA)
Lots happening here. Resource Adequacy is the main program the CPUC uses to ensure that there is generating capacity on the system each year to meet peak demand. The three major steps in the RA process are 1) The California Independent System Operator (CAISO) publishes a study annually on how much capacity is needed to meet the peak system-wide, 2) the CPUC divides that system-wide number into allocations for each load serving entity (LSE; includes CCAs, investor-owned utilities like PG&E, and direct access providers) based on its share of the peak demand, and 3) the LSEs file documentation at the CPUC showing that they’ve signed contracts for the required amount of capacity. The RA framework has been around since 2004, but changes on the grid since then, especially the increase in intermittent renewable resources and the proliferation of CCAs, have made its implementation increasingly complicated. We have two RA proceedings open at the CPUC right now, the end of one overlapping with the beginning of its successor.

The older proceeding, R.17-09-020, tackled among other things the creation a central buyer that could purchase RA capacity on behalf of all LSEs who wanted it to. The idea was that a central buyer could relieve

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3 Ie everything PG&E is allowed to spend money on and recover the costs of from ratepayers
4 We talk about the ERRA proceeding most frequently in the context of setting the PCIA, but the ERRA’s role more broadly is closely linked to the GRC. Since electricity is priced by the kWh but both supply costs and usage forecasting are imperfect, the role of the ERRA overall is to adjust rates and fees each year to keep PG&E on track to receive no more or less than its GRC-approved revenue requirement over the full three-year period.
the increasing capacity prices and market\(^5\) friction that have emerged in the past few years. There are right and wrong ways to design a central buyer, but CalCCA (the statewide CCA trade organization) and seven other parties submitted a settlement proposal in August 2019 that SVCE supported. Though it was originally scheduled for Q4 2019, we’re now expecting a Decision on the structure of the central buyer sometime in Q1 2020. In the meantime, on 1/16/20 the CPUC passed another Decision in this proceeding reducing the amount of RA compliance credit hybrid resources (e.g. solar plus storage) are eligible to receive. “RA accounting,” or calculating the amount of RA credit a resource can recieve, has become increasingly complex as nondispatchable resources such as wind and solar and dispatchable but availability-limited ones like storage have begun to displace the operationally-simpler natural gas the RA framework was designed around.

This leads us into the newer RA proceeding (R.19-11-009)\(^6\), which will focus heavily on RA accounting as well as the deeper question of how to adapt the RA framework to a grid dominated by low- or no-carbon resources whose capacity is only available at certain times of day (compared to the 24/7 availability of gas). The new RA proceeding got a Scoping Ruling on 1/22/20, and SVCE is currently planning our participation strategy alongside CalCCA and other CCAs. 

**GHG Reduction Planning, aka Integrated Resource Planning/Plan (IRP)**

Less happening here, at least on the CPUC front. IRP is the framework the CPUC uses to ensure the electricity sector is on track to meet its portion of CA’s GHG emissions reduction goals by 2030, and we have to submit one every two years. We’re currently in the 2019-2020 cycle, the first step of which is the CPUC conducting a modeling exercise showing how the sector could meet its total GHG reduction goals at lowest cost. This is called the Reference System Plan (RSP), and we got a draft version for review back in November 2019. After providing opening and reply comments, we’re waiting for a Decision containing the final RSP as well as the compliance templates we need to submit our own IRPs. In the meantime, there’s lots to do at SVCE internally. Progress on development of our own IRP, which the CPUC will aggregate with other LSEs’ IRPs and compare to the RSP once it’s submitted, continues apace. On 1/31/20 the CPUC extended the IRP submission deadline by two months to 7/1/20, allowing us more time for analysis and them more time to develop the compliance templates we still need. We’re also preparing a filing due 2/18/20 indicating that we intend to self-procure our portion (67.2 MW) of the 3,300 MW of incremental capacity the CPUC ordered as the final outcome of the 2017-2018 IRP cycle.

**Direct Access (DA)**

SB 237 (Hertzberg 2018) expanded CA’s DA program by 4,000 GWh and required the CPUC to conduct a study on the implications of fully reopening DA to all nonresidential customers in the state. DA expansion is significant for CCAs due to the potential for load migration (e.g. customer loss), which can result in stranded assets and higher costs for remaining CCA customers. The PCIA protects investor-owned utilities (IOUs) such as PG&E from these impacts, but there is no equivalent exit fee collected by CCAs so extra

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\(^5\) Note that the capacity “market” in California technically isn’t one. CA has a wholesale market for energy run by the California Independent System Operator (CAISO), but no equivalent for capacity. Capacity is bought and sold bilaterally between the power plants providing capacity and the LSEs that need capacity for RA compliance.

\(^6\) This proceeding opened in November 2019, which you can tell by looking at the first two components of the proceeding number: R.19-11-009. Proceeding numbers always start with the year and month of opening.
planning care is needed. SVCE as been leading CalCCA’s involvement in SB 237’s implementation proceeding at the CPUC, where Commission staff must finish the study and submit it to the legislature by 6/1/20. SVCE and CalCCA participated in a workshop on how the study should be designed on 1/8/20 (including Poonum Agrawal speaking as one of the panelists), and submitted opening and reply comments thereafter. The CPUC will release a draft version of the study for review by 3/9/20.

**Power Charge Indifference Adjustment (PCIA) Reform**

Apart from the annual PCIA-setting that happens in the ERRA proceedings, the PCIA reform proceeding is dedicated to improving the methodology the ERRA uses to calculate the PCIA. This proceeding is also examining some deeper reforms such as allocation of excess IOU resources directly to the CCAs (rather than CCAs paying for them all through the PCIA). The proceeding has three working groups, each tackling a different set of issues. Working Group 1 got a Decision on the first half of its issues in October 2019, so it’s currently on hiatus for a while before picking up again. Working Group 2, which is examining options for CCAs to prepay the PCIA if they wish, is waiting for a Decision after issuing its final report on 12/9/19. Working Group 3, addressing the aforementioned resource allocations, will submit its final report to the CPUC on 2/21/20. The report will include proposals for allocating GHG-free resources, RPS resources, and system/flex RA from the IOUs’ portfolios to CCAs on a voluntary basis. It will also include a proposal for a mandatory allocation of local RA. The GHG-free and RPS resources proposal may be effective 2021. The RA proposals will most likely be effective beginning compliance year 2022. A final Decision from the Commission on these allocation proposals is expected in Q2 2020. Finally, on 1/16/20 the CPUC issued a Decision denying all Applications for Rehearing of the October 2018 Decision in Phase 1 of this proceeding (including CalCCA’s) and rejecting all of CalCCA’s arguments against the Decision.

**Legislative**

The 2020 legislative session is off to the races. Bills must be introduced by 2/21/20, and we are sorting through those have come in as well as helping with CalCCA’s legislative efforts. Once the new members of the Legislative Ad Hoc Committee are selected, SVCE staff will schedule an initial meeting to begin reviewing bills and preparing for spring advocacy.
## FEBRUARY 2020

| Board of Directors, Feb. 12: |
|---|---|
| Consent |
| Minutes |
| December 2019 Treasurer Report |
| Contract for Appliance Marketplace Solution |

| Board of Directors, March 11: |
|---|---|
| Consent |
| Minutes |
| December 2019 Treasurer Report |
| Contract for Appliance Marketplace Solution |

| Board of Directors, April 8: |
|---|---|
| Consent |
| Minutes |
| January 2020 Treasurer Report |

| Executive Committee, TBD: |
|---|---|
| Board Succession Planning |

| Executive Committee, March 27: |
|---|---|
| IRP Review |
| Workforce Development Program Update |

| Executive Committee, April 24: |
|---|---|
| IRP Review |
| Workforce Development Program Update |

| Audit Committee, Feb. 5: |
|---|---|
| Receive Financial Audit Results |

## MARCH 2020

| Board of Directors, May 13: |
|---|---|
| Consent |
| Minutes |
| February 2020 Treasurer Report |

| Executive Committee, April 24: |
|---|---|
| IRP Review |
| Workforce Development Program Update |

| Executive Committee, May 22: |
|---|---|
| Strategic Plan Update |

## APRIL 2020

## MAY 2020
Staff Report – Item 4

Item 4: Appoint Board Committee Members

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/12/2020

RECOMMENDATION
Staff recommends the Board appoint members to the Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee, Audit Committee, and Finance and Administration Committee through February 2021.

BACKGROUND
SVCE’s Joint Powers Authority Agreement, Article 4, Section 4.7 Commissions, Board and Committees, states, “The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.” Per SVCE’s Operating Rules and Regulations, the term of office for each committee established by the Board shall be one year. There are no limits on the number of terms that a Director may serve on a committee.

ANALYSIS AND DISCUSSION
Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee
This Ad Hoc Board Committee was formed on January 8, 2020 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

The committee meets as needed (based on member availability), is comprised of up to six Directors or Alternate Directors of the Board, and will sunset on September 30, 2020. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. No more than one Committee member shall represent a particular member agency.

<table>
<thead>
<tr>
<th>Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Not more than six Directors of the Board (6 total)</td>
</tr>
<tr>
<td>• No more than one eligible Committee Member shall represent their respective Member Agency</td>
</tr>
<tr>
<td>• Alternates to appointed committee members is prohibited</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Directors who have Expressed Interest for 2020</th>
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</thead>
<tbody>
<tr>
<td>• Vice Chair Nancy Smith, Sunnyvale</td>
</tr>
<tr>
<td>• Dir. Javed Ellahie, Monte Sereno</td>
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<tr>
<td>• Dir. Neysa Fligor, Los Altos</td>
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<tr>
<td>• Dir. Yvonne Martinez Beltran, Morgan Hill</td>
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<tr>
<td>• Dir. Rob Rennie, Los Gatos</td>
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<tr>
<td>• Dir. Rod Sinks, Cupertino</td>
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</tbody>
</table>
Audit Committee
The purpose of the Audit Committee is to oversee the accounting and financial reporting process and the audit of SVCE’s financial statements by the independent auditor. The Audit Committee meets twice a year and as needed, is comprised of a minimum of three and up to six Directors or Alternate Directors of the Board, and no more than one eligible committee member shall represent their respective member agency.

<table>
<thead>
<tr>
<th>Composition</th>
<th>2019 Roster</th>
<th>Members Who Have Expressed Interest for 2020</th>
</tr>
</thead>
</table>
| • Minimum of three and no more than six Directors of the Board or appointees by the Board (3-6 total)  
• Board Members, Alternate Board Members, and member agency staff nominated by a Board Member can serve  
• No more than one eligible Committee Member shall represent their respective Member Agency  
• Alternates to appointed committee members is prohibited | • Committee Chair Courtenay Corrigan, Los Altos Hills  
• Committee Vice Chair Nancy Smith, Sunnyvale  
• Dir. Jeannie Bruins, Los Altos | • Vice Chair Nancy Smith, Sunnyvale  
• Dir. George Tyson, Los Altos Hills  
• Alt. Dir. Elaine Marshall, Milpitas |

Finance and Administration Committee
The purpose of the Finance and Administration Committee is to provide financial and administrative oversight of SVCE. Tasks include budgeting, financial reporting, monitoring of internal controls, review financial and administrative policies and oversee investment strategies. The Finance and Administration Committee meets quarterly and as needed, is comprised of up to six Directors or Alternate Directors of the Board, a minimum of three Directors or Alternate Directors, and no more than one eligible committee member shall represent their respective member agency.

<table>
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<tr>
<th>Composition</th>
<th>2019 Roster</th>
<th>Directors who have Expressed Interest for 2020</th>
</tr>
</thead>
</table>
| • Minimum of three and no more than six Directors of the Board or appointees by the Board (3-6 total)  
• Board Members, Alternate Board Members, and member agency staff nominated by a Board Member can serve  
• No more than one eligible Committee Member shall represent their respective Member Agency  
• Alternates to appointed committee members is prohibited | • Committee Chair Howard Miller, Saratoga  
• Committee Vice Chair Rob Rennie, Los Gatos  
• Dir. Javed Ellahie, Monte Sereno  
• Dir. Liz Gibbons, Campbell  
• Committee member Maria Oberg, Santa Clara County | • Chair Howard Miller, Saratoga  
• Dir. Javed Ellahie, Monte Sereno  
• Dir. Liz Gibbons, Campbell  
• Dir. Rob Rennie, Los Gatos  
• Committee member Maria Oberg, Santa Clara County |
Attached are two documents: 1) the 2020 Committee Matrix Worksheet which summarizes who served on these respective committees in 2019 and who has expressed interest for 2020, and 2) a visual snapshot of the proposed 2020 committee assignments for SVCE.

**STRATEGIC PLAN**
Not applicable.

**ALTERNATIVE**
There is no alternative to selecting members of SVCE’s committees.

**FISCAL IMPACT**
No fiscal impact as a result of selecting SVCE’s committee members.

**ATTACHMENTS**
1. 2020 Committee Matrix Worksheet
2. 2020 Proposed SVCE Committee Assignments
# 2020 Committee Matrix Worksheet

<table>
<thead>
<tr>
<th>Committee</th>
<th>2019 Roster</th>
<th>Committee Details</th>
<th>Interested in 2020</th>
</tr>
</thead>
</table>
| Ad Hoc Board Committee on Legislative and Regulatory Responses to Industry Transition | N/A | **Meeting Frequency:** As needed  
**Location:** SVCE Office  
**Composition:**  
• No greater than 6 Directors of the Board  
• No more than one eligible Committee member shall represent their respective Member Agency  
• An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. | • Nancy Smith, Sunnyvale  
• Javed Ellahie, Monte Sereno  
• Neyya Fligor, Los Altos  
• Yvonne Martinez Beltran, Morgan Hill  
• Rob Rennie, Los Gatos  
• Rod Sinks, Cupertino |
| Audit Committee | • Jeannie Bruins, Los Altos  
• Courtenay Corrigan, Los Altos Hills  
• Nancy Smith, Sunnyvale | **Meeting Frequency:** Twice yearly & as needed  
**Location:** SVCE Office  
**Composition:**  
• 3-6 Directors of the Board  
• Board members, Alternate Board members, and member agency staff nominated by a Board member can serve on the committee  
• No more than one eligible Committee member shall represent their respective Member Agency | • Nancy Smith, Sunnyvale  
• George Tyson, Los Altos Hills  
• Elaine Marshall, Milpitas (Alternate Board Member) |
| Finance and Administration Committee | • Howard Miller, Saratoga  
• Rob Rennie, Los Gatos  
• Javed Ellahie, Monte Sereno  
• Liz Gibbons, Campbell  
• Maria Oberg, Santa Clara County (staff member) | **Meeting Frequency:** Quarterly & as needed  
**Location:** SVCE Office  
**Composition:**  
• 3-6 Directors of the Board  
• Board members, Alternate Board members, and member agency staff nominated by a Board member can serve on the committee  
• No more than one eligible Committee member shall represent their respective Member Agency | • Howard Miller, Saratoga  
• Rob Rennie, Los Gatos  
• Javed Ellahie, Monte Sereno  
• Liz Gibbons, Campbell  
• Maria Oberg, Santa Clara County (staff member) |
<table>
<thead>
<tr>
<th>Director</th>
<th>Agency</th>
<th>Executive Committee</th>
<th>Leg and Reg Responses to Industry Transition Ad Hoc Committee As needed</th>
<th>Audit Committee Twice yearly and as needed</th>
<th>Finance and Administration Committee Quarterly and as needed</th>
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<tr>
<td>Howard Miller, Chair</td>
<td>Saratoga</td>
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<tr>
<td>Nancy Smith, Vice Chair</td>
<td>Sunnyvale</td>
<td>●</td>
<td>✓</td>
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<tr>
<td>Liz Gibbons</td>
<td>City of Campbell</td>
<td>●</td>
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<tr>
<td>Rod Sinks</td>
<td>City of Cupertino</td>
<td>●</td>
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<tr>
<td>Fred Tovar</td>
<td>City of Gilroy</td>
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<td>Neysa Fligor</td>
<td>City of Los Altos</td>
<td></td>
<td>✓</td>
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<tr>
<td>George Tyson</td>
<td>Town of Los Altos Hills</td>
<td></td>
<td></td>
<td>✓</td>
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<tr>
<td>Rob Rennie</td>
<td>Town of Los Gatos</td>
<td></td>
<td>✓</td>
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<tr>
<td>Carmen Montano</td>
<td>City of Milpitas</td>
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<td>Elaine Marshall</td>
<td>City of Milpitas</td>
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<tr>
<td>(Alternate Director)</td>
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<tr>
<td>Javed Ellahie</td>
<td>City of Monte Sereno</td>
<td></td>
<td>✓</td>
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<tr>
<td>Yvonne Martinez Beltran</td>
<td>City of Morgan Hill</td>
<td></td>
<td></td>
<td>✓</td>
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<tr>
<td>Margaret Abe-Koga</td>
<td>City of Mountain View</td>
<td>●</td>
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<td>Susan Ellenberg</td>
<td>County of Santa Clara</td>
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<tr>
<td>Maria Oberg</td>
<td>County of Santa Clara (staff)</td>
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✓ = Appointment to be ratified at the Feb. 12, 2020 Board of Directors Meeting
● = Confirmed appointment for 2020
Staff Report – Item 5

**Item 5:** Clean Energy Procurement and Integrated Resource Planning Update

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources

Date: 2/12/2020

**RECOMMENDATION**
Staff requests that the Board accept an informational update on its various efforts related to power supply procurement to meet SVCE’s clean energy goals and product offerings, California’s Renewable Portfolio Standard of the 2020 Integrated Resource Plan.

**BACKGROUND**
SVCE has established a goal of meeting 100 percent of its power supply with clean energy resources from a mix of RPS eligible resources and other sources of carbon-free energy such as large hydroelectricity to meet product offering commitments and California state mandated procurement requirements. Staff actively plans and procures to meet these mandates with an objective towards meetings SVCE’s budget and financial objectives.

**DISCUSSION**
At the February 12, 2020 Board of Directors’ meeting, SVCE staff will provide an oral update on its progress towards the following efforts:

1. Progress towards meeting SVCE’s clean energy goals;
2. Progress towards meeting California’s RPS mandates;
3. Update on PG&E’s RPS, greenhouse gas free and resource adequacy allocations; and
4. Progress towards developing the 2020 Integrated Resource Plan and revisions to the timeline

**FISCAL IMPACT**
Acceptance of the informational update does not have a fiscal impact.
Item 6: Adopt Resolutions Authorizing the Chief Executive Officer to Execute an Amended and Restated Renewable Power Supply Power Purchase Agreement with RE Slate 1 LLC and If Shortlisted, Authorizing the Chief Executive Officer to Execute a Confirmation with PG&E for Long-term RPS Bundled Energy

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources
Ian Williams, Power Resources Manager

Date: 2/12/2020

RECOMMENDATION
Adopt resolutions authorizing the Silicon Valley Clean Energy Authority (SVCE) Chief Executive Officer (CEO) to execute two contracts for renewable energy Power Content Category One ("PCC1") under the California Energy Commission's Renewable Portfolio Standard (RPS) eligibility criteria and any necessary ancillary documents as follows:

1. Resolution No. 2020-04: Amended and Restated Power Purchase Agreement (PPA) with RE Slate 1, LLC., ("Slate") to increase the solar and battery storage capacity and extend the PPA term. Power delivery term: June 30, 2021 to June 29, 2038, in an amount not to exceed $198,500,000.

2. Resolution No. 2020-05: If shortlisted, a Confirmation Agreement under Pacific Gas and Electric (PG&E) and SVCE Master Power Purchase and Sale Agreement for Long-term RPS Bundled Energy. Power delivery term: January 2021 to December 31, 2030, in an amount not to exceed $13,500,000.

Approval of these two agreements is necessary to help meet SVCE’s RPS goals, state-mandated long-term procurement requirements for RPS and mandated incremental resource adequacy procurement.

BACKGROUND
SVCE has established a goal of meeting 100 percent of its power supply with clean energy resources from a mix of RPS eligible resources and other sources of carbon-free energy such as large hydroelectricity. California’s RPS mandates a certain percent of energy be met via eligible renewables and that starting in 2021 at least 65 percent of the RPS be met through contracts of at least ten years in term.

To procure long-term RPS resources, SVCE and Monterey Bay Community Power (MBCP) issued their first joint Request for Proposals (RFP) in 2017 (2017 Joint RFP) and second one in 2019 (2019 Joint RFP). Through the 2017 Joint RFP, three long-term PPAs for RPS PCC1 resources were executed and through the 2019 Joint RFP, one PPA for geothermal with Ormat was executed. Table 1 is a summary of SVCE’s progress towards meeting the long-term RPS goals and mandates.
As part of the 2018 Integrated Resource Plan (IRP), the California Public Utilities Commission (CPUC) identified a shortfall of 3,300 megawatts (MW) of capacity for reliability purposes. The CPUC attributed the shortfall to the expiration of several natural gas fired power plants, a lack of contracting for import capacity and an over-dependence on intermittent renewable resources such as wind and solar. Further, the California Independent System Operator (CAISO) revised the counting protocols for capacity associated with wind and solar resources out of concern for reliability. Solar and wind resources now have a much lower effective load carry capacity (ELCC) which is used to determine resource adequacy (RA) compliance.

To close the 3300 MW shortfall, the CPUC ordered all load-serving entities (such as SVCE) procure capacity for 2021, 2022 and 2023 for which SVCE’s share is 33.6, 50.4 and 67.2 MW respectively. RA resources eligible to meet the mandated procurement must be incremental to the resources included in the 2018 IRP and can include new solar plus storage which must be on-line no later than August 31 of the showing year. SVCE’s two solar plus storage resources and recently executed geothermal PPA with Ormat are expected to partially meet the incremental RA mandate. LSEs, such as SVCE, must indicate to the CPUC by mid-February 2020 whether or not they will be able to self-procure to meet their mandated incremental RA requirements. LSEs not able to self-procure will default to central procurement from an unknown entity and for an unknown resource, price and term.

**DISCUSSION/ANALYSIS**

1. **RE Slate Amended and Restated PPA**

   In October 2018 via Resolution No. 2018-11, the Board authorized the CEO to execute the Recurrent Energy (RE) Slate 2 LLC project for a new solar photovoltaic (PV) and energy storage project to be built in Kings County, California. The original RE Slate PPA is a 15-year agreement for 150 MW Solar PV plus a 45 MW battery energy storage system with energy deliveries starting on June 30, 2021 and ending on June 29, 2036. SVCE and MBCP agreed to split the RE Slate project for all output and obligations.

   Recurrent approached SVCE and MBCP with an offer to upsize the solar and battery from its current 150 MW solar PV with 45 MW battery to 160.5 MW solar PV with 80.25 MW battery at the same PPA price for solar and battery. The solar and battery price are considered competitive compared to the current prices received as part of the 2019 Joint RFP and PPAs currently under negotiations.

   The RE Slate project is on track to meeting a June 30, 2021 on-line date and the additional battery capacity of 21.75 MW will enable SVCE to declare it can self-procure to meet its mandated incremental RA obligation.
In addition to upsizing of the solar and battery, Recurrent requested an extension of the contract term from fifteen to seventeen years. The change in term, battery size and energy increases the potential cost over the life of the PPA thus requiring an increase in the contract authority not-to-exceed amount from $141,000,000 to $198,500,000.

### Summary of RE Slate Project & PPA Changes

<table>
<thead>
<tr>
<th></th>
<th>Existing PPA</th>
<th>Amended &amp; Restated PPA</th>
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<tbody>
<tr>
<td><strong>Product</strong></td>
<td>Bucket 1 (PCC1) Renewable Energy, solar plus storage</td>
<td>Same</td>
</tr>
<tr>
<td><strong>Delivery Term</strong></td>
<td>15 years (June 30, 2021 through June 29, 2036)</td>
<td>17 years (June 30, 2021 through June 29, 2038)</td>
</tr>
<tr>
<td><strong>Contract Capacity</strong></td>
<td>Solar: 82.5 MW</td>
<td>Solar: 93 MW</td>
</tr>
<tr>
<td></td>
<td>Battery: 24.75 MW</td>
<td>Battery: 46.5 MW</td>
</tr>
<tr>
<td><strong>Expected Annual Energy</strong></td>
<td>230,000 average MWh</td>
<td>257,900 average MWh</td>
</tr>
<tr>
<td><strong>Percentage of Retail Load Served</strong></td>
<td>5.8%</td>
<td>6.4%</td>
</tr>
<tr>
<td><strong>Contract Price Structure</strong></td>
<td>Solar: Fixed price per MWh</td>
<td>Same price</td>
</tr>
<tr>
<td></td>
<td>Battery: Fixed price per kW-month</td>
<td></td>
</tr>
<tr>
<td><strong>Contract Not to Exceed Amount</strong></td>
<td>$141,000,000</td>
<td>$198,500,000</td>
</tr>
</tbody>
</table>

2. **PG&E Bundled Long-term Renewable Energy Confirmation Agreement**

On November 4, 2019, PG&E issued its Long-term RPS Bundled Energy Sale Solicitation to sell PCC1 resources for ten years starting in January 2021. SVCE submitted a non-binding offer to procure 125,000 MWh per year or 3.0% of its load under an index plus REC contract structure. PG&E will notify SVCE whether it is shortlisted in February 2020 for possible execution in late-February or early-March 2020. The authority delegated to the CEO under the board approved energy risk management policy limits the CEO’s authority to 60 months, thus requiring Board-approval for this potential transaction.
While SVCE Board has expressed a preference for new renewable resources to be built and SVCE has negotiated several other PPAs from the 2019 Joint RFP these resources are not likely to come on-line until 2023 and carry significant development risk. Execution of a contract with PG&E under the Master Power Purchase and Sale Agreement ("Confirmation Agreement") for existing renewables will better enable SVCE to meet its long-term procurement mandates for the first compliance period in which the mandate is in effect.

**Summary of PG&E Long-term RPS Bundled Energy Confirmation**

<table>
<thead>
<tr>
<th>Product</th>
<th>Bucket 1 (PCC1) Renewable Energy solar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery Term</td>
<td>10 years (January 2021 through December 31, 2030)</td>
</tr>
<tr>
<td>Contract Capacity</td>
<td>Solar: none</td>
</tr>
<tr>
<td>Expected Annual Energy</td>
<td>125,000 average MWh</td>
</tr>
<tr>
<td>Percentage of Retail Load Served</td>
<td>3%</td>
</tr>
<tr>
<td>Contract Price Structure</td>
<td>Energy Indexed to NP/SP-15 plus Renewable Energy Credit per MWh</td>
</tr>
<tr>
<td>Contract Not to Exceed Amount</td>
<td>$13,500,000</td>
</tr>
</tbody>
</table>

**RPS Progress**

Much uncertainty remains with respect to project development and on-line start dates of the existing PPAs. For these reasons staff believes it is prudent to go beyond the minimum long-term procurement mandates. As such, staff is negotiating an additional five PPAs for projects received through the 2019 Joint RFP. Through these additional negotiations, SVCE staff hopes to add an additional 15 to 20% of renewable resources under long-term PPAs for an on-line start date of no later than 2023. Table 2 is a summary of SVCE’s progress towards meeting its long-term RPS procurement based on executed PPAs.
Table 2: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period

<table>
<thead>
<tr>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>50%</td>
<td>57%</td>
</tr>
<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>37%</td>
</tr>
<tr>
<td>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (geothermal, wind &amp; solar)</td>
<td>21.0%</td>
<td>23.0%</td>
<td>23.0%</td>
</tr>
<tr>
<td>5. SVCE: RPS Achieved with Proposed Amended &amp; Restated Slate PPA RPS Achieved with Proposed Geothermal Project</td>
<td>22.0%</td>
<td>24.0%</td>
<td>25.0%</td>
</tr>
<tr>
<td>6. SVCE: RPS Achieved with Proposed Confirmation with PG&amp;E for Bundled RPS Energy and RE Slate Upsizing</td>
<td>25.0%</td>
<td>27.0%</td>
<td>28.0%</td>
</tr>
</tbody>
</table>

Figure 1 illustrates SVCE’s progress towards meeting the Board-approved target of 50% RPS and mandated RPS under SB100 and long-term procurement mandates. Additional long-term and short-term RPS resources will need to be sought to meet RPS goals and mandates. Staff anticipates issuing a new request for proposal in the coming 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 resolutions and execution of the Amended and Restated RE Slate PPA and PG&E Bundled RPS Energy Confirmation will help satisfy Goal #10.
ALTERNATIVE
If SVCE were to rely solely on newly constructed renewable PPAs, it would be exposed to greater uncertainty via development risk to meet its SB 350 long-term compliance requirements. PG&E has stated that there are early termination rights in the potential confirm dependent upon CPUC and Bankruptcy court approval and PG&E may terminate if the upstream contract is terminated. This is not a firm delivery confirmation and SVCE has risk of contract termination by the upstream supplier which would increase SVCE’s long-term SB 350 compliance risk.

FISCAL IMPACT
The RE Slate PPA is slated to start on June 30, 2021 and will be budgeted for as part of the 2020-21 budget. The PG&E Confirmation if executed will begin delivery in January 2021 and funds will be budgeted to cover the cost as part of fiscal year 2021 budget.

ATTACHMENTS
1. Resolution 2020-04 Delegating Authority to the CEO to execute the Amended and Restated PPA for Renewable Supply (PCC1) with RE Slate 1 LLC., and any necessary ancillary documents
2. Amended and Restated PPA between RE Slate 1 LLC, and SVCE
3. Resolution 2020-05 If shortlisted, Delegating Authority to the CEO to execute a Confirmation Agreement with PG&E for long-term RPS Bundled Energy, and any necessary ancillary documents

---

1 2021-2023 D.19-11-016 system reliability procurement mandate associated with IRP
SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2020-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDED AND RESTATED POWER PURCHASE AGREEMENT WITH RE Slate 1, LLC TO INCREASE THE SOLAR AND BATTERY STORAGE CAPACITY AND EXTEND THE POWER PURCHASE AGREEMENT TERM, AND TO EXECUTE SUCH OTHER ANCILLARY DOCUMENTS AS MAY BE NECESSARY

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

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

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

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

WHEREAS, in Fall 2017, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, SVCE administered a competitive process to select one or more power supply providers;

WHEREAS, one of the providers selected by SVCE through this competitive process is RE Slate 1, LLC, based on its desirable offering of Products, pricing, and terms;

WHEREAS, in Fall 2018, Staff presented to the Board, and the Board reviewed, the negotiated form of a Power Purchase Agreement between SVCE and RE Slate 1, LLC and approved Resolution 2018-11 authorizing the Chief Executive Officer to execute the Power Purchase Agreement with RE Slate 1, LLC and to execute such other ancillary documents as may be necessary;

WHEREAS, Staff received an offer to increase the solar and battery storage capacity and extend the power purchase agreement term and has presented to the Board, and the Board has reviewed, the negotiated form of an amended and restated Power Purchase Agreement between SVCE and RE Slate 1, LLC;

WHEREAS, because of the timing of the execution of the amended and restated Power Purchase Agreement with RE Slate 1, 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 amended and restated Power Purchase Agreement between SVCE and RE Slate 1, LLC;

WHEREAS, the Board also wishes to delegate to the Chief Executive Officer authority to execute the aforementioned amended and restated 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 amended and restated Power Purchase Agreement and any
other ancillary documents required for said purchase of power from RE Slate 1, 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 amended and restated Power Purchase Agreement with RE Slate 1, 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 one hundred ninety-eight million five hundred
thousand dollars ($198,500,000.00) over the seventeen-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
amended and restated 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 RE Slate 1, LLC.

ADOPTED AND APPROVED this 12th day of February, 2020 by the following vote:

<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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<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
<td></td>
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<tr>
<td>City of Cupertino</td>
<td>Director Sinks</td>
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<tr>
<td>City of Gilroy</td>
<td>Director Tovar</td>
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<tr>
<td>City of Los Altos</td>
<td>Director Fligor</td>
<td></td>
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<tr>
<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
<td></td>
<td></td>
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<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>City of Milpitas</td>
<td>Director Montano</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>City of Morgan Hill</td>
<td>Alternate Director Eulo</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
<td></td>
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<tr>
<td>City of Saratoga</td>
<td>Director Miller</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>City of Sunnyvale</td>
<td>Director Smith</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

______________________________
Chair

ATTEST:

______________________________
Clerk
AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: RE Slate 1 LLC, a Delaware limited liability company

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


Milestones

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td></td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td></td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td></td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</td>
<td></td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td></td>
</tr>
</tbody>
</table>

Delivery Term: Seventeen (17) 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>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
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<td>5</td>
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<td>6</td>
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<td>7</td>
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<td>11</td>
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<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Capacity:**

**Storage Contract Capacity:**

**Maximum Output That Can Be Sustained by Storage Facility for Four (4) Hours:** The Storage Contract Capacity

**Storage Facility Loss Factor:**
**Contract Price**

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 17</td>
<td></td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 17</td>
<td></td>
</tr>
</tbody>
</table>

**Product**

- **PV Energy**
- **Discharging Energy**
- **Green Attributes (if Renewable Energy Credit, please check the applicable box below):**
  - [x] Portfolio Content Category 1
  - [ ] Portfolio Content Category 2
  - [ ] Portfolio Content Category 3
- **Storage Capacity**
- **Capacity Attributes (select options below as applicable):**
  - [ ] Energy Only Status
  - [x] Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Security:**

- **Development Security:**
- **Performance Security:**
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AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement ("Agreement") is entered into as of [___________], 2020 (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 and Buyer entered into that certain Renewable Power Purchase Agreement, dated as of October 25, 2018 (the “Original PPA”);

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the Original PPA as provided herein; and

WHEREAS, Seller intends to develop, design, construct, own, and operate a fully integrated photovoltaic solar plus battery storage facility (the “Facility,” as more fully defined below); 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.

“Adjusted Facility Energy” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor.

“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.

“**Approved Forecast Vendor**” means (x) any of AWS Truepower (a division of UL), Reuniwatt, SteadySun, or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Availability Adjusted Storage Contract Capacity**” has the meaning set forth in Exhibit P.

“**Available Generating Capacity**” means the capacity of the Generating 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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;
(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where the Buyer or the SC for the Facility:

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

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

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or a (c) Buyer Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(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 Facility 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), and 350 (2015), codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

“CapacityDamages” has the meaning set forth in Exhibit B.

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility 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.

“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, more than 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 more than 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 tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“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.

“Compliance Actions” 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 Price” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

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

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

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

“Coverage Ratio” has the meaning set forth in Section 8.10(b).

“Coverage Threshold” has the meaning set forth in Section 8.10(d).

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

“Credit Notice” has the meaning set forth in Section 8.10(a).

“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 Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility 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 Facility 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.
“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 amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

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

“Deficient Month” has the meaning set forth in Section 4.10(e).

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

“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.
"Discharging Energy" means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

"Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

"Electrical Losses" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging 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 Generating Facility.

"Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

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

"Excess MWh" has the meaning set forth in Exhibit C.

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

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

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

"Facility” means the Generating Facility and the Storage Facility.
“Facility Energy” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and 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.

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

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

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating Energy or making Facility 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 4.10(a).

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

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic 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 (i) PV Energy to the Delivery Point, (ii) Charging Energy to the Storage Facility and (iii) Discharging Energy to the Delivery Point; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“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 Facility 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 and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.
“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” has the meaning set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

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

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

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

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

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

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

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

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

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

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Battery Capacity.

“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, 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.

“Installed PV Capacity” means the actual generating capacity of the Generating 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 Cure Period” has the meaning set forth in Exhibit B.

“Interconnection Delay” means the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point, despite the exercise of diligent and commercially reasonable efforts by Seller.

“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.

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

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

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“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 and/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 and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least [REDACTED], 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.

“Lien” has the meaning set forth in Section 8.11.

“Local Capacity Area Resource” 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., NP-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.
“Lost RECs” 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 Facility during the applicable period.

“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).

“Monthly Storage Availability” has the meaning set forth in Exhibit P.

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

“Multiplier” has the meaning set forth in Section 3.8(b).

“MW” means megawatts measured 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, the LMP at the Facility’s PNode is less than Zero dollars ($0).

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

“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, facsimile or electronic messaging (e-mail).

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

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“Operating Procedures” or “Operating Restrictions” means those rules, requirements, and procedures set forth on Exhibit Q.

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

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

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

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

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

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

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

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

“Planned Outage” means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

“Portfolio” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“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.
“Portfolio Content Category 2” or “PCC2” 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“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 industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice shall include 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.

“PV Energy” means that portion of Energy that is delivered directly to the Delivery Point and is not Discharging Energy.

“Qualifying 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 Commercial Operation Date.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during the RA Shortfall Period in which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

“**RA Shortfall Period**” means the period of consecutive calendar months that starts with the calendar month in which the RA Guarantee Date occurs and concludes on the earlier of (i) the calendar month following the calendar month in which the Effective FCDS Date occurs and (ii) the end of the Delivery Term.

“**Real-Time Forecast**” means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected 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.

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

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

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

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

“**Renewable Rate**” has the meaning set forth on the Cover Sheet.
“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 TAC Area and described as a Local Capacity Area Resource.

“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 shall include any local, zonal or otherwise locational attributes associated with the Facility.

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

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

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

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/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 4.10(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, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate in the form of Exhibit J to Buyer.

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

“Station Use” means:

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

“Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, and any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

“Storage Capacity Test” means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B and/or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.
“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Loss Factor” is set forth on the Cover Sheet and represents the result of subtracting from the number one (1) the percentage of Electrical Losses associated with converting Charging Energy to Discharging Energy.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with an accuracy class between 0.3 and 0.5, as selected by Seller and approved by Buyer, each acting reasonably), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“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 and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

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

“**Termination Cure Period**” means the period of three hundred sixty (360) days following the Guaranteed Commercial Operation Date, which period shall be (i) reduced by the length of any Development Cure Period provided to Seller hereunder and (ii) extended in accordance with the terms of Section 3(a) of Exhibit B.

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

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility 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.

“**Transmission Provider**” means any entity or entities transmitting or transporting the Facility 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 downstream 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 4.10(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 shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("Contract Term"); 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, 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 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

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

(a) Seller shall have 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 applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;
(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, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(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, if any, including Daily Delay Damages, Commercial Operation Delay Damages, and Interconnection 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, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, 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 all the Product produced by or associated with 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 the Facility. 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, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility 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 from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 **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 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 unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(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; 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. 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 and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, 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 Seller. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially 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.** The Parties acknowledge and agree that if Seller is unable to obtain Full Capacity Deliverability Status by the RA Guarantee Date, then Seller shall either pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated
damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility, multiplied by **Multiplier**. (the “**Multiplier**”); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, 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 50 Business 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 and in accordance with the timing set forth in this Section 3.9, 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. Within one hundred eighty (180) days after the Commercial Operation Date, 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 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. Subject to Section 3.12, Seller shall also
take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 Compliance Expenditure Cap. If a change in Laws occurring after the Effective Date has increased Seller’s cost 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 ("Compliance Expenditure Cap").

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

If Buyer 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.

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date 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 Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, 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 Facility 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. Seller’s capacity forecasts shall include both Available Generating Capacity and Storage Capacity. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and Storage Capacity accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

(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) 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 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 Energy, Available Generating Capacity and Storage 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) Storage Capacity and (iii) hourly expected 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(s) 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 best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of the outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) **Forced Facility Outages.** Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) **Forecasting Penalties.** Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of
(A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) **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, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Seller’s obligations under this Section 4.4(d) shall be subject to the limitations expressly set forth in Section 3.12. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid
Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer’s right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.
(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Procedures.

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 will 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) 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 scheduled maintenance no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such scheduled maintenance on the Facility.

(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, Buyer Curtailment Period 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) **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.** During the Delivery Term, Seller shall be required to deliver to Buyer an amount of Adjusted Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Adjusted Facility Energy, as measured in MWh, equal to [redacted] for the two (2) Contract Years constituting such 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, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, 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, and
Curtailment Periods or Buyer Curtailment Periods (“Lost Output”).

4.8 **Storage Availability.**

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than \( \text{Guaranteed Storage Availability} \) (the “**Guaranteed Storage Availability**”), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer’s payment for the Storage Product shall be calculated by reference to the Availability Adjusted Storage Contract Capacity (as determined in accordance with Exhibit P).

4.9 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

4.10 **WREGIS.** Seller shall, at its sole expense, but 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 Facility Energy are issued and
tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility 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 Facility 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 4.10. 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 Facility 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 Adjusted Facility 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 4.10, 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 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 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 Facility Energy in the same calendar month.

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

4.11 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 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 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 Buyer’s emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging 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 and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility. Without limiting the foregoing, Buyer acknowledges that the Facility will share a transformer with a separate, but neighboring solar photovoltaic generating and storage plant.

**ARTICLE 7**
**METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be operated pursuant to applicable CAISO-approved calculation methodologies and subject to adjustment in accordance with applicable CAISO meter requirements, including to account for Electrical Losses and Station Use. The Facility Meter will be located on the low-voltage side of the transformer that serves the Facility (subject to Section 6.3). Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. To the extent not inconsistent with applicable CAISO-approved calculation methodologies or the requirements of this Agreement, all meters will be operated in accordance with Prudent Operating Practices. All meters will be maintained at Seller’s cost. All meters shall be programmed to adjust for all losses from such meter 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 set forth as Exhibit R. The Facility 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 Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

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 no sooner than 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 PV Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy 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. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller 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. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date
occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to 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.

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 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 Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) 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 meets the requirements set forth in the definition of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, 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.

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.
ARTICLE 9
NOTICES

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

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

ARTICLE 10
FORCE MAJEURE

10.1 Definition.

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

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

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

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

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and 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 ten (10) 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 except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) 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 appropriate; or
such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

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

(ii) the failure by Seller to achieve Commercial Operation on or prior to 

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least \[
\text{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, } \\
\text{or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the } \\
\text{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 } \\
\text{is not, on average, at least } \\
\text{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;}

(vi) 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

(vii) 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 [Credit Rating];

(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)) subject to the limitations in Section 7 of Exhibit B, 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. 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 a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the 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 as set forth in Section 4.8(b) and except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, 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. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:
(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary 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.

13.2 Buyer’s Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent
of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 Prevailing Wage. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform 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 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. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not 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, which consent shall not be unreasonably withheld; provided, however, that a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s 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.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with 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 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, 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 in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer
may be made only to an entity that meets the definition of Permitted Transferee; and

(h) 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, 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, 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 shall be approved by Buyer, not to be unreasonably withheld.

14.4 **Shared Facilities; Portfolio Financing.** Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.
ARTICLE 15
DISPUTE RESOLUTION

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

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “Indemnified Party”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the
Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date,
construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business automobile insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) 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 rule) to disclose any Confidential Information of the disclosing Party (the “Disclosing Party”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to 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 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 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) and/or, to the extent set forth herein, any Lender and/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 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 Service Contract. The Parties intend this Agreement to be considered as a service
contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

19.8 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.9 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.10 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.11 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) 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.

19.12 **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 another provision of 11 U.S.C. § 101-1532.

19.13 **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.

RE SLATE 1 LLC

By: ____________________________
Name: __________________________
Title: __________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: RE Slate 1

Site includes all or some of the following APNs:

County: Kings County, California

Type of Generating Facility: Solar Photovoltaic

Operating Characteristics of Generating Facility: see Exhibit Q

Type of Storage Facility: Lithium-ion Battery Energy Storage Facility

Operating Characteristics of Storage Facility:

- Maximum Charging Capacity (MW):
- Maximum Discharging Capacity (MW):
- Maximum Stored Energy Level (MWh):

Operating Restrictions of Storage Facility: see Exhibit Q

Guaranteed Capacity:

Storage Contract Capacity:

Maximum Output:

Delivery Point: P-Node

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

P-node:

Participating Transmission Owner: Pacific Gas & Electric Company
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**
   
a. *“Construction Start”* will occur upon Seller’s execution of an engineering, procurement, and construction contract and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site and proceed to completion without foreseeable interruption of material duration, including acquisition of the approvals and permits required for the commencement of construction of the Facility and ordering of equipment and supplies necessary for the commencement of construction of the Facility. 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 shall be the *“Construction Start Date.”* The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; provided that in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start 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 pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** *“Commercial Operation”* means the condition existing when 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”*). The *“Commercial Operation Date”* shall be the later of (x) or (y) the date identified in the COD Certificate as the “Commercial Operation Date”.

Exhibit B - 1
a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date:

3. 

Termination for Failure to Achieve Commercial Operation. If the Facility has not achieved Commercial Operation on or prior to the final day of the Termination Cure Period, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a);
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:
5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

   a. **Guaranteed Capacity.** If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [number of days] days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to [amount] for each MW that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

   b. **Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [amount] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages or Interconnection 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 ten (10) Business Days after such draw.
EXHIBIT C

COMPENSATION

Compensation

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Renewable Rate.** Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy.

(b) **Excess Contract Year Deliveries up to 125%**. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds

(c) **Excess Settlement Interval Deliveries**. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be

(d) **Storage Rate**. All Storage Product shall be paid at the Storage Rate based on the Availability Adjusted Storage Contract Capacity of the Storage Facility, as determined under Exhibit P. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(e) **Excess Contract Year Deliveries Over 125%**.

(f) **Test Energy**. Test Energy is compensated in accordance with Section 3.6.

(g) **Tax Credits**. The Parties agree that the neither the Renewable Rate, the Storage Rate 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 Exhibit C - 1
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 Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer 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. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including 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 (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller’s...
account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller’s responsibility.

(d) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“**CAISO Charges Invoice**”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

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

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
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. 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.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

| 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC  |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|       |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|       |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the 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 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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** = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- **B** = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- **C** = the Renewable Rate for the Contract Year, in $/MWh
- **D** = **C**

“Adjusted Energy Production” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“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 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 Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Capacity Attributes” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

“Replacement Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for...
retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

   “Replacement Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all Replacement Green Attributes.

   No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

   Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
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 Amended and Restated Renewable Power Purchase Agreement dated [_____________], 2020 ("Agreement") by and between RE Slate 1 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 Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less [________________] of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less [________________] of the Storage Contract Capacity.

4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less [________________] of the Guaranteed Capacity for the Generating 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].

5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to no less [________________] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _______[DATE]_____.

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _______[DATE]_____.

8. 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 H - 2
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 Amended and Restated Renewable Power Purchase Agreement dated [__________], 2020 ("Agreement") by and between RE Slate 1 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:

(a) The performance test for the Generating 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 PV Capacity");

(b) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Battery Capacity"); and

(c) The sum of (a) and (b) is __MW AC and shall be the "Installed Capacity".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: ____________________________

Its: ____________________________

Date: ____________________________

Exhibit I - 1
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by RE Slate 1 LLC ("Seller”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated [____________], 2020 (“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:
   ________________________________ (such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

RE SLATE 1 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
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attn: Girish Balachandran

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”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (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 __________ __, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, marked thereon Letter of Credit No. [XXXXXXX] accompanied by the following documents:

1. the original of this Letter of Credit and its amendments, if any;

2. Your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We will return the original of this Letter of Credit back to the Beneficiary after our endorsement on this Letter of Credit of our payment of each draft, provided there is balance undrawn under the

Exhibit K - 1
Letter of Credit.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service to the above address that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice; provided that in no event shall the Letter of Credit be extended beyond the final expiration date referenced in the paragraph below. No presentation made under this Letter of Credit after such expiry date will be honored.

The final expiration date of this Letter of Credit is [XXXXXXX]. Upon this final expiration date, this Letter of Credit shall automatically become null and void whether or not the original of this Letter of Credit has been returned to us for cancellation and presentation made under this Letter of Credit after such date will not 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. If, for any of the reasons specified in Article 36 of the UCP, the Issuer’s place for presentation of the Letter of Credit is closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Trade Services Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Trade Services Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]
[Insert officer title]

Exhibit K - 2
Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of [insert applicant name] (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.

3. The undersigned is a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority 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___________________________
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 RE Slate 1 LLC, a Delaware limited liability company (“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 Exhibit L - 1
failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

Exhibit L - 2
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 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
   
   [_____]
   
   Attn: [_____]
   
   Fax: [_____]

   If delivered to Guarantor, to it at
   
   [_____]
   
   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 City and County of San Francisco, 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.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]  

By:______________________________

Printed Name:__________________
Title:____________________________

BUYER:

[_____]  

By:______________________________

Printed Name:__________________
Title:____________________________

By:______________________________

Printed Name:__________________
Title:____________________________
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by RE Slate 1 LLC (“Seller”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Amended and Restated 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>
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<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
<td></td>
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<tr>
<td>Unit SCID</td>
<td></td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td>Resource Type</td>
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<tr>
<td>Point of interconnection with the CAISO Controlled Grid (“substation or transmission line”):</td>
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<tr>
<td>Path 26 (North or South)</td>
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<tr>
<td>LCR Area (if any)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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<tr>
<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NOC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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<tr>
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<td>December</td>
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1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: _____________________________
Its: _____________________________

Date: _____________________________
## EXHIBIT N

### NOTICES

<table>
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<tr>
<th>RE Slate 1 LLC (“Seller”)</th>
<th>Silicon Valley Clean Energy Authority</th>
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Exhibit N - 1
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<tr>
<th>RE Slate 1 LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority</th>
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Exhibit N - 2
EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a “SCT”. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

Exhibit O - 1
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility’s electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility’s electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

1. Time;
2. Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
3. Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
4. Stored Energy Level (MWh).

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
3. Ambient air Temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Storage Facility:

1. successfully started;
2. operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

Exhibit O - 2
(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;

(4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and

(5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

(i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).

(ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.

(iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

(1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;

(2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

Exhibit O - 3
(3) the level of Storage Contract Capacity, Charging Capacity, Discharging Capacity and Stored Energy Level determined by the SCT, including supporting calculations; and

(4) Seller’s statement of either Seller’s acceptance of the SCT or Seller’s rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the SCT results or Buyer’s rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility (“Supplementary Storage Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Storage Contract Capacity. The total amount of Discharged Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.
EXHIBIT P

STORAGE AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “Monthly Storage Availability” in a given month using the formula set forth below:

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Exhibit P - 1
**Availability Adjustment**

The applicable "**Availability Adjusted Storage Contract Capacity**" is calculated by multiplying the Storage Contract Capacity by the Availability Adjustment ("**Availability Adjustment**" or "**AA**").
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

1. Buyer shall not issue a Charging Notice requesting or requiring any charging of the Storage Facility from any facility or grid other than the Generating Facility. Seller shall not be required to charge the Storage Facility from any facility or grid other than the Generating Facility.

2. Buyer shall not issue a Discharging Notice for more than the Storage Contract Capacity during any period of the agreement.

3. Buyer shall not issue a Discharging Notice instructing to discharge more Discharging Energy than the Stored Energy Level at the time of the Discharging Notice.
EXHIBIT R

METERING DIAGRAM

Exhibit R - 1
RESOLUTION NO. 2020-05

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORIZATION TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE LONG TERM RPS BUNDLED ENERGY PG&E CONFIRMATION WITH NON-SUBSTANTIVE CHANGES IF SHORTLISTED

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

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

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

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

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

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

WHEREAS, PG&E launched its long-term RPS bundled energy sale solicitation on November 4th, 2019;

WHEREAS, PG&E is offering to sell long-term RPS bundled energy for a term of ten years beginning in Q1 2021;

WHEREAS, SVCE submitted a non-binding index plus bid on January 7th, 2020;

WHEREAS, PG&E will notify participants who have made the shortlist to continue to negotiations during the week of February 3rd, 2020;
NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authorization to the Chief Executive Officer to:

1. Execute the PG&E long-term RPS bundled energy sale confirmation with non-substantive changes if shortlisted. The total contract cost shall not exceed thirteen million five hundred thousand dollars ($13,500,000).

ADOPTED AND APPROVED this 12th day of February, 2020 by the following vote:

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<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
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Chair

ATTEST:

Secretary
Item 7: **Adopt Resolution Approving the Revised SVCE Decarbonization Strategy and Programs Roadmap, New Program Briefs, and Budget Allocation Adjustments**

To: Silicon Valley Clean Energy Board of Directors  
Prepared by: Aimee Bailey, Director of Decarbonization and Grid Innovation  
Date: 2/12/2020  

**RECOMMENDATION**  
Staff recommends the Board approve Resolution No. 2020-06 to adopt the revised SVCE Decarbonization Strategy & Programs Roadmap, new program briefs, and the following budget allocation adjustments.

<table>
<thead>
<tr>
<th>Program</th>
<th>Budget Allocation Adjustment</th>
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<tbody>
<tr>
<td>Building Decarb Joint Action Plan</td>
<td>$150k (programs reserve)</td>
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<tr>
<td>Resilience at Community Facilities</td>
<td>$150k (programs reserve)</td>
</tr>
<tr>
<td>Streamlining Community-Wide Electrification</td>
<td>$200k (programs reserve)</td>
</tr>
<tr>
<td>Customer Resource Center</td>
<td>$500k for FY2021-FY2022</td>
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**EXECUTIVE COMMITTEE RECOMMENDATION**  
The Executive Committee supported unanimously to recommend the Board approve the amendment to the Roadmap to change the update frequency to “as needed” and add two new program priorities at their January 31, 2020 meeting. The original staff recommendation was to transition to a 2-year update cycle, but the Executive Committee discussed and supported changing the proposal to “as needed”, to most effectively and efficiently use staff and stakeholder time and resources to implement Board-adopted policy objectives.

**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) Board of Directors approved the Decarbonization Strategy & Programs Roadmap (abbr. “Roadmap”) in December 2018. The Roadmap included community-wide greenhouse gas emissions reduction targets through 2030 and a portfolio of programs spanning six program areas: power supply; built environment; mobility; energy efficiency & grid integration; innovation; and, education & outreach. Additional programs within these six focus areas were brought forward to the Board for review and approval throughout 2019, including: a multi-year funding request for electric vehicle service equipment (EVSE) incentives (Feb 2019), workforce development and training activities (April 2019), the EV Infrastructure joint action plan (Sep 2019), and an extension of the heat pump water heater program (Jan 2020). In addition to staff providing a quarterly report on Roadmap implementation to the board, a policy was included in the Roadmap to carry out an annual stakeholder review and update. This is the first annual update.

**ANALYSIS & DISCUSSION**  
*Update to Decarbonization Strategy & Programs Roadmap*

Staff carried out the following engagement with key stakeholders to gather input on Roadmap implementation progress and potential Roadmap changes.
• Outreach to community environmental leaders in Dec 2019
• Presentations at Dec 2019 and Jan 2020 Member Agency Working Group (MAWG) meetings
• Presentation at SVCE’s Jan 2020 Executive Committee meeting

Stakeholder feedback supported two updates to the Roadmap for 2020. First, updating the Roadmap’s policy for update frequency to an “as needed” basis, which is anticipated to be every 2-3 years from initial Roadmap adoption. Moving from an annual to an as-needed update frequency will give staff and stakeholders more flexibility in determining when an update is justified given the ramp-up time required for Roadmap implementation, the dynamic pace of industry change, and the significant level of stakeholder effort needed to provide feedback during the Roadmap update process itself.

Second, staff proposed the following two additional program priorities for 2020.

- **Building Decarbonization Joint Action Plan**: Create an SVCE-wide building decarb joint action plan with member agencies to prioritize future incentives, permitting, code & rates and other activities
- **Resilience at Community Facilities**: Work with member agencies to analyze and develop a program to support resilience at community facilities

These two programs would be in addition to the portfolio of programs already approved by the Board, which are in various stages of implementation. A hand-out summarizing all Board-adopted programs will be provided via a hand-out at the Board meeting.

Exhibit A to the Resolution is a redlined version of the Roadmap with the proposed changes. Additional details on the two proposed programs can be found in the program briefs (Exhibit B), which include details on challenges, goals, approach of each program.

**Budget Allocation Adjustments**

In order to implement the Roadmap including the two new proposed programs, staff requests the budget allocation adjustments shown in Table 1. As described under “Fiscal Impact”, the total programs budget remains within the Board-approved 2% of operating revenues per year.

<table>
<thead>
<tr>
<th>Program</th>
<th>Budget Allocation Adjustment</th>
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<tbody>
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<td>$200k (programs reserve)</td>
</tr>
<tr>
<td>Customer Resource Center**</td>
<td>$500k in additional funds for FY2021-FY2022</td>
</tr>
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</table>

*Proposed new program
**Approved program

Table 1: Proposed budget allocation adjustments

For the first three programs shown in the table, the program briefs (Exhibit B) provide details on the program approach and how the funds will be used. The proposed budget allocation adjustment for the Customer Resource Center (CRC) would extend the program budget for an additional two fiscal years (the Board already approved $150k in FY2019 and $200k in FY2020 for the CRC). This is in anticipation of multi-year contracts for CRC implementation being brought forward to the board for review in early 2020.

**Greenhouse Gas Emissions Inventory for 2018**

SVCE collects and tracks GHG data for SVCE service territory on annual basis to guide SVCE decarbonization activities. Attachment 2 provides a summary of key results from the greenhouse gas emissions inventory for calendar year 2018, including a bulleted summary of emissions trends and figures of emissions trends for electricity, natural gas, and transportation. The 2018 inventory results have been integrated into planning for
the Decarbonization Strategy & Programs Roadmap, and are included here as informational. Based on 2018 results, SVCE is appears to be on target to meet GHG emissions reduction goals. However, staff will continue to track and report emissions on an annual basis.

**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.

**ALTERNATIVES**
The staff proposal was formulated to maximize effective and efficient implementation of the Decarbonization Strategy & Programs Roadmap. If the Board does not approve the staff proposal, staff would request input from the Board on how the proposal could be modified to address concerns.

**FISCAL IMPACT**
The Board approved 2% of annual operating revenues for programs, which totaled $5M in FY19 and is estimated to be $6.4M in FY20. The staff proposal has no incremental fiscal impact, since all proposed funding allocations remain within the approved programs budget. Table 2 shows a summary of the programs budget, including existing Board-approved budget allocations, this budget allocation request, and resultant funds in the programs reserve. As shown in the table, current program commitments collectively remain within the Board-approved programs budget.

<table>
<thead>
<tr>
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<th>FY19</th>
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<th>FY22</th>
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<tr>
<td>Programs Budget*</td>
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<tr>
<td>Feb 2020 Request**</td>
<td>$500,000</td>
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<td>$250,000</td>
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<tr>
<td>Programs Reserve Funds***</td>
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*Actual (FY19) & Forecast (FY20 Onward)  
**Budget allocation request for FY19 draws on programs reserve funds  
***Value if staff proposal is adopted  

*Table 2: Programs budget summary with Board request*

**ATTACHMENTS**
1. Resolution No. 2020-06 to adopt the revised SVCE Decarbonization Strategy & Programs Roadmap, new program briefs, and budget allocation adjustments  
2. Summary of Greenhouse Gas Emissions Inventory for Calendar Year 2018
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2020-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING REVISIONS TO THE SVCE DECARBONIZATION STRATEGY & PROGRAMS ROADMAP TO CHANGE THE UPDATE FREQUENCY AND ADD TWO NEW PROGRAMS, APPROVING NEW PROGRAM BRIEFS, AND APPROVING BUDGET ALLOCATIONS FOR THE IMPLEMENTATION OF DECARBONIZATION PROGRAMS

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 approved Operating Budgets for Fiscal Year (FY) 2018-2019 and FY 2019-2020 that provide for funding from 2% of energy sales to support decarbonization and grid programs; and

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

WHEREAS, SVCE staff has returned to the Board with requests for revisions to the budget allocation as decarbonization programs are developed that are consistent with the Roadmap; and

WHEREAS, the Board adopted Resolution Nos. 2019-02, 2019-07, and 2020-01 to amend the initial budget for decarbonization programs by approving allocations for the electric vehicle service equipment (EVSE) incentive program, workforce development and training activities, and the heat pump water heater program; and

WHEREAS, the Roadmap currently provides that SVCE staff will bring forward the Roadmap for a comprehensive review and update on an annual basis.

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

Section 1. The SVCE Decarbonization Strategy and Programs Roadmap is
revised as shown in Exhibit A, attached hereto, to provide that a comprehensive review and update will be completed on an “as needed basis”; to incorporate programs that were approved in 2019; and to add two new programs.

Section 2. The new program briefs for the Building Decarbonization Joint Action Plan, Resilience at Community Facilities, and Streamlining Community-Wide Electrification, attached hereto as Exhibit B, are hereby adopted.

Section 3. The following allocations within the budget for decarbonization programs are hereby approved:

<table>
<thead>
<tr>
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<th>Budget Allocations</th>
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<tbody>
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<td>Customer Resource Center</td>
<td>$500k for FY2021-FY2022</td>
</tr>
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</table>

PASSED AND ADOPTED this 12th day of February, 2020.

_____________________________
Chair

ATTEST:

_____________________________
Andrea Pizano, Board Secretary

Exhibits:
A. Revised Decarbonization Strategy and Programs Roadmap
B. Building Decarbonization Joint Action Plan, Resilience at Community Facilities, and Streamlining Community-Wide Electrification Program Briefs
Decarbonization Strategy & Programs Roadmap

Proposed Changes in Redline - Not Yet Adopted

Goals
Reduce greenhouse gas emissions from 2015 baseline levels by 30% by 2021, 40% by 2025 and 50% by 2030.

Strategic Framework
In addition to the overarching greenhouse gas emissions reduction goals and decarb strategies, the following, three-part strategic framework was developed through the stakeholder engagement process and used to guide development of Decarb Strategy and Programs Roadmap.

What will we do?

- **Retail Products & Services**: Develop and support innovative new products and services to meet customer needs and decarbonize
- **Education & Outreach**: Increase public awareness and education on electrification and actions to reduce emissions
- **Public Policy**: Expand state and local policy activity on decarbonization, while strengthening local and regional agency coordination
- **Market Transformation**: Catalyze market transformation through coalitions and partnerships with actors in industry and the innovation ecosystem

How will we leverage?

- **Innovation**: Harness innovation to continuously improve service to our customers and community, and to accelerate “bending the carbon curve”
- **Data**: Unlock the tremendous value of utility and other data to guide development, implementation, measurement and evaluation of all program activities
- **Partnerships**: Form and leverage partnerships to support activities addressing our decarbonization mission
Which priorities will guide us?

- **Customer & Community Value**: Deliver value to our customers and larger community through program offerings and ongoing initiatives
- **Emissions Impact**: Prioritize activities with greatest emissions reduction potential to achieve alignment with our mission
- **Scalable and Transferable**: Pursue solutions that can be expanded and adapted by others, to ensure impact both within and beyond our borders
- **Equity in Service**: Balance activities to reflect the diversity of our customer base and geography
- **Core Role for SVCE**: Recognize activities where we can and must play a key role given our unique position of community-owned electricity provider

## Decarbonization Strategy

SVCE is guided by the following overarching strategy to achieve deep decarbonization.

1. Procure & maintain a sustainable, affordable and carbon-free **power supply**
2. Electrify the **built environment** and **mobility**
3. Promote **energy efficiency** & successful **grid integration**

SVCE will pursue the following specific strategies, organized by sector or cross-sector initiatives.
1. Achieve a sustainable, affordable and carbon-free power supply. (*Power Supply*)
   a. Seek Board input for an updated, comprehensive integrated resource plan evaluating key policy options (RPS level versus carbon-free resources, types of RPS resources, diversification of resources, location and price structures, hourly matching of load to carbon-free resources, amount of supply in long-term contracts, local renewables carve-out, distributed energy resources, etc.) and considering all trade-offs.
   b. Research the availability and costs of supply resources sited within SVCE service territory to inform prospective policies and procurement.

2. Align our clean power pricing with economic and environmental costs to encourage smart investments that support decarbonization and the grid. (*Power Supply*)
   a. Develop new retail rate products (e.g. terms-based, dedicated supply, load-following renewable supply option) for large commercial and industrial customers to be responsive to their unique needs and encourage customer retention.
   b. Carry out a retail rates assessment and develop and execute an implementation plan to address barriers and opportunities in rate design to facilitate electrification and guide smart infrastructure investments. Incorporate the statewide move to default time-of-use rates for residential customers in 2020.
   c. Evaluate and revise policies, price signals and rates for distributed generation – specifically the net energy metering successor program – to ensure consistency with SVCE decarbonization strategy and other organizational objectives.

3. Accelerate high-efficiency, all-electric new construction and retrofits. (*Built Environment*)
   a. Assess current building stock, appliance technologies, adoption rate of all-electric new construction, and other market trends/barriers to inform all building electrification activities.
   b. Promote education and awareness to encourage adoption of efficient electric technologies as replacements for natural gas appliances in retrofit and new construction.
   c. Provide support to member agencies in their consideration of all-electric building codes.
   d. Expand state policy activity to accelerate statewide baseline building codes toward all-electric, to mitigate barriers for local agencies exercising leadership, and to align other state policies and regulations (e.g. CPUC’s “three-prong test”) with California’s ambitious climate goals.
   e. Develop a program to provide incentives and/or technical and design support for new construction, all-electric showcase projects in the community, including potential decarbonized district energy approaches such as Stanford’s energy system design.
   f. Design and launch a program to provide incentives to fuel-switch from natural gas to heat pump water heaters using the BAAQMD grant and SVCE match funds.
   g. Facilitate coordination across member agencies to share best practices, policies, processes, and programs supporting all-electric buildings & promote advancements to the community, developers, and other practitioners operating in the service territory.
   h. Pursue actions with member agencies to decarbonize their own municipal buildings.
i. Consider opportunities to support schools, community colleges and other educational institutions in their efforts to decarbonize their facilities.

j. Support workforce development and allied suppliers and providers necessary for the massive fuel switching required for decarbonization, for both retrofit and new construction.

4. Accelerate the electrification and transformation of mobility in our community to reduce emissions and provide other benefits such as reduced congestion. (*Mobility*)
   a. Work with member agencies and all other relevant stakeholders to develop and implement a strategy and plan for community-wide build-out of EV charging infrastructure; including plan to jointly pursue/leverage external funding opportunities (e.g. BAAQMD, California Energy Commission, PG&E).
   b. Develop one or more EV fast charging pilots (e.g. to support EV use in transportation network company operations, to pilot real-time pricing structures, to address “last mile” solutions, and to accelerate adoption of electric autonomous vehicles).
   c. Study barriers and pursue activities to support EV use by low-income customers.
   d. Study barriers and pursue activities to support EV use for customers living in multi-unit dwellings.
   e. Provide support to member agencies and C&I customers in electrifying their vehicle fleets and pursuing other decarbonized mobility solutions (e.g. autonomous electric shuttles as a “last mile” solution, e-bikes, e-scooters).
   f. Consider participating in relevant regional, state and national advocacy groups and coalitions to accelerate transportation electrification.

5. Educate the community on the benefits of conservation and energy efficiency. (*Energy Efficiency & Grid Integration*)
   a. Promote energy efficiency programs already available to SVCE customers through PG&E and third-party providers.

6. Promote successful grid integration of existing and newly electrified loads to support high penetration renewables integration. (*Energy Efficiency & Grid Integration*)
   a. Include recommendations and/or requirements for connectivity and control in all SVCE programs that result in newly electrified loads.
   b. Develop a program to monetize and harness the value that distributed energy resource (DER) aggregations (aka “virtual power plants”) in SVCE service territory can provide the grid and manage the anticipated load growth resulting from electrification.
   c. Explore opportunities to partner with PG&E and other third parties on activities that leverage DERs to provide additional customer and distribution system value.

7. Educate and engage customers and our community in understanding their overall energy usage, opportunities associated with building and vehicle electrification, and specific actions they can take. (*Cross-Sector - Education & Outreach*)
a. Develop and launch an SVCE-branded customer resource center to enable engagement and awareness-building, education and action related to vehicle and building electrification.

b. Partner with local organizations in under-represented customer segments to promote SVCE accomplishments and programs.

c. Develop engaging content for the customer resource center, social media and other channels to broaden interest in energy and electrification.

8. Accelerate innovation needed to achieve SVCE’s decarbonization mission. (Cross-Sector - Innovation)

   a. Identify key strategic partners and enter into MOUs and other types of partnership agreements to efficiently and effectively engage the innovation ecosystem.

   b. Develop a program with standardized agreements, evaluation criteria, and processes to allow SVCE to rapidly and nimbly identify and pursue promising pilot opportunities with external partners.

   c. Engage with universities, national labs, and other research institutions to support relevant academic research.

   d. Research, evaluate and implement (or replicate) programs leveraging advancements in fintech and innovative business models (e.g. “as a service”, potential leverage of SVCE capital) that remove barriers to accessing needed capital, particularly in low-income and disadvantaged communities.

   e. Pursue novel mechanisms to spur innovation, such as aggregating market demand across the service territory and beyond to reduce costs, influence product development and shape the supply chain. (e.g. “golden carrot”)

   f. Evaluate the merits of establishing an open data portal to provide transparency where appropriate to improve the ability for market actors to support SVCE’s missions and spur private sector innovation.

   g. Pursue external funding opportunities (e.g. DOE, CEC, BAAQMD) with partners.

9. Leverage data-driven, strategic analyses to inform programs and cross-functional activities. (Cross-Sector – Other)

   a. Establish a viable data analytics platform that integrates disparate data sets (customer usage, weather, wholesale market prices, etc.) and enables efficient, high-impact analysis.

   b. Assess technical, economic and market potential of distributed energy resources and electrification across the service territory to inform program development, load forecasting, long-term planning, and rate design.

   c. Carry out a customer segmentation analysis to better understand the diversity and relevant characteristics of the SVCE customer base to inform targeted program activities.
10. Measure and monitor progress toward meeting SVCE’s decarbonization goals. (*Cross-Sector – Other*)
   a. Carry out an annual GHG emissions and clean energy asset baseline assessment.
   b. Evaluate developing sector-specific objectives or targets (e.g. “25% of new construction all-electric by 2020”).
   c. Evaluate how methane leakage should be reflected in SVCE’s emissions accounting and decarbonization policies, and propose revised policies, as needed.

**Programs Roadmap**

The following programs comprise the programs roadmap, organized by sector and cross-sector initiatives. *Initiatives shown in bold are prioritized in the first tranche of programs for detailed development and launch in 2019.*

**Power Supply (PS)**

PS1. C&I Clean Power Offerings: Develop, market and sell additional SVCE power offerings to address large C&I customers seeking to buy clean power at competitive rates

PS2. Retail Rates Assessment: Carry out comprehensive assessment of retail rates to develop multi-phase plan for improvements and developments of pilot rates

PS3. Integrated Resource Plan: Solicit community input to develop comprehensive strategy for supply portfolio (e.g. %RPS, short- vs. long-term contracts, local resource carve-out, etc.)

PS4. Local Renewables: Research the availability and price for local resources, and evaluate costs/benefits of procurement

**Built Environment (BE)**

BE1. Reach Codes: Hire technical consultant to support SVCE and PCE member agencies in the development, review, adoption and implementation of reach codes supporting building electrification and EV charging infrastructure

BE2. All-Electric Showcase Grants: Develop model requirements for all-electric buildings for architects, developers, practitioners & provide financial incentives and/or upfront design assistance for a specified number of showcase projects

BE3. FutureFit Heat Pump Water Heater: Provide rebates to fuel-switch natural gas water heaters to heat pump electric water heaters (BAAQMD grant)

BE4. Streamlining Community-Wide Electrification: Survey and review local city policies (codes, permitting, inspection, incentives, etc.) and develop model policies/processes

BE5. Workforce Training & Development (approved April 2019): Support workforce training and development to support the transition to all-electric buildings and EV charging infrastructure development in the built environment
BE6. Building Decarbonization Joint Action Plan (proposed): Create an SVCE-wide building decarb joint action plan with member agencies to prioritize future incentives, permitting, code & rates and other activities

BE4-BE7. Resilience at Community Facilities (proposed): Work with member agencies to analyze and develop a program to support resilience at community facilities

**Mobility (MO)**

MO1. EV Charging Infrastructure Strategy and Plan: Create an SVCE-wide EV readiness and infrastructure strategy considering permitting practices, ordinance/reach code integration, siting, technology types, public versus dedicated access, and rate design

MO2. California Electric Vehicle Infrastructure Project (CALeVIP) (awarded Aug 2019): Work with the California Energy Commission and local partners to launch a regional incentive program with $12M in funds committed to SVCE territory for shared Level 2 and public DC Fast Charging.

MO3. Priority Zone DC Fast Charging (DCFC) Incentives (approved Sept 2019): Competitive application to receive an additional incentive (on top of CALeVIP) for DCFC in “priority zones” that support nearby SVCE-designated multifamily housing clusters.

MO4. Multi-Unit Residential Charging Technical Assistance (approved Sept 2019): Technical assistance and help applying for pertinent CALeVIP rebates for charging at multifamily housing properties.

MO5. Small/Medium Workplace Charging Technical Assistance (approved Sept 2019): Technical assistance and help applying for pertinent CALeVIP rebates for charging at small and medium workplace properties.

MO6. Fleet Electrification Grants (approved Sept 2019): Competitive application for SVCE’s fleet electrification planning support and funding for site upgrades. Targeting a broad set of fleet types, to create widely applicable fleet electrification planning templates.

MO7. Silicon Valley Transportation Electrification Clearinghouse (approved Sept 2019): Regional group of key stakeholders focused on information sharing, solving critical issues and attracting external funding to the SVCE community in support of EV infrastructure deployment.


MO2. EV Fast Charging Pilot Depots: Work with private sector, member agencies, and regional partners to develop one or more EV fast charging pilots (e.g. for ride-hailing electrification, real-time pricing, “last mile”)

MO3. EV Incentives for Low Income: Provide rebates for used EVs for low-income qualified customers in collaboration with Peninsula Clean Energy
EV Charging for Multi-Unit Dwellings: Provide flexible grant offerings to address market gaps with multi-unit dwelling and small and medium business workplace charging

Fleet Electrification: Support member cities and commercial customers in evaluating options to electrify their vehicle fleets

Energy Efficiency & Grid Integration (GI)

GI1. Virtual Power Plant: Support “virtual power plants” made up of cloud-based aggregations of customer-cited resources to support grid integration and monetize value from connected, controllable loads

GI2. Non-SVCE Programs: Promote existing, non-SVCE led energy programs through the Customer Resource Center and other channels.

Education & Outreach (EO)

EO1. Customer Resource Center: Develop customer resource center to enable engagement and awareness-building, education and action related to vehicle and building electrification

EO2. Community Engagement Grants: Partner with local organizations in under-reached customer segments to promote SVCE accomplishments and programs

Innovation (IN)

IN1. Innovation Partners: Engage with key strategic partners to participate in the local innovation ecosystem to provide a voice for SVCE customers and the decarbonization mission

IN2. Innovation Onramp: Provide small grants to support innovation through pilot projects with external partners

Reporting & Review

Updates on Roadmap implementation will be provided on an approximately quarterly basis, coinciding with existing review processes, including the budget cycle and annual strategic plan update.

The Roadmap will be brought forward to stakeholder groups, the Executive Committee, and the Board for a comprehensive review and update on an as needed basis, which is anticipated to be every two to three years from initial Roadmap adoption annual basis, starting in January 2020.
SVCE Program Brief – Building Decarbonization Joint Action Plan (BE6)
February 12, 2020

Summary
Aggregate and integrate existing building decarbonization resources relevant to SVCE service area; establish community-wide building decarbonization strategy and plan spanning all building types and uses; establish program priorities and related plan of action; include elements addressing other program sectors (e.g. mobility and innovation) as they relate to primarily built environment topics such as building permitting processes. This effort is modelled off of SVCE’s Electric Vehicle Infrastructure Joint Action Plan.

Key Challenges
• No existing comprehensive strategy or plan across SVCE service area for community-wide actions to support building decarbonization; key stakeholder issues are not clearly articulated, and critical regional building decarbonization efforts will require buy-in and support from these entities

Goals
• Develop priorities, policy/program concepts, and an action plan with SVCE member communities to guide ongoing building decarbonization efforts

Program Approach
General
• Contract for consultant support; work with Member Agency Working Group and other key stakeholders to refine scope of work for focused strategy and planning effort; identify needs, status and priorities across SVCE service territory; identify associated development opportunities - including context of state and regional efforts; develop specific plan to guide SVCE and member communities in taking priority actions to advance building decarbonization, focusing on the upcoming 3-year period

Target Participants
• Member agencies and other local stakeholders, e.g. architects, developers, contractor community, labor, community groups and local environmental advocacy organizations

Participation Criteria
• Interest in building decarbonization mission and visibility to building-related topics and issues

Program Evaluation, Measurement & Verification Plan
• N/A

Third-Party Support
• Consultant to be selected

Resources
• $150,000 in FY2020
Staff Support
• 0.5 FTE for 4 months

Timeline
• Q3/Q4 FY2020

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>
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<tr>
<td>Public Policy</td>
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Leverage

- Coordinated approach spanning member agencies; work with other businesses and organizations (contractors, developers)
- Significant innovation opportunity, especially related to existing building stock
- Customer and geographic data analytics will help target related outreach and program efforts

Prioritization Criteria

- Will identify critical needs and highest-priority opportunities for enabling building decarbonization
- Buildings a major source of emissions within SVCE territory; enabling switch from natural gas a critical factor to addressing regional emissions
Approaches and resources can be readily shared with customers, and leveraged with key partners

Strategy and planning efforts will be especially focused on key needs related to achieving building decarbonization in underserved communities

SVCE a natural point of aggregation in supporting our member agency communities to advance building decarbonizations; member agencies have significant visibility/control of building-related processes
SVCE Program Brief – Resilience at Community Facilities (BE7)
February 12, 2020

Summary
During the 2019 wildfire season, PG&E began proactively shutting off power to reduce fire risks. In our territory there were four shut-off events. Three of these events impacted more than 18K customers and the fourth impacted 471 customers. PG&E expects these outages to continue for many years to come. In addition, extreme heat, flooding, and sea level rise caused by climate change will continue to increase power outages. Ensuring the region’s energy resilience is important for public health and economic vitality. Medically fragile, low income, and small business customers are more sensitive to the impacts of power outages and solutions must provide specific protection for these groups. Further, if resilience is left unaddressed, the fear of power outages could act as a significant barrier to widespread electrification and lacking options customers could invest in carbon intensive back-up generators. For these reasons, energy resilience is important to SVCE’s overarching goal of decarbonization. This program will develop tools, resources and partnerships to support energy resilience throughout SVCE territory with an emphasis on city facilities to mitigate the impacts of PG&E’s Public Safety Power Shutoff (PSPS) events and other climate related power outages.

Key Challenges
- Local governments are seeking ways to minimize the future impact of PSPS events, but lack the data and technical knowledge necessary to adequately evaluate project opportunities.
- Prioritizing sites for energy resilience projects will require input from a variety of stakeholders and analysis combining geospatial and energy data.
- Successful implementation of energy resilience projects requires combining hard infrastructure investments (e.g. microgrids) with soft infrastructure strategies (e.g. coordination, communication).

Goals
- Identify and prioritize locations for microgrids and other resilience infrastructure, on both government and community buildings, that can minimize the impact of power outages—particularly on the most vulnerable.
- Provide data and resources for our member agencies to fast track their respective resilience planning efforts, including General Plan updates and Hazard Mitigation Plans.
- Engage a cross-section of stakeholders to identify critical soft infrastructure strategies including coordination opportunities and rate design that ensure the maximum benefit from new infrastructure development.

Program Approach
General
- Develop a regionwide Energy Resilience Plan that provides SVCE with a strategy to minimize impacts of PSPS events in the short term, a set of prioritized actions to further improve resilience over the next 3-5 years, and will provide our member agencies with data, analysis, and resources necessary to implement their own resilience initiatives.
**Target Participants**
SVCE will include all member agencies in this collaborative effort.

In addition, SVCE intends to coordinate with the following participants:
- Offices of emergency management
- Local small business organizations
- Public health departments
- Hospitals and clinics
- Community benefit organizations serving populations most impacted by power outages

**Participation Criteria**
- N/A

**Program Evaluation, Measurement & Verification Plan**
- When projects are installed, SVCE will work with site hosts to monitor the performance of the project during power outages, including an assessment of the populations served by the sites during the outage.

**Third-Party Support**
- Consultants TBD

**Resources**
- $150,000

**Staff Support**
- .25 FTE in FY2020

**Timeline**
- Q3 FY2020 Solicitation
- Q3 FY2020 Vendor Selection and Design
- Q1 FY2021 Delivery
## Program Sector & Activity Type

<table>
<thead>
<tr>
<th>Sector(s)</th>
<th>Activity Type(s)</th>
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<tbody>
<tr>
<td>Power Supply</td>
<td>Public Policy</td>
</tr>
<tr>
<td>Energy Efficiency &amp; Grid Integration</td>
<td></td>
</tr>
<tr>
<td>Data</td>
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</tbody>
</table>

## Leverage

- **Partnerships**
  - Partnering with member agencies, nonprofits, public health and emergency management offices to maximize the relevance, reach, and impact of the plan.
  - Developing new data and analysis to support the development of more sophisticated resiliency planning across the region. Increase development of storage and microgrids to accelerate both resilience and decarbonization.
  - Leverage integrated database to inform prioritization of sites, identification of most vulnerable populations, and to assess best technology options for prioritized sites based on their specific energy profile.

## Prioritization Criteria

- **Customer & Community Value**
  - Promoting affordable local, low-carbon electricity while increasing reliability and stabilizing power supply.

- **Emissions Impact**
  - Expansion of low-carbon energy, gas reduction, and round-trip efficiency will reduce regional emission levels.

- **Scalable and Transferable**
  - Can be adopted or replicated by other LSEs which can be fitted to their service territory’s needs.
Prioritizing low-income residents, customers who rely on life-dependent medical equipment, and customers and businesses located in disadvantaged communities ensures that these customers will be supported during power shutoffs. Provides economic stability by supporting energy stability for small local businesses.

Promotes SVCE’s core values of decarbonization and grid innovation while working collaboratively with member agencies and local stakeholders.
SVCE Program Brief – Streamlining Community-Wide Electrification (BE4)
February 12, 2020

Summary
Develop a report baselining current member agencies’ permitting processes related to FutureFit technologies to help streamline and harmonize the process while understanding the market barriers to electrification. Informed by the outcome of the report, develop and provide tools, trainings, and/or other support to member agency staff to streamline and harmonize permitting processes across the service territory.

Key Challenges
- Procedural and cost differences within permitting and installation increases pricing
- Institutional knowledge may conflict with currently available technology

Goals
- Research, compile through the report to share information pertaining to electrification and FutureFit technology with stakeholders
- Develop and provide tools, trainings, and/or other support to member agency staff to streamline and harmonize permitting processes across the service territory, based on need as identified in the report and by member agency staff

Program Approach
General
- Contract with 3rd party to develop scope of work for focused training, education, awareness, and stakeholder mapping.
- Advance administrative and procedural change and further education surrounding FutureFit technology

Target Participants
- Member agencies (e.g. permit office, planning and development) contractors, and other local stakeholders

Participation Criteria
- Building permit and inspection staff for necessary trainings

Program Evaluation, Measurement & Verification Plan
- Permit data collection specific for each community
- Share collected data pertaining to HPWH with participating cities building department

Third-Party Support
- BayREN - outreach support on rebates and contractor communication
- Hire a consultant to conduct and deliver a report baselining current member agency’s permitting processes
- Hire a summer intern to conduct and deliver a report baselining current member agency’s permitting processes

### Resources
- $200,000 in FY2020-FY2021

### Staff Support
- 1 FTE for 6 months

### Timeline
- FY2020 – FY2021

### Program Sector & Activity Type

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

### Leverage

- BayREN (training), JVSV (outreach), Building Decarb Coalition, MAWG
- Expand online processing for ease of use for customers, contractors, and staff
- Share information learned with member agencies. Uniformed processes, where possible, will allow for easier data collection and dissemination

### Prioritization Criteria

- Ensure building department staff is knowledge about emerging technology and permitting processes; and permit streamlining will “soft costs”
Streamlining electrification of transportation and the built environment will further GHG reductions

Process aims to create a replicable model regionally

Permits are often fixed or standardized which may impact lower income customers more than others. Learn how cities may or may not be factoring this into their procedures

Identify and share improvements with and between member agencies. SVCE’s role as a regional facilitator enables a larger sphere of influence to impact service territory.
GHG Inventory for Calendar Year 2018
February 12, 2020 BOD Meeting

Key Results:

• **Buildings and transportation emissions:** In 2018, buildings- and transportation-related emissions in SVCE service territory totaled 3.19 million metric tons CO2e, 21% below 2015 levels and 8% below 2017 levels. This decrease is primarily due to decreasing electricity emissions in the residential and non-residential sectors.

• **Emission factors:** PG&E and direct access emission factors continue to decrease. SVCE’s emission factor increased slightly in 2018 due to increased geothermal in SVCE’s electricity mix. The 2018 weighted average emission factor for SVCE service territory was approximately 100 lbs/MWh,\(^1\) 75% lower than the 2015 weighted average emission factor. This is due to SVCE’s increasing share of electricity consumption in the residential and non-residential sectors, as well as the decreasing emission factors of PG&E and direct access providers.

• **Electricity trends:** 2018 electricity consumption was 4.8% lower than 2015 levels. 2018 electricity emissions were 76% lower than 2015 levels. Decreasing electricity emissions are partially attributed to decreasing electricity consumption, but are largely attributed to a declining weighted average emission factor across SVCE, PG&E, and direct access providers.

• **Natural gas trends:** 2018 natural gas consumption and emissions were 6.4% higher than 2015 levels. One likely cause of this trend is increasing economic activity in SVCE service territory.

• **On-road transportation trends:** Since 2015, electric vehicle miles traveled (VMT) have increased by 112% and gasoline and diesel VMT have decreased by 0.5%. In 2018, electric VMT constituted 3.6% of on-road VMT in SVCE service territory. Electric VMT are expected to continue to increase as EV adoption increases and programs are deployed to develop EV charging infrastructure in SVCE service territory. 2018 on-road transportation emissions were 4.8% lower than 2015 levels.

• **Off-road transportation trends:** Off-road emissions accounted for 20% of transportation emissions in 2018. 2018 off-road transportation emissions were 1.3% higher than 2015 levels, but 1.7% lower than 2017 levels.

• **Business-as-usual GHG emissions forecast:** The business-as-usual (BAU) greenhouse gas emissions forecast, created using 2015 and 2017 emissions data, projects buildings- and transportation-related emissions through 2030 in a BAU scenario. 2018 actual emissions were 0.5% higher than the forecasted BAU emissions. The largest discrepancies between the 2018 actual emissions and the BAU forecast were found in: direct access electricity emissions (over-forecasted), non-residential natural gas emissions (under-forecasted), and non-commercial transportation emissions (under-forecasted).

\(^1\) Calculated using 2017 PG&E and 2016 direct access emission factors, which were the most recent years of data available.
Figure: Buildings and transportation emissions by subsector for 2015, 2017, and 2018
Figure: SVCE territory-wide emissions by subsector (2018)
(Includes estimate of waste and wastewater emission for illustrative purposes)
Figure: Electricity consumption by provider for 2015, 2017, and 2018
Figure: Electricity consumption and emissions by building type for 2015, 2017, and 2018
Figure: Natural gas consumption and emissions by building type for 2015, 2017, and 2018
Figure: On-road transportation VMT for 2015, 2017, and 2018
Figure: 2018 actual emissions overlaid on the BAU GHG forecast, including BAU scenario analysis
Figure: 2018 actual emissions overlaid on the BAU GHG forecast, including programs scenario analysis
<table>
<thead>
<tr>
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<th></th>
<th></th>
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<tbody>
<tr>
<td>Direct Access</td>
<td>235,978</td>
<td>196,551</td>
<td>-1.24%</td>
</tr>
<tr>
<td>PG&amp;E</td>
<td>58,427</td>
<td>57,374</td>
<td>-0.03%</td>
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<tr>
<td>SVCE</td>
<td>451</td>
<td>7,401</td>
<td>0.22%</td>
</tr>
<tr>
<td>Residential Natural Gas</td>
<td>520,040</td>
<td>511,295</td>
<td>-0.28%</td>
</tr>
<tr>
<td>Non-residential Natural Gas</td>
<td>633,297</td>
<td>668,727</td>
<td>1.12%</td>
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<tr>
<td>Transportation (Commercial)</td>
<td>197,911</td>
<td>184,704</td>
<td>-0.42%</td>
</tr>
<tr>
<td>Transportation (Off-road)</td>
<td>365,810</td>
<td>354,311</td>
<td>-0.36%</td>
</tr>
<tr>
<td>Transportation (Non-commercial)</td>
<td>1,165,367</td>
<td>1,212,146</td>
<td>1.47%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3,177,280</strong></td>
<td><strong>3,192,511</strong></td>
<td><strong>0.48%</strong></td>
</tr>
</tbody>
</table>

*Figure: 2018 actual emissions vs. BAU forecasted emissions*
Staff Report – Item 8

Item 8: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/12/2020

The Executive Committee met on January 31, 2020 and this item will be addressed as an oral report to the Board.
The Finance and Administration Committee met on January 17, 2020 and this item will be addressed as an oral report to the Board.
The Audit Committee met on January 27, 2020 and February 5, 2020; this item will be addressed as an oral report to the Board.
Appendix A

Power Resource Contracts Executed by CEO
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 A

Seller: Party B

Product: The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller’s local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

Delivery Period: [Redacted] inclusive.

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

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Firm RA Product

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

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

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

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

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

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

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

2.3 **Seller To Provide Alternate Capacity**

(a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.

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

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.

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

PG&E Resource Adequacy (Log No. 33B230S05)
2020 Bilateral Resource Adequacy (RA)
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.
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;

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2020 Bilateral Resource Adequacy (RA)
(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(y), 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 Buyer Collateral Requirements

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

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

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

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

8.2 Seller Collateral Requirements

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

8.3 Current Mark-to-Market Value

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

ARTICLE 9
ADDITIONAL MASTER AGREEMENT AMENDMENTS

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

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

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

Silicon Valley Clean Energy Authority, a California joint powers authority

By: 
Name: Girish Balachandran
Title: CEO
Date: 1/12/2020

Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

By: 
Name: 
Title: 
Date: 1/12/2020
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.

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2020 Bilateral Resource Adequacy (RA)
“Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM), which are being jointly administered.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by
which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

"FERC" means the Federal Energy Regulatory Commission.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

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

"FCR Contract Quantity" means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

"Flexible Capacity Category" has the meaning set forth in the Tariff.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include "market participants" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

"Hold-Back Capacity" is defined in Article 7 of this Confirmation.

"Local Capacity Area" has the meaning set forth in the Tariff.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Outage” has the meaning set forth in the Tariff.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

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

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff. “Scheduling Coordinator” has the meaning set forth in the Tariff.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Scheduling Coordinator ID Code (SCID)” has the meaning set forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes
only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

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

"Substitute Capacity" means "RA Substitute Capacity" as defined in the Tariff.

"Supply Plan" has the meaning set forth in the Tariff.

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

"Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

"Unit EFC" means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

"Unit NOC" means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.
APPENDIX B

PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Path (North, South)</th>
<th>RAR Quantity (MW)</th>
<th>Capacity Area*</th>
<th>FCR Quantity, if any (MW)</th>
<th>Flexible Capacity Category (1,2,3)</th>
<th>Contract Price ($/kW-Month)</th>
<th>SCID of Benefiting LSE</th>
</tr>
</thead>
</table>

* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura

PG&E Resource Adequacy (Log No. 33B230S05)
2020 Bilateral Resource Adequacy (RA)
APPENDIX C
SUBSEQUENT SALE INFORMATION

<table>
<thead>
<tr>
<th>Contract Key ID:</th>
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<tr>
<td>Benefitting LSE SCID:</td>
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</tr>
<tr>
<td>Generic Volume (in MW):</td>
<td></td>
</tr>
<tr>
<td>Local Volume (in MW and by local area):</td>
<td></td>
</tr>
<tr>
<td>Flexible Volume (in MW):</td>
<td></td>
</tr>
<tr>
<td>Term:</td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX D
NOTICE INFORMATION

Name: Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer" or "Party A")

All Notices:

Delivery Address:
Street: 333 W. El Camino Real, Suite 320
City: Sunnyvale State: CA Zip: 94087

Mail Address: (if different from above)

Attn: Dennis Dyc-O'Neal
(email) dennis.dyconeal@svcleanenergy.org
Phone: (408) 721-5301 x1016

Invoices and Payments:
Attn: SVCE Power Settlements
(email): powersettlements@svcleanenergy.org
Phone: (408) 721-5301

Scheduling:
Attn: Brian Goldstein
(email): brian@opacities.com
Phone: (916) 936-3303

Wire Transfer:
BNK: River City Bank
ACCT Title: SVCE
ABA: [Redacted]
ACCT: [Redacted]
DUNS: 080462990
Federal Tax ID Number: [Redacted]

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, CBO
(email): girish@svcleanenergy.org
Phone: (408) 721-5301 x1001

Supply Plan Contact:

PG&E Resource Adequacy (Log No. 33B230S05)
2020 Bilateral Resource Adequacy (RA)

Name: Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions ("Seller" or "Party B")

All Notices:

Delivery Address:
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Mail Address:
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177
Attn: Candice Chan (candice.chan@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780

Invoices and Payments:
Attn: Fuel Settlements (egssettlements@pge.com)
Manager, Fuel Settlements
Phone: (415) 973-0795

Outages:
Attn: Outage Coordinator
(ISMOOutageCoordinator@pge.com;
RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:
BNK: The Bank of NY Mellon
ACC Title: PG&E
ABA: [Redacted]
ACCT: [Redacted]
DUNS: 55650034
Federal Tax ID Number: [Redacted]

Credit and Collections:
Attn: Credit Risk Management (PGERiskCredit@pge.com)
Phone: (415) 972-5188

Contract Management
Attn: Elizabeth Motley (elizabeth.motley@pge.com)
Contract Management
Phone: (415) 973-2368

With additional Notices of an Event of Default to Contract Manager:
Attn: Ted Yura (ted.yura@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660

Supply Plan and Hold-Back Request:
EPP-RAFilingsMailbox@pge.com

20
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
derelated 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.

PG&E Resource Adequacy (Log No. 33B230S04)
2020 Bilateral Resource Adequacy (RA)
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.

PG&E Resource Adequacy (Log No. 33B230S04)
2020 Bilateral Resource Adequacy (RA)
(c) If at any time during the Delivery Period, one or more of the conditions in subsections (i) and (ii) of Section 8.1(b) is no longer satisfied, and 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

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<td>Name:</td>
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Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions

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PG&E Resource Adequacy (Log No. 33B230S04)
2020 Bilateral Resource Adequacy (RA)
APPENDIX A

DEFINED TERMS

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

“Advice Letter” means (1) an informal request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief, including an informal request for approval to furnish service under rates, charges, terms or conditions other than those contained in the utility’s tariffs then in effect, and (2) a compliance filing by a load-serving entity pursuant to Public Utilities Code Section 380.

“Alternate Unit” means a generating unit designated by the Parties in accordance with Section 2.3 and which includes the Product characteristics, if any, as set forth in Appendix B.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

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

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

“Capacity Attributes” means, with respect to a generating unit, any and all of the following, in each case which are attributed to or associated with the generating unit at any time throughout the Delivery Period:

(a) Resource Adequacy Capacity attributes of the generating unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction, that can be counted toward RAR;

(b) Resource Adequacy Capacity attributes or other locational attributes of the generating unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the generating unit within the CAISO Control Area, that can be counted toward a Local RAR; and

(c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs of the generating unit, howsoever entitled, including any accounting construct counted toward any Compliance Obligations;

provided that, notwithstanding the foregoing, Capacity Attributes exclude all certificates, tags, credits, or accounting constructs that are not counted toward any Compliance Obligations, howsoever entitled associated with the generating unit, as such characteristics, certificates, tags, credits, or accounting constructs are described in the CPUC Decisions and Tariff.
“Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.

“Chapter 11 Cases” means Party B’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM), which are being jointly administered.

“Competitive Solicitation Process” or “CSP” has the meaning set forth in the Tariff.

“Compliance Obligations” means the RAR and Local RAR, and if applicable FCR.

“Compliance Showings” means the monthly, annual, or multi-year (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, FCR compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO) pursuant to the CPUC Decisions, to CAISO pursuant to the Tariff, or to any Governmental Body having jurisdiction.

“Confirmation” is defined in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” is defined in the introductory paragraph of this Confirmation.

“Contract Price” means, for any period during the Delivery Period, the price, expressed in dollars per kW-month, specified for such period set forth in the Contract Price Table in Appendix B.

“Contract Quantity” means, with respect to any day during the Delivery Period, the amount of Product, expressed in MW, set forth in the Contract Quantity table in Appendix B for such day.

“Control Area” has the meaning set forth in the Tariff.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-01-063, 15-06-063, 16-06-045, 17-06-027, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” is defined in Article 1 of this Confirmation.

“Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by
which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

"Environmental Costs" means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

"FERC" means the Federal Energy Regulatory Commission.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by a Local Regulatory Authority or other Governmental Body having jurisdiction.

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

"FCR Contract Quantity" means, with respect to a day included in the Delivery Period, the amount of FCR Attributes, expressed in MW, equal to the Contract Quantity for such day.

"Flexible Capacity Category" has the meaning set forth in the Tariff.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal. This definition does not include "market participants" as defined in the CAISO's Business Practice Manual for Definitions and Acronyms as published on the CAISO website.

"Hold-Back Capacity" is defined in Article 7 of this Confirmation.

"Local Capacity Area" has the meaning set forth in the Tariff.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
“LSE” means “Load Serving Entity” as such term is defined in the Tariff.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Master Agreement” is defined in the introductory paragraph of this Confirmation.

“Monthly Payment” is defined in Section 3.1 of this Confirmation.

“MW” means megawatt.

“Outage” has the meaning set forth in the Tariff.

“Path” refers to the Path 26 transmission constraint which is surrounded by two zones; North of Path 26 (PG&E’s TAC) and South of Path 26 (SCE and SDG&E’s TACs), as identified by the Commission in D.07-06-029.

“Planned Outage” means any outage that was submitted to the CAISO for approval at least eight (8) calendar days prior to the outage start date.

“Procurement Review Group” has the meaning set forth in CPUC Decision D. 02-08-071.

“Product” is defined in Article 1 of this Confirmation.

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

“Re-sale Plan” is defined in Section 2.7(b) of this Confirmation.

“Resold Product” is defined in Section 2.7 of this Confirmation.

“Resource Adequacy Capacity” has the meaning set forth in the Tariff. “Scheduling Coordinator” has the meaning set forth in the Tariff.

“SCID of Benefitting LSE” means the Scheduling Coordinator ID Code (SCID) of the Load Serving Entity (LSE) that will be using the Product toward meeting their RAR in the given Showing Month.

“Scheduling Coordinator ID Code (SCID)” has the meaning set forth in the Tariff.

“Showing Month” means the calendar month that is the subject of the related Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes
only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

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

"Substitute Capacity" means "RA Substitute Capacity" as defined in the Tariff.

"Supply Plan" has the meaning set forth in the Tariff.

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

"Tariff" means the Fifth Replacement FERC Electric Tariff and the associated CAISO protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means any generation unit provided by Seller pursuant to Section 2.2 and any Alternate Unit or Shown Unit.

"Unit EFC" means, with respect to a Unit on any date of determination, the lesser of the Effective Flexible Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.

"Unit NOC" means, with respect to a Unit on any date of determination, the lesser of Net Qualifying Capacity of the Unit as set by CAISO as of (x) the Confirmation Effective Date and (y) such date of determination.
APPENDIX B
PRODUCT AND PRICE INFORMATION

Product means Capacity Attributes with the following characteristics.

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>Path (North, South)</th>
<th>RAR Quantity (MW)</th>
<th>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><strong>Contract Key ID:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefitting LSE SCID:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Generic Volume (in MW):</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Local Volume (in MW and by local area):</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Flexible Volume (in MW):</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Term:</strong></td>
<td></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): eric@global.biz
Phone: (916) 221-4327

Wire Transfer:
BNK: River City Bank
ACCT Title: SVCE
ABA: [redacted]
ACCT: [redacted]
DUNS: 080462990
Federal Tax ID Number: [redacted]

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 Fuels 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) 973-9795

Invoices and Payments:
Attn: Fuel Settlements
(email): payments@svcleanenergy.org
Manager, Fuel Settlements
Phone: (415) 973-9795

Outages:
Attn: Outage Coordinator
(BSMOutageCoordinator@pge.com;
RATransactionNotificationList@pge.com)
Phone: (415) 973-1721

Wire Transfer:
BNK: The Bank of NY Mellon
ACCT Title: PG&E
ABA: [redacted]
ACCT: [redacted]
DUNS: 556650034
Federal Tax ID Number: [redacted]

Credit and Collections:
Attn: Credit Risk Management
(PGERRiskCredit@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
REVISED
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
CALPINE ENERGY SERVICES, L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Calpine Energy Services, L.P., a Delaware limited partnership ("Buyer"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of January 9, 2020 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, and that certain Cover Sheet, effective as of March 9, 2018, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.
1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

1.13 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 "Control Area" has the meaning set forth in the Tariff.

1.15 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

1.17 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.18 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.19 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental body having jurisdiction.

1.21 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 "Firm RA Product" has the meaning specified in the Section 3.3 hereof.

1.24 "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental body having jurisdiction.

1.25 "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.

1.26 "GADS" means the Generating Availability Data System or its successor.
1.27 "Generic RA Product" means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

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

1.29 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 "LRA" has the meaning set forth in the Tariff.

1.33 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.34 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.35 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.37 "NERC" means the North American Electric Reliability Council, or its successor.

1.38 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.

1.39 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.40 "Non-Availability Charges" has the meaning set forth in the Tariff.

1.41 "Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
1.42 "Outage" means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

1.43 "Party" and "Parties" have the meanings specified in the introductory paragraph hereof.

1.44 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as "Approved Maintenance Outage" under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.45 "Product" has the meaning specified in Article 3 hereof.

1.46 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

1.47 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

1.48 "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

1.49 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

1.50 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

1.51 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.52 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.

1.53 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.54 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.

1.55 "Seller" has the meaning specified in the introductory paragraph hereof.

1.56 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.57 "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
1.58 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

1.59 "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.61 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.62 "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Delta Energy Center Aggregate
Location: Pittsburg, CA
CAISO Resource ID: DELTA_2_PL1X4
Resource Type: 1_Phys_Res
Resource Category (1, 2, 3 or 4): 4
Point of interconnection with the CAISO Controlled Grid ("Substation"): Pittsburg 230 kV substation
Path 26 (North, South or None): North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None
Run Hour Restrictions: None
LAR Attributes (Yes/No): No
   If yes: Local Capacity Area (as of Confirmation Effective Date): N/A
Product Type (Flexible/Generic): Generic

If Generic: Unit NQC (as of the Confirmation Effective Date): Varies by Month
If Flexible: Unit EFC (as of the Confirmation Effective Date): N/A

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): N/A

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period
The Delivery Period shall be [redacted] inclusive. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for any period after the end of the Delivery Period.

4.2 Delivery Point
The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity
The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</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 the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or
(ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of each Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity.

4.5 Alternate Capacity and Replacement Units

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.
4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:
Appendix A

Calpine Deal: 2517490

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

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<tr>
<th>Contract Year/.Month</th>
<th>RA Capacity Price ($/kW-month)</th>
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4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit's SC, owner, or
operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. **CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

6. **RESERVED**

7. **OTHER BUYER AND SELLER COVENANTS**

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 **Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:**

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other
Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

(g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit’s RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

(i) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.
9. BUYER’S RE-SAILE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit’s SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

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

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller’s obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

[SIGNATURE PAGE Follows]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

By: ____________________________
Name: Andrew Novotny
Title: Executive Vice President

Silicon Valley Clean Energy Authority

By: ____________________________
Name: Girish Balachandran
Title: CEO
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Clean Power Alliance of Southern California, a California joint powers authority ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of January 13, 2020 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

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

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

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

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

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

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

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

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

2.2 Adjustments to Contract Quantity

If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

(a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser's Compliance Showings related to such Showing Month; and

1 For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
(b) the designation of any Replacement Unit by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity

(a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

(b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser’s right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

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

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

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

ARTICLE 3
PAYMENTS

3.1 Payment

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time
of the CAISO filing for such Showing Month.

3.2 Allocation of Other Payments and Costs

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

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

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

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Shown Unit’s SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit’s SC, owner, or operator for noncompliance.
4.2 **Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 **Seller’s Representations and Warranties**

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

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

(b) the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

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

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

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

**ARTICLE 5**

**ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

5.1 **Termination Payment**

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

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

5.2 **Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
(b) Each Party acknowledges that the other Party is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that each Party may be required to make public this Confirmation (which may be partially redacted by such Party) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Each Party may submit information to the other Party that such Party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, each Party may release confidential information without notice to or over the objection of the other Party if such Party’s legal counsel advises such Party that it is required by law to release such confidential information.

5.3 Dodd-Frank Act


5.4 Change in Law

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and
revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

5.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

5.7 **No Recourse to Members of Purchaser or Seller**

Purchaser and Seller are each organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. Each Party agrees it will have no rights and will not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

5.8 **Other WSPP Agreement Changes**

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

(a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(c) Section 22.3 of the WSPP Agreement is amended by:
In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: "If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary."

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"

(e) In Section 22.3(f), delete the entire provision and replace with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34."

(f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(g) Section 30.1 of the WSPP Agreement is amended by inserting "or requested" after the word "required" in Section 30.1(4) and by adding the following at the end of the first sentence: "; or (8) to the Party's and such Party's affiliates' lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".

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

"34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION."

"34.2 EXCLUSIVE JURISDICTION"
EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

(i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.

(j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

(k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.

(l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:
(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm'n, 558 U.S. 165 (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

5.9 **Counterparts**

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

5.10 **Entire Agreement: No Oral Agreements or Modifications**

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

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

<table>
<thead>
<tr>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</th>
<th>SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>Docusigned by: Girish Balachandran</td>
</tr>
<tr>
<td>Name: Ted Bardacke</td>
<td>Name: Girish Balachandran</td>
</tr>
<tr>
<td>Title: Executive Director</td>
<td>Title: CEO</td>
</tr>
</tbody>
</table>
APPENDIX A
DEFINED TERMS

"Alternate Capacity" means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

"CAISO" means the California ISO.

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

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

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

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

"Contingent Firm RA Product" has the meaning set forth in Article 1 herein.

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

"Effective Flexible Capacity" has the meaning given in CAISO’s FERC-approved Tariff.

"Environmental Costs" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day
of such Showing Month, including the amount of Contract Quantity of Product that Seller has
elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm
RA Product, the Contract Quantity of Product for such day of such Showing Month, including
the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity
with respect to for such day, less any reductions to Contract Quantity for such day specified in
Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

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

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

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

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-
approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit
that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or
for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity,
Contract Price and other specifications contained in Appendix B.
“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

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

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

- ☑ RAR
- ☐ Local RAR
- ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

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

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

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<thead>
<tr>
<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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Flexible Capacity, if applicable

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<th>Showing Month and Year</th>
<th>Contract Quantity (MW)</th>
<th>Contract Price ($/kW-mo)</th>
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<tbody>
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Appendix B - 1
## Unit 1

### Unit Specific Information

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<tr>
<th>Resource Name</th>
<th>Sunrise Power Project AGGREGATE II Fellows, CA</th>
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<tr>
<td>Physical Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<td>SCID of Resource</td>
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<tr>
<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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</tr>
<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>PG&amp;E</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
<td>CAISO System</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
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<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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*(Repeat for additional Units)*

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
## APPENDIX C

### NOTICE INFORMATION

<table>
<thead>
<tr>
<th>Seller: Clean Power Alliance of Southern California</th>
<th>Purchaser: Silicon Valley Clean Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Attn: Theodore Bardacke</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone: (213) 269-5870</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Duns: 08-083-1567</td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td>Duns: 08-046-2990</td>
</tr>
<tr>
<td></td>
<td>Federal Tax ID Number:</td>
</tr>
</tbody>
</table>

| **Invoices:**                                   | **Invoices:**                                   |
| Attn: Director, Power Planning & Procurement    | Attn: Power Supply Group                        |
| Phone: (213) 269-5870                           | Phone: (408) 721-5301                           |
| E-mail: settlements@cleanpoweralliance.org      | Email: SVCEpowersettlements@svcleanenergy.org   |

| **Scheduling:**                                 | **Scheduling:**                                 |
| Attn: Jeff Fuller, Director Client Services     | Attn: ZGlobal                                   |
| Phone: (425) 460-1110                           | Phone: (916) 221-4327                           |
| Email: jfuller@teainc.org                       | Email: eric@zglobal.biz                         |

| **Wire Transfer:**                              | **Wire Transfer:**                              |
| BNK: River City Bank                            | BNK: River City Bank                            |
| ABA:                                           | ABA:                                           |
| ACCT:                                          | ACCT:                                          |

| **Credit and Collections:**                     | **Defaults:**                                   |
| Attn: David McNeil, Chief Financial Officer     | Hall Energy Law PC                             |
| Phone: (213) 269-5870                           | Attn: Stephen Hall                             |
| E-mail: dmcneil@cleanpoweralliance.org          | Phone: (503) 313-0755                           |
|                                                | Email: steve@hallenergylaw.com                 |
| **Credit and Collections:**                     | **Defaults:**                                   |
| Attn: Nancy Whang, General Counsel              | Hall Energy Law PC                             |
| Phone: (213) 595-7818                           | Attn: Stephen Hall                             |
| E-mail: nwhang@cleanpoweralliance.org           | Phone: (503) 313-0755                           |
|                                                | Email: steve@hallenergylaw.com                 |

Additional notices of an Event of Default to:

Hall Energy Law PC
Attn: Stephen Hall
Phone: (503) 313-0755
Email: steve@hallenergylaw.com
APPENDIX D
PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
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:</td>
<td>Complete</td>
</tr>
<tr>
<td>CEQA [X ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec,</td>
<td></td>
</tr>
<tr>
<td>[ ] EIR</td>
<td></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>9/30/2021</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>Complete</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>12/1/2021</td>
</tr>
<tr>
<td>Network Upgrades completed</td>
<td>12/1/2021</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>12/31/2021</td>
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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>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
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<td>4</td>
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<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
</tbody>
</table>

**Contract Capacity:** 7 MW

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

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10</td>
<td></td>
</tr>
</tbody>
</table>

**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:** kW times Contract Capacity

**Performance Security:** kW times Contract Capacity

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

This Renewable Power Purchase Agreement ("Agreement") is entered into as of January 8, 2020 (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 undischarged 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 16 MWh: zero percent (0%) and (b) for any hour in which total electric energy generated by the Facility is greater than 16 MWh: a percentage equal to (i) fifty percent (50%) of the electric energy generated by the Facility in excess of 16 MWh, divided by (ii) total electric energy generated by the Facility; provided, however, that for any hour in which the Facility is curtailed by the Other Offtaker under the Existing PPA, the references to 16 MWh in this definition of Buyer’s Energy Share will be deemed to be replaced with the reduced generation amount that Seller is permitted to deliver under the Existing PPA for such hour based on the curtailment notice provided by the Other Offtaker.

“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” means an amount equal to the Development Security amount required hereunder, divided by sixty (60).

“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” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Contract Capacity.

“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 an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred and twenty (120).

“**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 amount of Delivered Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be calculated as the difference between (a) the product of (i) the arithmetic average of the Facility’s metered output rate, in MW, immediately before and after such Market Curtailment Period, as applicable, by (ii) the duration of such Market Curtailment Period, as applicable, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Market Curtailment Period, if any; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

“**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 16 MWh, multiplied by (b) fifty percent (50%); provided, however, that for any hour in which the Facility is curtailed by the Other Offtaker under the Existing PPA, (i) the reference to 16 MWh in this definition of Delivered Energy will be deemed to be replaced with the reduced generation amount that Seller is permitted to deliver under the Existing PPA for such hour based on the curtailment notice provided by the Other Offtaker, and (ii) the Delivered Energy for such hour shall not exceed eight (8) MWh unless Buyer agrees in writing (including via email) to allow Delivered Energy to exceed eight (8) MWh for such hour.

“**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 ninety percent (90%) of the total Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

“Guarantor” 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) has a tangible net worth of at least $[Redacted] (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.
“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 \[ \text{blank} \] 12

"Negative LMP Strike Price" means \[ \text{blank} \] 12, as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C; provided, however, that (a) in no event shall the Negative LMP Strike Price be greater than \[ \text{blank} \] 12, and (b) subject to the preceding clause (a), for purposes of this Agreement, the Negative LMP Strike Price will be deemed to be the greater of (i) the Negative LMP Strike Price specified by Buyer in accordance with Exhibit C or (ii) the "Negative LMP Strike Price" in effect under the Renewable Power Purchase Agreement between Seller and Monterey Bay Community Power Authority, a California joint powers authority (the "MBCP PPA"), if such strike price is different from the Negative LMP Strike Price specified by Buyer.

"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 two (2) years of experience in the ownership and operations of power generation facilities similar to the Generating Facility with a generating capacity of at least twenty (20) MW, 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 “PCCI” 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 date that is sixty (60) days after the Commercial Operation Date.

"RA Shortfall Month" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month commencing after the RA Guarantee Date during which (a) fifty percent (50%) of the Net Qualifying Capacity of the Facility in excess of 16 MW for such month was less than (b) fifty percent (50%) of the Qualifying Capacity of the Facility in excess of 16 MW 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. 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
Appendix A

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

3.5 **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 Seller an amount equal to seventy-five percent (75%) of the Contract Price (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.
RA Deficiency Amount Calculation. Commencing on the Commercial Operation Date, for each RA Shortfall Month Seller shall pay to Buyer an amount equal to the product of the difference, expressed in kW, of (i) fifty percent (50%) of the Qualifying Capacity of the Facility in excess of 16 MW for such month, minus (ii) fifty percent (50%) of the Net Qualifying Capacity of the Facility in excess of 16 MW for such month, (the "RA Shortfall Amount") multiplied by _______kW mo. (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.
Appendix A

(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 [###] per MW of Contract Capacity (“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(s) 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 ten percent (10%), 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 [REDACTED].

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 **Neting 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):

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(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) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) 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;

(iv) 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 Contract Year, the Adjusted Energy Production amount is not at least sixty percent (60%) of the total Expected Energy amount for such period;
(vi) in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least seventy percent (70%) of the total Expected Energy amount for such period;

(vii) 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;

(viii) 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 ___________ per occurrence, and an annual aggregate of not less than ___________. Defense costs shall be provided 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 ___________.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than ___________ for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the ___________ 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 One ___________ 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 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 ___________ 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 heretofore 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: [Signature]
Name: Connie Steckman
Title: Secretary

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

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

FACILITY DESCRIPTION

Site Name: Mammoth Casa Diablo IV Geothermal Project

Site includes all or some of the following APNs: 37-030-29, 37-050-11, 37-050-12, 37-050-13, 037-050-14, 037-050-15, 037-030-16, 037-050-01

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 A - 1
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 one hundred eighty (180) days, 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) Installed Capacity, minus sixteen (16) MW, multiplied by (b) fifty percent (50%) (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, in an amount equal to [redacted] for each MW that the Contract Capacity exceeds the Buyer’s Share of Installed Capacity, and the Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

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 the difference of: (i) the Contract Price; minus (ii) the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period; provided, however, that (A) if the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period is less than the Negative LMP Strike Price, then such Day-Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Exhibit C, and (B) if the result of the difference of (i) minus (ii) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller’s monthly invoice).

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy above the Curtailment Cap. There shall be no payment for (i) Deemed Delivered Energy amounts below the Curtailment Cap, or (ii) Deemed Delivered Energy amounts accrued during a Market Curtailment Period for energy that the Facility was forecasted to generate in the Day-Ahead Forecast provided under Section 4.3(c) if the Day-Ahead Market LMP corresponding to such Day-Ahead Forecast was greater than the Negative LMP Strike Price.

(c) Excess Contract Year Deliveries. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy for such Contract Year:

(i) exceeds one hundred fifteen percent (115%) but is less than or equal to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy in excess of one hundred fifteen percent (115%) but less than or equal to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year will be [REDACTED];

(ii) exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, notwithstanding anything to the contrary in this Agreement, Buyer is not obligated to purchase the Product associated with such Delivered Energy and Deemed Delivered Energy in excess of one hundred fifteen percent (115%) of the Expected Energy for such Contract Year and Seller may retain for its own use or sell to one or more third parties all such Product and retain all associated revenue.

(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; provided, however, that the Negative LMP Strike Price identified by Buyer must be less than or equal to [REDACTED].

Exhibit C - 1
(e) Reserved.

(f) **Curtailment Payments.** Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap as provided above.

(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 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 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the 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 29 |     |     |     |     |     |     |     |     |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |     |     |     |     |     |     |     |     |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |     |     |     |     |     |     |     |     |     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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:

- \(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- \(B\) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- \(C\) = 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.
- \(D\) = 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
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 ninety percent (90%) of the Total Facility Capacity.

3. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) 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 H - 1
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 ________.

ORNI 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$[XXXXXXX]
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. $[XXXXXXX] (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.

Exhibit K - 1
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. [XXXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]
[Insert officer title]
(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. [XXXXXXX] (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 K - 3
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, statute or regulation, in each such event in any such proceeding, or

   (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

   (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

   (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) 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

[____]  
Attn:  [____]  
Fax:  [____]

If delivered to Guarantor, to it at

[____]  
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:

[Blank]

By: ____________________________

Printed Name: __________________

Title: ___________________________

BUYER:

[Blank]

By: ____________________________

Printed Name: __________________

Title: ___________________________

Exhibit L - 6
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:

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<tbody>
<tr>
<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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To be repeated for each unit if more than one.
ORNI 50 LLC

By: ____________________________

Its: ____________________________

Date: ____________________________
# EXHIBIT N

## NOTICES

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<tr>
<th>ORNI 50 LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
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<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 6140 Plumas Street</td>
<td>Street: 333 W. El Camino Real, Suite 290</td>
</tr>
<tr>
<td>City: Reno</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn: CEO</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone: (775) 356-9029</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile: (775) 356-039</td>
<td>Email <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:assetmanager@ormat.com">assetmanager@ormat.com</a></td>
<td>With a copy to:</td>
</tr>
<tr>
<td></td>
<td>Street: 6140 Plumas Street</td>
</tr>
<tr>
<td></td>
<td>City: Reno</td>
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<tr>
<td></td>
<td>Attn: Asset Manager</td>
</tr>
<tr>
<td></td>
<td>Phone: (775) 356-9029</td>
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<tr>
<td></td>
<td>Facsimile: (775) 356-9039</td>
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<tr>
<td></td>
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| With a copy to:        | |
| Street: 6140 Plumas Street | |
| City: Reno             | |
| Attn: Asset Manager    | |
| Phone: (775) 356-9029  | |
| Facsimile: (775) 356-039 | Email: assetmanager@ormat.com |

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<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
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<td><strong>With additional Notices of an Event of Default to:</strong></td>
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<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>
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</tbody>
</table>

| **Emergency Contact:** | **Emergency Contact:**                        |
| Attn: Asset Manager    | Attn:                                          |
| Phone: (775) 356-9029  | Phone:                                         |
| Facsimile: (775) 356-9039 | Facsimile:                                    |
| E-mail: assetmanager@ormat.com | E-mail:                                       |
EXHIBIT O
OPERATING RESTRICTIONS

- Nameplate capacity of the Project: 38 MW
- Minimum capacity: 5 MW
- Ramp rate: 3 MW/minute
EXHIBIT P
METERING DIAGRAM
CONFIRMATION AGREEMENT

This Confirmation confirms the agreement reached on January 23, 2020 between SILICON VALLEY CLEAN ENERGY AUTHORITY ("CounterParty") and Shell Energy North America (US), L.P. ("Shell Energy") pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 28, 2016 ("EEI") between CounterParty and Shell Energy. This confirmation constitutes part of and is subject to all of the terms and provisions of such EEI. Terms used but not defined herein shall have the meanings ascribed to them in the EEI. CounterParty and Shell Energy hereby agree to the sale of Energy by Shell Energy to CounterParty under the terms and conditions as follows:

Buyer's Facilities:          650 W OLIVE AVE, SUNNYVALE, CA 94086-7637
Product:                   CAISO Energy
Contract Quantity:          Hourly Quantities (MWhrs) Shown in the Exhibit A Hourly Shape Table
Total Volume:              
Delivery Point:            
Contract Price:            
Delivery Term:             March 01, 2020 through December 31, 2020

This Confirmation sets forth the terms of the transaction into which the Parties have entered into and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of electric energy and/or electric capacity. Please have this confirmation executed by an authorized representative or officer of your company.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By:  
Name: Girish Balachandran  
Title: CEO  
Date: 1/24/2020

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

By:  
Name: John W. Pillion  
Title: Confirmations Team Lead  
Date: 1/23/2020 02:43:58 PM
### Exhibit A

#### Hourly Load Shapes (MW)

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MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
OHMCONNECT, INC.

This Confirmation Letter ("Confirmation") confirms the Transaction between OhmConnect, Inc., a Delaware corporation ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of January 28, 2020 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 21, 2018, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" has the meaning specified in the introductory paragraph hereof, and is "Purchaser" within the meaning of the WSPP Agreement.

1.6 "CAISO" means the California Independent System Operator Corporation or its successor.

1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the "Contract Quantity (MWs)" table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program.

1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an Excusable Event.

1.18 "Excusable Event" means those events described under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that excuse Seller's performance.

1.19 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

1.20 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.21 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

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

1.23 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.24 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

1.25 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.26 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

1.27 "LRA" means Local Regulatory Authority as defined in the Tariff.

1.28 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
1.29 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.30 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.

1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.35 "Product" has the meaning specified in Article 3 hereof.

1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.

1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.41 "Replacement Unit" has the meaning specified in Section 4.5.

1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.

1.44 "Seller" has the meaning specified in the introductory paragraph hereof.

1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.

1.49 "Unit" or "Units" shall mean the demand response resources described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

### ARTICLE 2. UNIT INFORMATION

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<tr>
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<th>OhmConnect</th>
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<tbody>
<tr>
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</tr>
<tr>
<td>CAISO Resource ID</td>
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<tr>
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### ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

#### 3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the “Product”) and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

#### 3.2 Product Type

☐ **Flexible RA Product**

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- [ ] FCR Attributes with LAR Attributes
- [ ] FCR Attributes with RAR Attributes
Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

[X] RAR Attributes
[ ] LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, that to the extent the Units are not available to provide the full amount of the Contract Quantity due to an Excusable Event or any reduction of the Contract Quantity in accordance with Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller notifies Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity as a result of (x) an adjustment in accordance with Section 4.4 and (y) that it will not supply Alternate Capacity to fulfill the remainder of the Contract Quantity, Seller shall reduce its invoice for any months of such non-availability to reflect the daily proportion of the Contract Quantity not delivered to the full Contract Quantity. If Seller fails to provide Buyer with the Contract Quantity for a reason other than an Excusable Event or a reduction of the Contract Quantity in accordance with Section 4.4, Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, to the extent Seller provides less than the full amount of the Contract Quantity (i) due to an Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be [ ]

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

<table>
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<tr>
<th>Contract Month</th>
<th>Total Generic RAR Contract Quantity (MWs)</th>
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4.4 Adjustments to Contract Quantity

(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the
obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

(b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

(c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

(a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof to the extent such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR
Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;
(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 3.3, 4.4 and 4.5; or
(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Payment in full of the Monthly RA Capacity Payment is due no later than 30 days after the last day of the Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

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4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit’s Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.
ARTICLE 6. GOVERNING LAW

Section 24 of the WSPP Agreement is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

(b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 17-09-020 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7.1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller has the right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
Appendix A

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;

With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR, to the extent that those laws apply to demand response resources;

Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.
ARTICLE 11. JOINT POWERS AUTHORITY

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

ARTICLE 12. COLLATERAL REQUIREMENTS

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

ARTICLE 13. COUNTERPARTS

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California Joint Powers Authority

By:

Name: Girish Balachandran
Title: CEO

OHMCONNECT, INC., a Delaware Corporation

By:

Name: Matt Duesterberg
Title: CRO

11
APPENDIX A
CAISO RESOURCE CONTRACTED

Subject to change, final set to be provided in Supply Plans.

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