



Howard Miller, Chair  
City of Saratoga

Nancy Smith, Vice Chair  
City of Sunnyvale

Liz Gibbons  
City of Campbell

Rod Sinks  
City of Cupertino

Fred M. Tovar  
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Town of Los Altos Hills

Rob Rennie  
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Javed Ellahie  
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Yvonne Martinez Beltran  
City of Morgan Hill

Margaret Abe-Koga  
City of Mountain View

Susan Ellenberg  
County of Santa Clara

[svcleanenergy.org](http://svcleanenergy.org)

333 W El Camino Real  
Suite 290  
Sunnyvale, CA 94087

**Silicon Valley Clean Energy Authority**  
**Board of Directors Meeting**  
Wednesday, March 11, 2020  
7:00 pm

Cupertino Community Hall  
10350 Torre Avenue  
Cupertino, CA

**AGENDA**

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

*The public may provide comments on any item not on the Agenda. Speakers are limited to 3 minutes each.*

Consent Calendar (Action)

- 1a) Approve Minutes of the February 12, 2020, Board of Directors Meeting
- 1b) Receive December 2019 Treasurer Report
- 1c) Adopt Resolution Approving Addition of New SVCE Rate Schedules and Rates, to Correspond with New PG&E Agricultural Time of Use Rates
- 1d) Adopt Resolution Approving Budget Allocation Adjustment for Additional Technical Support for the Reach Code Program, and Authorize the Chief Executive Officer to Execute Agreement with Integral Group for Developing a Building Decarbonization Joint Action Plan
- 1e) Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule to Add Director of Regulatory and Legislative Policy Position
- 1f) Finance and Administration Committee Report
- 1g) Audit Committee Report

Regular Calendar

- 2) CEO Report (Discussion)



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- 3) Clean Energy Procurement and Integrated Resource Planning Update (Discussion)
- 4) Adopt Resolution Authorizing the Chief Executive Officer to Execute Renewable Power Supply Power Purchase Agreements with Coso Geothermal Power Holdings LLC, and Any Necessary Ancillary Agreements and Documents (Action)
- 5) Executive Committee Report (Discussion)
- 6) Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee Report (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Adjourn

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## SVCE GLOSSARY OF TERMS

**CAISO – California Independent System Operator** - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California’s electric flow). Its stated mission is to “operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

**CALCCA – California Community Choice Association** – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California’s community choice electricity providers.

**CARB – California Air Resources Board** – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

**CEC** – California Energy Commission

**CPUC** – California Public Utility Commission

**C&I – Commercial and Industrial** – Business customers

**CP – Compliance Period** – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

**DA – Direct Access** – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

**DA Cap** – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

**DA Lottery** – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

**DA Waitlist** – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

**DAC** – Disadvantaged Community

**DASR – Direct Access Service Request** – Request submitted by C&I to become direct access eligible.

**Demand** - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

**DER – Distributed Energy Resource** – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

**Distribution** - The delivery of electricity to the retail customer’s home or business through low voltage distribution lines.

**DLAP – Default Load Aggregation Point** – In the CAISO’s electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

**DR – Demand Response** - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

**DWR – Department of Water Resources** – DWR manages California’s water resources, systems, and infrastructure in a responsible, sustainable way.

**ELCC – Effective Load Carrying Capacity** – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

**EPIC – Electric Program Investment Charge** – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

**ERRA – Energy Resource Recovery Account** – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

**ESP – Energy Service Provider** - An energy entity that provides service to a retail or end-use customer.

**EV** – Electric Vehicle

**GHG – Greenhouse gas** - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

**GRC – General Rate Case** – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California’s three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

**GWh – Gigawatt-hour** - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

**IEP – Independent Energy Producers** – California’s oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

**IOU – Investor Owned Utility** – A private electricity and natural gas provider.

**IRP – Integrated Resource Plan** – A plan which outlines an electric utility’s resource needs in order to meet expected electricity demand long-term.

**kW – Kilowatt** – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

**kWh – Kilowatt-hour** – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

**LCFS – Low Carbon Fuel Standard** – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

**LCR – Local (RA) Capacity Requirements** – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

**LMP – Locational Marginal Price** – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

**Load** - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

**LSE – Load-serving Entity** – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

**NEM – Net Energy Metering** – A program in which solar customers receive credit for excess electricity generated by solar panels.

**NRDC** – Natural Resources Defense Council

**OIR – Order Instituting Rulemaking** - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

**MW – Megawatt** – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

**MWH – Megawatt-hour** – measure of energy

**NP-15 – North Path 15** – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E’s service territory.

**PCC1 – RPS Portfolio Content Category 1** – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as “in-state” renewables

**PCC2 – RPS Portfolio Content Category 2** – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

**PCC3 – RPS Portfolio Content Category 3** – Unbundled REC

**PCIA or “exit fee”** - Power Charge Indifference Adjustment (PCIA) is an “exit fee” based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

**PCL – Power Content Label** – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).

**PD – Proposed Decision** – A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

**Pnode – Pricing Node** – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

**PPA – Power Purchase Agreement** – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

**RA – Resource Adequacy** - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

**RE – Renewable Energy** - Energy from a source that is not depleted when used, such as wind or solar power.

**REC - Renewable Energy Certificate** - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

**RPS - Renewable Portfolio Standard** - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

**SCE** – Southern California Edison

**SDG&E** – San Diego Gas & Electric

**SGIP – Self-Generation Incentive Program** – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

**TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol** – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

**Time-of-Use (TOU) Rates** – The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

**TURN – The Utility Reform Network** - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

**Unbundled RECs** - Renewable energy certificates that verify a purchase of a MWh unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

**VPP – Virtual Power Plant** – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.



**Silicon Valley Clean Energy Authority**

**Board of Directors Meeting**

Wednesday, February 12, 2020

7:00 pm

Cupertino Community Hall  
10350 Torre Avenue  
Cupertino, CA

**DRAFT MINUTES**

**Call to Order**

Chair Miller called the meeting to order at 7:02 p.m.

**Roll Call**

**Present:**

Chair Howard Miller, City of Saratoga  
Vice Chair Nancy Smith, City of Sunnyvale  
Director George Tyson, Town of Los Altos Hills  
Director Carmen Montano, City of Milpitas  
Director Javed Ellahie, City of Monte Sereno  
Director Rob Rennie, Town of Los Gatos  
Director Rod Sinks, City of Cupertino  
Director Margaret Abe-Koga, City of Mountain View  
Director Liz Gibbons, City of Campbell  
Alternate Director Anthony Eulo, City of Morgan Hill  
Director Fred Tovar, City of Gilroy (arrived at 7:03 p.m.)  
Alternate Director Jeannie Bruins, City of Los Altos

**Absent:**

Director Susan Ellenberg, County of Santa Clara

**Public Comment on Matters Not Listed on the Agenda**

No speakers.

**Consent Calendar**

Board Clerk Andrea Pizano noted an edit to Item 1a) *Approve Minutes of the January 8, 2019, Board of Directors Meeting* to reflect the minutes are from 2020 and not 2019.

MOTION: Director Sinks moved and Director Rennie seconded the motion to approve the Consent Calendar, noting the minutes in Item 1a are from January 8, 2020.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

The motion carried unanimously with Director Ellenberg absent.

**1a) Approve Minutes of the January 8, 2020, 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 Pimenti & Brinker, LLP (Action)**

Director of Finance and Administration Don Eckert introduced the item and Brett Bradford and Beth Samit of Pimenti and Brinker, LLP. Bradford and Samit presented a PowerPoint presentation and responded to board member questions.

Vice Chair Smith provided comments as the Vice Chair of the Audit Committee.

Director Sinks inquired if SVCE accounts for carbon savings in a monetary measure; CEO Girish Balachandran noted staff would discuss and bring it back to an appropriate committee of the board. Director Sinks requested staff address: savings to rate payers, the reserve SVCE has generated to be sustainable, and the benefit to the health of the earth.

MOTION: Director Smith moved and Alternate Director Bruins seconded the motion to receive and accept the Year-End Financial Statements and the Independent Auditor's Report for the Fiscal Year 2018-19.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

The motion carried unanimously with Director Ellenberg absent.

#### **3) CEO Report (Discussion)**

CEO Balachandran provided a CEO report which included a PowerPoint presentation on SVCE's Workplan and Strategic Plan, which CEO Balachandran noted would be posted to the website following the meeting. CEO Balachandran noted the City of Los Banos reached out regarding SVCE providing service to their city, and announced Director of Decarbonization and Grid Innovation Programs Aimee Bailey was appointed to the Board of Directors of the Building Decarbonization Coalition; CEO Balachandran responded to board member questions.

Director of Decarbonization and Grid Innovation Programs Bailey introduced a video of SVCE's Gridshift Hackathon which occurred January 31, 2020; Chair Miller, who served as a judge at the event, provided comments. Staff responded to board member questions.

Manager of Regulatory and Legislative Affairs Hilary Staver provided an update on regulatory and legislative matters and responded to board member questions. Director of Finance and Administration Don Eckert responded to a financial question regarding a potential power charge indifference adjustment (PCIA) increase; CEO Balachandran responded to additional questions regarding the PCIA.

Chair Miller opened public comment.

James Tuleya, resident of Sunnyvale and Chair of Carbon Free Silicon Valley, commented on the campaign for Fossil Free Buildings in Silicon Valley that's helping to advocate across San Mateo and Santa Clara counties helping to drive the reach code adoption; Tuleya noted SVCE's Board of Directors pushed the reach codes much further than expected and acknowledged Alternate Director Eulo for his leadership efforts in Morgan Hill and Director Gibbons in Campbell, and thanked the Board of Directors for their leadership in adopting reach codes.

Chair Miller closed public comment.

Director Sinks requested SVCE develop a reach code program one-pager which Directors could take to other agencies.

Director Gibbons requested SVCE staff and CalCCA make a presentation to the Association of Bay Area Governments (ABAG) executive board.

Alternate Director Bruins inquired about Senator Scott Weiner's legislation regarding PG&E and the creation of a publicly owned utility; CEO Balachandran responded and noted efforts on PG&E reorganization would be provided as updates in future meetings.

#### **4) Appoint Board Committee Members (Action)**

Board Clerk Andrea Pizano introduced the item.

MOTION: Alternate Director Eulo moved and Director Tovar seconded the motion to approve the following members of SVCE Committees as summarized by staff:

##### **Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee**

Vice Chair Nancy Smith  
 Director Javed Ellahie  
 Director Neysa Fligor  
 Director Yvonne Martinez Beltran  
 Director Rob Rennie  
 Director Rod Sinks

##### **Audit Committee**

Vice Chair Nancy Smith  
 Director George Tyson  
 Alternate Director Elaine Marshall

##### **Finance and Administration Committee**

Chair Howard Miller  
 Director Javed Ellahie  
 Director Liz Gibbons  
 Director Rob Rennie  
 Maria Oberg, Santa Clara County Treasury Administrator

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

The motion carried unanimously with Director Ellenberg absent.

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

CEO Balachandran and Director of Power Resources Monica Padilla presented a PowerPoint presentation and responded to board member questions.

Vice Chair Smith requested staff add the risks and what the impacts would be if the risks are realized to future presentations.

Chair Miller opened public comment.

Bruce Karney, resident of Mountain View, provided comments on the cost of renewable resources, suggested legislature of a PCIA equivalent when load departs a CCA, applauded the work done by SVCE to acquire new renewable resources of a variety of kinds, noted he would like to have more explicit conversation about the cost and benefits of the organization in incentivizing rooftop solar within the service territory, interest in the penalties and requirements mentioned by Director of Power Resources Padilla, comments on a legislative fix that all new direct access load must be served by 100% renewable energy, and a request for visibility to the organization's 24x7 renewable energy performance.

Chair Miller closed public comment.

**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)**

Director of Power Resources Monica Padilla presented a PowerPoint presentation and responded to board member questions. Director Gibbons made a two-part motion.

MOTION: Director Gibbons moved and Alternate Director Eulo seconded the motion to adopt 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.

MOTION: Director Gibbons moved and Alternate Director Eulo seconded the motion to adopt 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.

Chair Miller opened public comment.

No speakers.

Chair Miller closed public comment.

Both motions carried unanimously with Director Ellenberg absent.

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

Prior to hearing Item 7, Director Rennie announced he would recuse himself from the item as he is working for a start-up which is developing products in the low-carbon building electrification space and the proposed programs related to building decarbonization could materially benefit the company that he is doing work for.

Director Rennie left the meeting at 9:12 p.m.

Director of Decarbonization and Grid Innovation Programs Aimee Bailey presented a PowerPoint presentation and responded to board member questions.

Vice Chair Smith questioned the flexibility of the program process and confirmed with Director of Decarbonization and Grid Innovation Programs Bailey the comprehensive program review will be coming forward on an as-needed basis to the Board.

Alternate Director Eulo inquired if SVCE is on pace to spend all of the allotted program funds this fiscal year, or if SVCE will need to establish an additional reserve fund at the end of the fiscal year; Director of Decarbonization and Grid Innovation Programs Bailey commented she would need to reference the timeline of the contracts and would get back to the Board.

Chair Miller opened public comment.

James Tuleya commented support for the staff proposal and noted he appreciated staff reaching out to community leaders for input on the programs roadmap. Tuleya commented on the broader regional effort related to reach codes and building decarbonization.

Chair Miller closed public comment.

MOTION: Vice Chair Smith moved and Director Tovar seconded the motion to approve Resolution No. 2020-06 to adopt the revised SVCE Decarbonization Strategy & Programs Roadmap, new program briefs, and the following budget allocation adjustments.

<b>Program</b>	<b>Budget Allocation Adjustment</b>
Building Decarb Joint Action Plan	\$150k (programs reserve)
Resilience at Community Facilities	\$150k (programs reserve)
Streamlining Community-Wide Electrification	\$200k (programs reserve)
Customer Resource Center	\$500k for FY2021-FY2022

The motion carried unanimously with an abstention from Director Rennie, and Director Ellenberg absent.

#### **8) Executive Committee Report (Discussion)**

Chair Miller reported the Executive Committee met January 31, 2020 and selected a Chair, which was Chair Miller, and a Vice Chair, Vice Chair Nancy Smith. The committee selected their regular meeting schedule, recommended a July Board meeting hiatus, and received updates from staff on the annual decarbonization programs roadmap.

#### **9) Finance and Administration Committee Report (Discussion)**

Chair Miller reported the Finance and Administration Committee met January 17, 2020 and received updates on SVCE's credit rating, the new office lease on the third floor of the current SVCE office building, and long-term power prepay agreement.

#### **10) Audit Committee Report (Discussion)**

Vice Chair Nancy Smith announced her report was absorbed in Item 2) Receive Financial Audit Report from Pisenti & Brinker, LLP.

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

Director Tovar commended CEO Balachandran for taking time to respond to questions on the Board agenda.

Vice Chair Smith welcomed new members to the Board.

Alternate Director Eulo inquired when the Board of Directors would see an item to approve the virtual power plant battery project; CEO Balachandran estimated the board would see the item in two months.

Alternate Director Eulo commented on a Net Energy Metering item addressed by the board in 2017, and noted some Directors needed to recuse themselves from voting on the item because they would be affected directly. Alternate Director Eulo requested direction from legal counsel on if members who own solar systems are able to participate in the future virtual power plant battery program, or if they should recuse themselves from voting on the item; General Counsel Greg Stepanicich noted an answer to the question would be provided in advance of the meeting addressing the item.

#### **Adjourn**

Chair Miller adjourned the meeting at 9:42 p.m.



**TREASURER REPORT**

**Fiscal Year to Date  
As of December 31, 2019**

*(Preliminary & Unaudited)*

**Issue Date: March 11, 2020**

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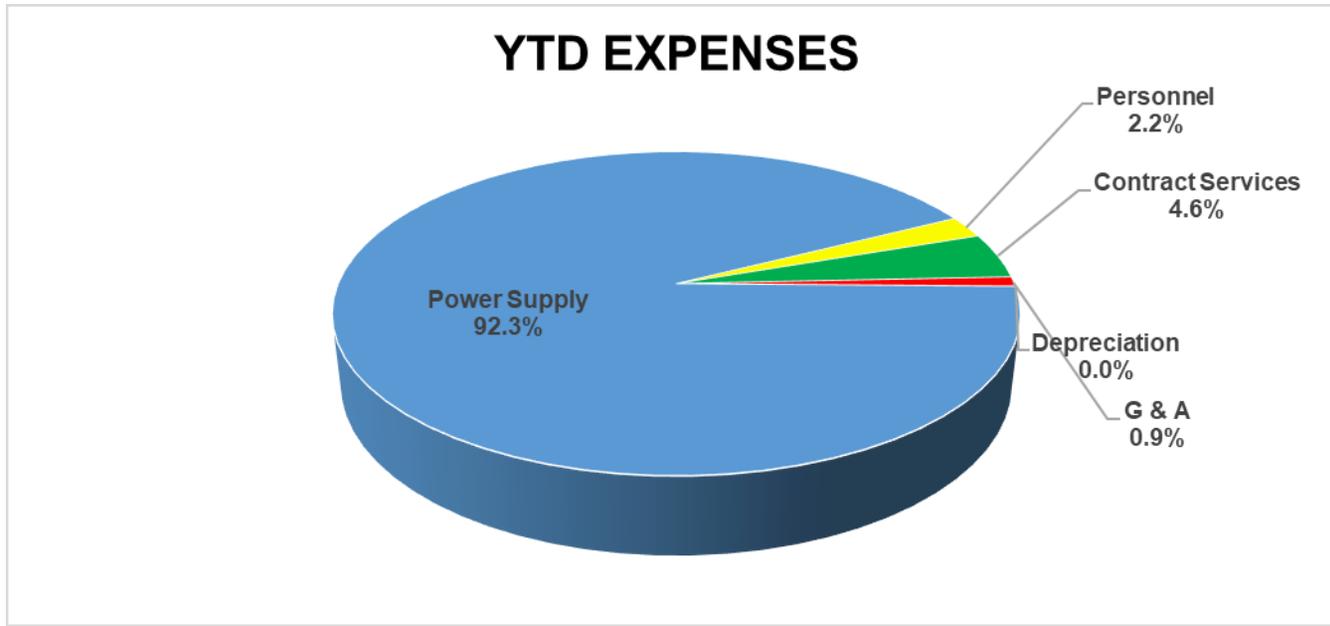
**SILICON VALLEY CLEAN ENERGY AUTHORITY  
Financial Statement Highlights (\$ in 000's)**

**Financial Highlights for the month of December 2019:**

*Note: SVCE ends Fiscal Year Q1 in stable financial condition. SVCE is also in the process of obtaining a credit rating from Moody's Investors Group.*

- > SVCE operations resulted in a positive change in net position for the month of \$4.2 million and year-to-date change in net position of \$24.3 million.
  - o September revenue of \$21.1 million accounted for 332 GWh in net retail consumption.
  - o Year-to-date operating margin is \$27.8 million or 38% mostly due to power supply costs being below budget.
  - o SVCE ends the quarter near targeted cash reserves and is financially stable.
- > Retail GWh sales for the month were close to target.
  - o Year-to-date retail load is 7 GWh's or 1% below budget.
  - o December weather was warmer than normal.
- > Power Supply costs are 23% below budget year-to-date.
  - o The primary driver for the favorable variance is timing. REC's budgeted in Q1 have not been invoiced yet.
  - o Market prices have been stable and near budget in Q1.
  - o SVCE will be bringing to the Board for approval in the near-term several long-term PPA's.
- > Decarbonization and Grid Innovations
  - o The Programs Roadmap was recently updated by the Board.
  - o Programs continue to ramp up.
- > Other
  - o The Board approved a new facility lease to allow agency expansion. Move-in date expected June 2020.
  - o SVCE is investing 90% of available funds generating year-to-date investment income of \$0.6 million

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Actual	14,432	5,732	4,159										24,323	50,910
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Energy & REC's	12,881	13,068	13,525										39,474	
Wholesale Sales	(807)	(9)	(10)										(826)	
Capacity	2,185	1,581	1,757										5,523	
CAISO Charges	451	400	763										1,613	
NEM Expense	155	(43)	(223)										(111)	
Charge/Credit (IST/Net Rev)	482	254	(224)										513	
Net Power Costs	15,347	15,251	15,588	-	-	-	-	-	-	-	-	-	46,186	245,340
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Capital Expenditures	-	6	6										12	400
Energy Programs	51	101	127										279	6,360
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Retail Sales Actual	325	314	332										971	
Retail Sales Budget	325	318	335	329	311	316	308	307	321	360	348	339	3,916	3,916



Other Statistics and Ratios	
Working Capital	\$167,041,331
Current Ratio	6.5
Operating Margin	38%
Expense Coverage Days	210
Expense Coverage Days with LOC	256
Long-Term Debt	\$0
Total Accounts	271,273
Opt-Out Accounts (Month)	71
Opt-Out Accounts (YTD)	155
Opt-Up Accounts (Month)	19
Opt-Up Accounts (YTD)	39

**STATEMENT OF NET POSITION**  
**As of December 31, 2019**

**ASSETS**

**Current Assets**

Cash & Cash Equivalents	\$ 152,839,191
Accounts Receivable, net of allowance	20,067,722
Market settlements receivable	98,510
Accrued Revenue	14,316,635
Other Receivables	51,213
Prepaid Expenses	2,850,460
Deposits	2,266,588
Restricted cash	5,000,000

**Total Current Assets** **197,490,319**

**Noncurrent assets**

Capital assets, net of depreciation	147,031
Deposits	129,560

**Total Noncurrent Assets** **276,591**

**Total Assets** **197,766,910**

**LIABILITIES**

**Current Liabilities**

Accounts Payable	1,314,858
Accrued Cost of Electricity	27,657,688
Accrued Payroll & Benefits	387,069
Other accrued liabilities	46,488
User Taxes and Energy Surcharges due to other gov'ts	1,014,565
Supplier Security Deposits	28,320

**Total Current Liabilities** **30,448,988**

**NET POSITION**

Net investment in capital assets	147,031
Restricted for security collateral	5,000,000
Unrestricted (deficit)	162,170,891
<b>Total Net Position</b>	<b>\$ 167,317,922</b>

**STATEMENT OF REVENUES, EXPENSES  
AND CHANGES IN NET POSITION  
October 1, 2019 through December 31, 2019**

<b>OPERATING REVENUES</b>	
Electricity Sales, Net	\$ 73,557,029
GreenPrime electricity premium	326,956
Other Income	93,294
<b>TOTAL OPERATING REVENUES</b>	<b><u>73,977,279</u></b>
<b>OPERATING EXPENSES</b>	
Cost of Electricity	46,185,735
Contract services	2,278,926
Staff compensation and benefits	1,111,631
General & Administrative	473,767
Depreciation	13,310
<b>TOTAL OPERATING EXPENSES</b>	<b><u>50,063,369</u></b>
<b>OPERATING INCOME(LOSS)</b>	<b><u>23,913,910</u></b>
<b>NONOPERATING REVENUES (EXPENSES)</b>	
Interest Income	562,789
Financing costs	(153,734)
<b>TOTAL NONOPERATING EXPENSES</b>	<b><u>409,055</u></b>
<b>CHANGE IN NET POSITION</b>	24,322,965
Net Position at beginning of period	<u>142,994,957</u>
<b>Net Position at end of period</b>	<b><u>\$ 167,317,922</u></b>

**STATEMENT OF CASH FLOWS**  
**October 1, 2019 through December 31, 2019**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 90,830,452
Other operating receipts	302,530
Payments to suppliers for electricity	(52,637,090)
Payments for other goods and services	(2,349,393)
Payments for staff compensation and benefits	(1,073,976)
Tax and surcharge payments to other governments	(1,706,336)
<b>Net cash provided (used) by operating activities</b>	<b><u>33,366,187</u></b>

**CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES**

Finance costs paid	(125,787)
<b>Net cash provided (used) by non-capital financing activities</b>	<b><u>(125,787)</u></b>

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Acquisition of capital assets	<u>(12,304)</u>
-------------------------------	-----------------

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Interest income received	<u>562,789</u>
--------------------------	----------------

Net change in cash and cash equivalents	33,790,885
Cash and cash equivalents at beginning of year	<u>124,048,306</u>
<b>Cash and cash equivalents at end of period</b>	<b><u>\$ 157,839,191</u></b>

**STATEMENT OF CASH FLOWS (Continued)**  
**October 1, 2019 through December 31, 2019**

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

Operating Income (loss)	\$ 23,913,910
<b>Adjustments to reconcile operating income to net cash provided (used) by operating activities</b>	
Depreciation expense	13,311
Revenue reduced for uncollectible accounts	296,723
(Increase) decrease in net accounts receivable	9,912,369
(Increase) decrease in energy settlements receivable	68,147
(Increase) decrease in other receivables	(33,313)
(Increase) decrease in accrued revenue	5,255,465
(Increase) decrease in prepaid expenses	(1,544,492)
(Increase) decrease in current deposits	(6,532)
Increase (decrease) in accounts payable	368,811
Increase (decrease) in accrued payroll & benefits	31,877
Increase (decrease) in energy settlements payable	(472,313)
Increase (decrease) in accrued cost of electricity	(4,002,308)
Increase (decrease) in accrued liabilities	(211,042)
Increase (decrease) in taxes and surcharges due to other governments	(224,426)
<b>Net cash provided (used) by operating activities</b>	<b><u>\$ 33,366,187</u></b>

**BUDGETARY COMPARISON SCHEDULE**  
October 1, 2019 through December 31, 2019

	<b>FYTD</b>	<b>FYTD</b>	<b>Variance</b>		<b>FY 2019-20</b>	<b>FY 2019-20</b>
	<b>Actual</b>	<b>Budget</b>	<b>\$</b>	<b>%</b>	<b>Budget</b>	<b>Remaining Budget</b>
<b>OPERATING REVENUES</b>						
Energy Sales	\$73,557,029	\$73,775,225	-\$218,196	0%	\$317,230,000	\$243,672,971
Green Prime Premium	326,956	234,830	92,126	39%	940,000	613,044
Other Income	93,294	12,500	80,794	646%	50,000	(43,294)
<b>TOTAL OPERATING REVENUES</b>	<b>73,977,279</b>	<b>74,022,555</b>	<b>(45,276)</b>	<b>0%</b>	<b>318,220,000</b>	<b>244,242,721</b>
<b>ENERGY EXPENSES</b>						
Power Supply	46,185,735	59,690,878	(13,505,143)	-23%	245,340,000	199,154,265
<b>Operating Margin</b>	<b>27,791,544</b>	<b>14,331,677</b>	<b>13,459,867</b>	<b>94%</b>	<b>72,880,000</b>	
<b>OPERATING EXPENSES</b>						
Data Management	873,234	881,377	(8,143)	-1%	3,530,000	2,656,766
PG&E Fees	287,829	336,526	(48,697)	-14%	1,350,000	1,062,171
Salaries & Benefits	1,111,631	1,373,340	(261,709)	-19%	5,490,000	4,378,369
Professional Services	853,376	997,607	(144,231)	-14%	3,710,000	2,856,624
Marketing & Promotions	141,144	264,659	(123,515)	-47%	960,000	818,856
Notifications	21,311	27,000	(5,689)	-21%	160,000	138,689
Lease	82,298	150,000	(67,702)	-45%	600,000	517,702
General & Administrative	214,816	265,000	(50,184)	-19%	1,150,000	935,184
<b>TOTAL OPERATING EXPENSES</b>	<b>3,585,639</b>	<b>4,295,509</b>	<b>(709,870)</b>	<b>-17%</b>	<b>16,950,000</b>	<b>13,364,361</b>
<b>OPERATING INCOME/(LOSS)</b>	<b>24,205,905</b>	<b>10,036,168</b>	<b>14,169,737</b>	<b>141%</b>	<b>55,930,000</b>	<b>31,724,095</b>
<b>NON-OPERATING REVENUES</b>						
Investment Income	562,789	367,375	195,414	53%	1,470,000	907,211
Grant Income	-	40,625	(40,625)	-100%	160,000	160,000
<b>TOTAL NON-OPERATING REVENUES</b>	<b>562,789</b>	<b>408,000</b>	<b>154,789</b>	<b>38%</b>	<b>1,630,000</b>	<b>1,067,211</b>
<b>NON-OPERATING EXPENSES</b>						
Financing	153,734	110,698	43,036	39%	180,000	26,266
<b>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</b>						
Capital Outlay	12,303	50,000	(37,697)	-75%	400,000	387,697
Refund of Bond (Cash Inflow)	-	-	-	0%	(100,000)	(100,000)
Financial Security Requirement	-	-	-	0%	147,000	147,000
Transfer to Program Fund	6,360,000	6,360,000	-	0%	6,360,000	-
<b>TOTAL OTHER USES</b>	<b>6,372,303</b>	<b>6,410,000</b>	<b>(37,697)</b>	<b>-1%</b>	<b>6,807,000</b>	<b>434,697</b>
<b>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</b>	<b>\$18,242,657</b>	<b>\$3,923,470</b>	<b>\$14,319,187</b>	<b>365%</b>	<b>\$50,573,000</b>	

**PROGRAM FUND  
BUDGETARY COMPARISON SCHEDULE  
October 1, 2019 through December 31, 2019**

<b>REVENUE &amp; OTHER SOURCES:</b>	<b><u>BUDGET</u></b>	<b><u>ACTUAL</u></b>	<b><u>BUDGET REMAINING</u></b>	<b><u>ACTUAL/ BUDGET</u></b>
Transfer from Operating Fund	\$6,360,000	\$6,360,000	\$0	100%
 <b>EXPENDITURES &amp; OTHER USES:</b>				
Program expenditures	6,360,000	278,685	6,081,315	4.4%
 <b>Net increase (decrease) in fund balance</b>	<b><u>\$0</u></b>	<b><u>\$6,081,315</u></b>	<b><u>                    </u></b>	<b><u>                    </u></b>
Fund balance at beginning of period		-		
Fund balance at end of period		<u>\$6,081,315</u>		

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

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$	18,242,657
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position		
Subtract depreciation expense		(13,310)
Subtract program expense not in operating budget		(278,685)
Add back transfer to Program fund		6,360,000
Add back capital asset acquisition		12,303
<b>Change in Net Position</b>		<b><u>24,322,965</u></b>

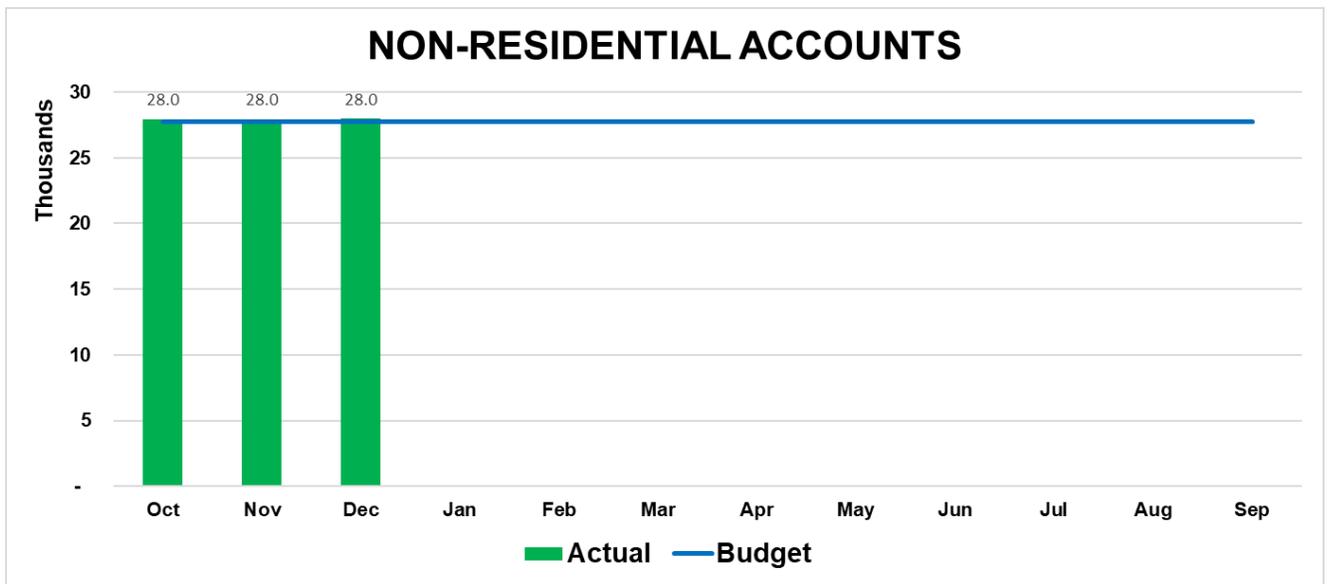
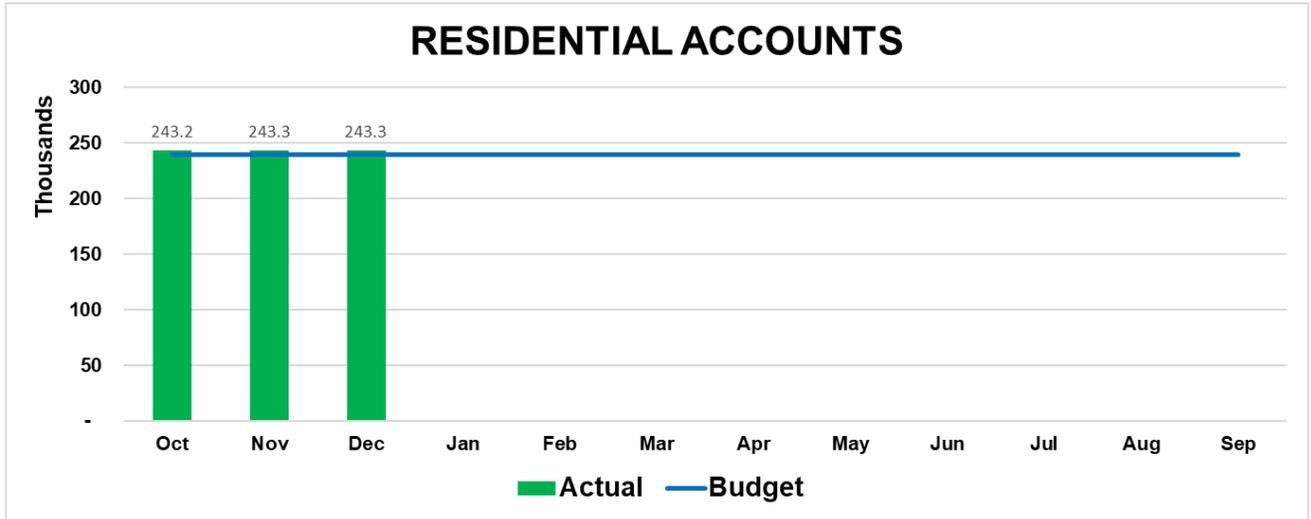
**SILICON VALLEY CLEAN ENERGY AUTHORITY**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**October 1, 2019 through December 31, 2019**

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
<b>OPERATING REVENUES</b>													
Electricity sales, net	\$ 30,729,014	\$ 21,850,841	\$ 20,977,174										\$ 73,557,029
Green electricity premium	117,448	97,649	111,859										326,956
Other income	40,200	53,094	-										93,294
Total operating revenues	30,886,662	22,001,584	21,089,033	-	-	-	-	-	-	-	-	-	73,977,279
<b>OPERATING EXPENSES</b>													
Cost of electricity	15,346,608	15,251,256	15,587,871										46,185,735
Staff compensation and benefits	358,403	325,710	427,518										1,111,631
Data manager	291,256	290,953	291,025										873,234
Service fees - PG&E	96,070	95,877	95,882										287,829
Consultants and other professional fees	249,638	266,760	499,433										1,015,831
General and administration	153,979	210,400	211,420										575,799
Depreciation	4,375	4,375	4,560										13,310
Total operating expenses	16,500,329	16,445,331	17,117,709	-	-	-	-	-	-	-	-	-	50,063,369
Operating income (loss)	14,386,333	5,556,253	3,971,324	-	-	-	-	-	-	-	-	-	23,913,910
<b>NONOPERATING REVENUES (EXPENSES)</b>													
Interest income	180,933	184,968	196,888										562,789
Financing costs	(135,103)	(9,316)	(9,315)										(153,734)
Total nonoperating revenues (expenses)	45,830	175,652	187,573	-	-	-	-	-	-	-	-	-	409,055
<b>CHANGE IN NET POSITION</b>	<b>\$ 14,432,163</b>	<b>\$ 5,731,905</b>	<b>\$ 4,158,897</b>	<b>\$ -</b>	<b>\$ 24,322,965</b>								

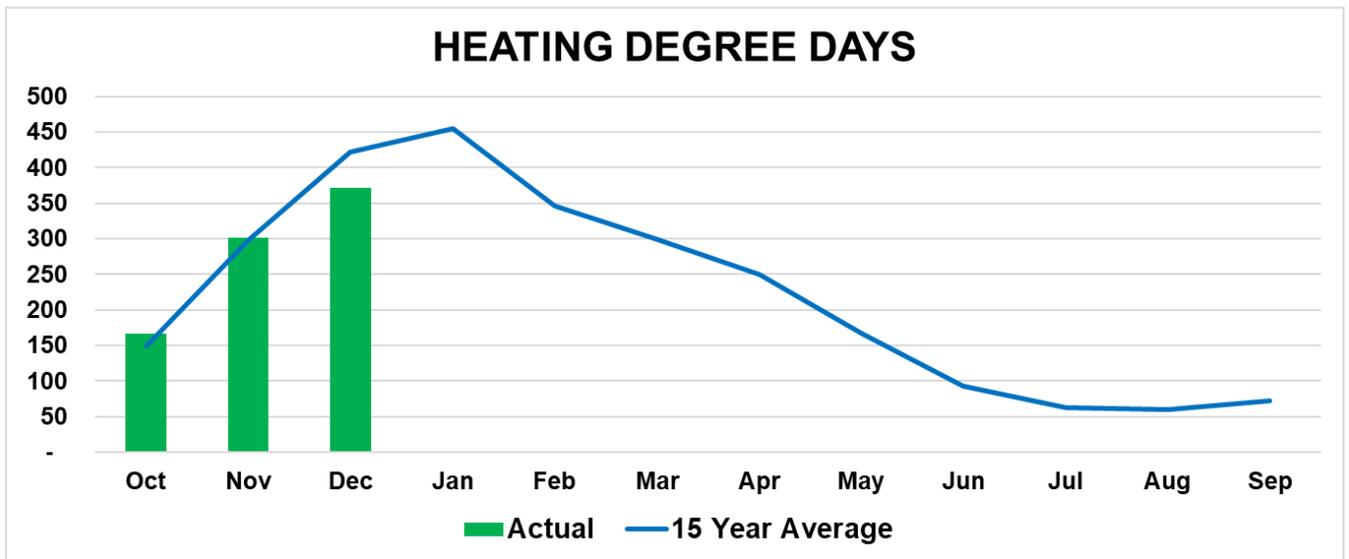
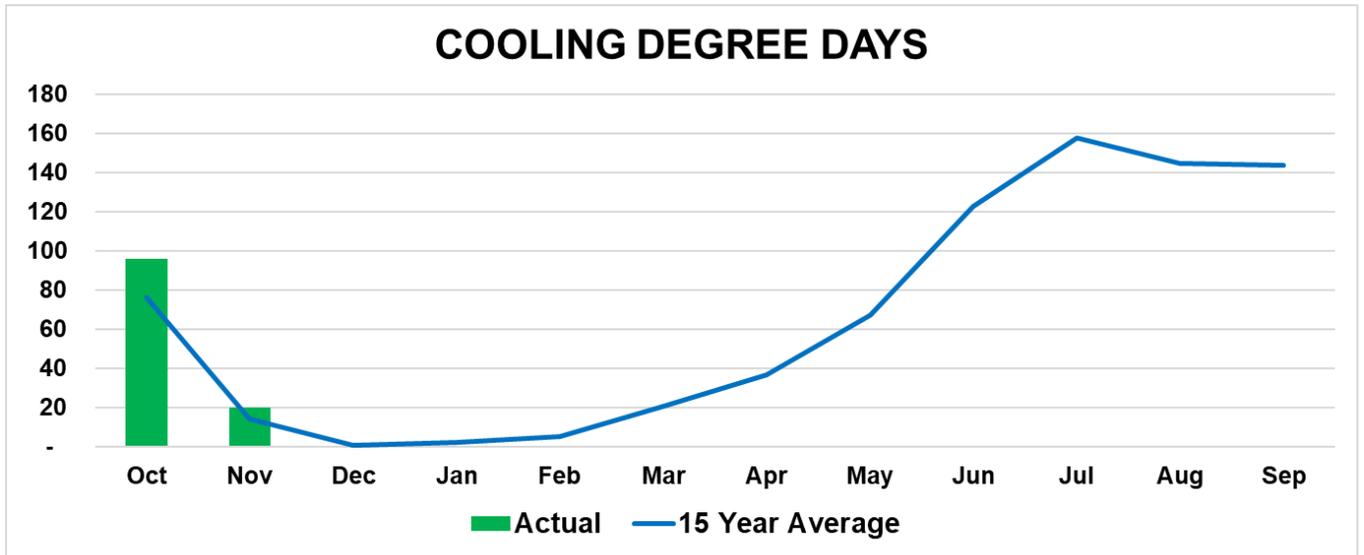
## PERSONNEL REPORT FOR DECEMBER 2019

HEADCOUNT				
<b>Position</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>	
Director of Account Services and Community Relations	1	1	0	
Account Services Manager	1	1	0	
Sr. Energy Consultant	1	1	0	
Energy Consultant	1	1	0	
Associate Energy Consultant	2	1	1	
Communications Manager	1	1	0	
Community Outreach Specialist	1	1	0	
Communications Specialist	1	1	0	
Board Clerk/Executive Assistant	1	1	0	
Chief Executive Officer	1	1	0	
Director of Finance and Administration	1	1	0	
Administrative Services Manager	1	1	0	
Rates Manager	1	0	1	
Management Analyst	1	1	0	
Administrative Analyst	1	1	0	
Administrative Assistant	1	1	0	
Director of Power Resources	1	1	0	
Power Resources Manager	1	1	0	
Power Resources Planner	1	0	1	
Power Settlements & Compliance Analyst	1	1	0	
Manager of Regulatory and Legislative Affairs	1	1	0	
Senior Regulatory Analyst	1	1	0	
Director of Decarboniation and Grid Innovation	1	1	0	
Associate Data Analyst	1	1	0	
Analyst	2	1	1	
<b>Total</b>	<b>27</b>	<b>23</b>	<b>4</b>	

# CUSTOMER ACCOUNTS



# WEATHER STATISTICS



**ACCOUNTS RECEIVABLE AGING REPORT**

	Total	Days				
		0-30	31-60	61-90	90-120*	Over 120*
<b>Accounts Receivable</b>	<b>\$27,113,778</b>	\$23,482,193	\$1,316,994	\$816,079	\$228,445	\$1,270,067
<b>Period %</b>	<b>100%</b>	86.6%	4.9%	3.0%	0.8%	4.7%

\*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

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**Item 1c: Adopt Resolution Approving Addition of New SVCE Rate Schedules and Rates, to Correspond with New PG&E Agricultural Time of Use Rates**

To: Silicon Valley Clean Energy Board of Directors

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

Date: 3/11/2020

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### **RECOMMENDATION**

Adopt Resolution 2020-07 approving addition of new SVCE rate schedules and rates to correspond with new PG&E agricultural Time of Use (TOU) schedules that will take effect March 1, 2020.

### **BACKGROUND**

Currently, most Agricultural (Ag) customers in SVCE territory are subscribed to Time of Use (TOU) rates having a peak period between noon and 6pm on summer weekdays. As such, the TOU periods in these agricultural rate classes are out of synch with the late afternoon/evening peak that now occurs on California's grid. In order to better align retail TOU pricing with wholesale electricity prices, PG&E is introducing a new class of agricultural rates effective March 1, 2020. These rates will be optional to Ag customers until March of 2021 when they become mandatory with few exceptions. PG&E is also simplifying the available options by reducing the offered rates from 17 options to 5 options.

Historically, PG&E's agricultural customers have had a wide range of options when it comes to choosing their rate plan. Currently the smallest Ag customers are charged a flat rate for energy that is not dependent on a Time of Use schedule. The largest Ag customers are charged for energy on Time of Use, and are charged additionally for their maximum electrical demand OR for their 'connected load,' e.g. the pump motor rating of their agricultural well, measured in horsepower. There are additional options available that incentivize customers to irrigate on only four out of seven days of the week by foregoing a peak period charge for two alternating weekdays and weekends.

Currently all agricultural rates have a Summer period of May 1st – October 31st and a Winter period from November 1st to April 30th. For TOU-based Ag rates, the peak period occurs in Summer from 12:00 pm to 6:00 pm during weekdays. Some rate classes have a part-peak charge on weekdays, and all current TOU Ag rates have off-peak charges all day on weekends.

In order to simplify the rate selection process for agricultural customers, PG&E is changing all Ag rates to a TOU billing structure and eliminating the connected load option. Under these new Ag TOU rates, part-peak charges are also eliminated, and the resulting peak/off-peak pricing structure becomes valid all seven days of the week in all seasons. Peak time is shifted to 5:00 pm to 8:00 pm to better reflect real-time power prices on the grid. Similarly, the Summer season shifts to a four-month June through September period when the California climate is the hottest, leaving an eight-month Winter billing season.

**Agenda Item: 1c****Agenda Date: 3/11/2020**

Customers on Rate Plans	Demand	Will be Assigned To	Or May Elect
AG-1A, AG-4A, AG-VA and AG-RA	< 35 kW	AG-A1	AG-A2 or AG-FA
AG-5A	< 35 kW	AG-A2	AG-A1 or AG-FA
AG-1A, AG-4A, AG-VA, AG-RA and AG-5A	>=35 kW	AG-B	AG-C or AG-FB/FC
AG-1B, AG-4B, AG-4C, AG-VB and AG-RB	No size screening	AG-B	AG-C or AG-FB/FC
AG-5B and AG-5C	No size screening	AG-C	AG-B or AG-FB/FC

Customer accounts smaller than 35 kW will not incur a demand charge. Customer accounts greater than 35 kW will pay a max demand charge that is the same in Summer and in Winter. Customers that benefit from choosing an irrigation schedule specific to certain days of the week will still have the option to do so.

Staff has attached the new SVCE Ag rates to Resolution 2020-07. Staff has applied SVCE's currently approved discount of 4% to publish corresponding SVCE rates and will update SVCE's billing system.

Overall, SVCE serves 891 Agricultural accounts that make up just over 1% of SVCE's total load.

***Timing of New Ag Rate Roll-out to New and Existing Agricultural Customers***

PG&E's new Agricultural rates will become available to customers on March 1<sup>st</sup>, 2020. Enrollment in these new rates for new agricultural accounts opened on or after this date will be mandatory, as legacy Ag rates will be closed to new enrollment. Agricultural customers with active accounts that are currently enrolled in legacy rates as of March 2020 will have the option to remain on that rate until their March 2021 meter-read date, at which time the transition will be mandatory. Existing customers may choose to opt-in to new Ag rates at any time after March 1<sup>st</sup>, 2020 and before their mandatory transition.

There are a few exceptions to mandatory transition. As of March 2020, only customers with eligible meters capable of being read remotely will be automatically transitioned. Also, a grandfathering clause exists to exempt NEM agricultural customers from mandatory transition for ten years from the date of their Permission to Operate their solar system. Finally, those customers that are considered 'Highly Impacted,' having >7% and \$100 annual increase to their bills, will delay their mandatory enrollment in new Ag TOU rates for one year to March 2022. This will allow for additional outreach about the transition from PG&E.

***Marketing, Education, and Outreach (ME&O)***

PG&E makes an online comparison of rate options available to each customer. Agricultural customers can consult the rate comparison tool on PG&E's website at any time after March of 2020 for a cost comparison. Customers are then able to maintain legacy rates until March 2021 or can voluntarily change to new Ag TOU rates directly on the website.

Under the ME&O requirements set forth by the CPUC, PG&E will communicate the mandatory March 2021 transition to new Ag TOU rates directly with customers at 60 days and 30 days from transition. The 60-day communication will educate customers about the change to the TOU time periods. The 30-day communication will be a customer's final notice of the switch before the transition occurs. Customers that will experience an on-bill increase of >7% and \$100 annually to their total bill will receive an additional direct email, standard mail, or phone call from a PG&E account manager. The first bill that delivers with new Ag TOU rates will contain on-bill messaging reinforcing the education about the new rates.

**ANALYSIS & DISCUSSION**

Due to the requirement of newly opened agricultural accounts to start service with new Ag TOU rates as of March 1, 2020, it is necessary for SVCE to establish corresponding generation rates so that SVCE can bill these accounts in a timely fashion. Not taking this action will result in customer accounts with pending charges that our billing partner (Calpine) will not be able to synchronize with billing determinants that they receive from PG&E. This will impact SVCE customer service - potentially resulting in opt-outs and inhibit SVCE's ability to bill and collect for service.

SVCE will likely have a small number of newly enrolled agricultural customers participating in new Ag TOU rates immediately upon their implementation on March 1, 2020. In order to collect from these customers, SVCE must be able to bill them for services on a rate schedule that corresponds to the PG&E new Ag TOU rates. Creation of these additional rates ensures that the customer will not experience a lapse in bill delivery and that SVCE does not lack the ability to collect from these customers.

PG&E published the new Ag rate schedules in Advice Letter 5769-E on Feb 25, 2020. In developing the proposed SVCE Ag rates in Resolution 2020-07, SVCE's standard pricing methodology was used. SVCE's currently-applicable 4% discount was applied to PG&E rates, less the PCIA and Franchise Fee.

Creation of these new SVCE rates is time-sensitive. Typically, Calpine needs approximately two weeks to adequately test standard price changes in existing rates before translating them on to customer bills. Immediately upon approval upon approval by the Board, SVCE's new Ag rates will be furnished to Calpine for incorporation into the customer billing system.

**STRATEGIC PLAN**

Time of use pricing that is adjusted to TOU periods reflecting the congestion and costs of the grid is directly supported by 5.3.3 and 6.12.2 of the Strategic Plan:

5.3.3: Engage industry partners (e.g. startups, corporations, academia) in designing innovative grid technology programs that provide value to customers and help enable further grid decarbonization.

6.12.2: Manage market price, credit, load, and supplier volume risk to meet rate and financial objectives.

**ALTERNATIVES**

Within the Calpine billing system, it is necessary that there be a set of corresponding rates, with the appropriate SVCE discount applied, to any rates that PG&E offers within the service territory. This ensures that quantities and charges based on hourly intervals correspond to PG&E meter-reads. If new Ag TOU rates are not created, any customer enrolled under a new Ag TOU rate will be impossible to bill for service. This will result in a poor customer experience and inhibit SVCE's ability to collect revenues from the customer.

**FISCAL IMPACT**

The utility-wide transition of agricultural customers to new Ag TOU rates in March 2021 is meant to be revenue neutral for the utility and participating CCAs, as well as cost neutral to the overall customer base - though individual results may vary depending on energy use.

Staff does not anticipate a measurable fiscal impact due to the adoption of new agricultural rates. Agriculture represents only 1% of SVCE total load.

**ATTACHMENTS**

1. Resolution 2020-07 Approving Addition of New Agricultural Time of Use Rate Schedules and Rates

## SILICON VALLEY CLEAN ENERGY AUTHORITY

### RESOLUTION NO. 2020-07

#### A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING ADDITION OF NEW AGRICULTURAL TIME OF USE RATE SCHEDULES AND RATES

**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**, historically, PG&E’s “Ag” rate classes have applied to agricultural customers; and

**WHEREAS**, PG&E is introducing a new agricultural Time of Use (“TOU”) rates, with rate schedules corresponding to each of the Ag rate schedules that serve most agricultural customers. All new agricultural accounts starting service as of March 1, 2020 will be enrolled in these rates, and legacy customers will have the option to transition over to the new Ag TOU rates. Transition to the new Ag TOU rates will become mandatory March 2021; and

**WHEREAS**, to accurately bill commercial and industrial customers enrolled in the Ag TOU class and collect for service, SVCE must implement a rate schedule that corresponds to the rate; and

**WHEREAS**, SVCE Ag TOU generation rates will absorb current power cost indifference adjustment (PCIA) and franchise fee surcharge (FFS) per applicable rate components for energy and demand, and then apply a 4% discount to the remainder; and

**WHEREAS**, PG&E has announced its new Ag TOU rates will go into effect on March 1, 2020; and

**WHEREAS**, for reasons described in more detail in the agenda report, staff is recommending the addition of new SVCE rate schedules so that the Authority’s Ag TOU generation rates will be 4% lower than PG&E’s Ag TOU generation rates that will be effective April 1, 2020.

**NOW THEREFORE**, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve, determine, and order as follows:

Section 1. The rate schedules as set forth in Exhibit A, attached hereto, are hereby approved.

**PASSED AND ADOPTED** this 11<sup>th</sup> day of March 2020, by the following vote:

<b>JURISDICTION</b>	<b>NAME</b>	<b>AYE</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Andrea Pizano, Board Secretary

**Attachment**

Exhibit A – New Agricultural Time of Use Rate Schedules and Rates



**EXHIBIT A**  
**Silicon Valley Clean Energy**  
**Generation Rates Effective March 1, 2020 (proposed)**

PG&E EQUIVALENT SCHEDULE	SVCE RATE SCHEDULE	UNIT/PERIOD	SVCE PROPOSED RATE (1)	SVCE PROPOSED RATE WITH PG&E SURCHARGES (2)	PG&E GENERATION RATE (3)
<u>AGRICULTURAL CUSTOMERS</u>					
AG-A1	<b>AG-A1</b>				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.19350	0.21808	0.22717
		OFF-PEAK	0.07861	0.10319	0.10749
		<u>WINTER</u>			
		PEAK	0.07542	0.10000	0.10417
		OFF-PEAK	0.05003	0.07461	0.07772
AG-A2	<b>AG-A2</b>				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.19350	0.21808	0.22717
		OFF-PEAK	0.07861	0.10319	0.10749
		<u>WINTER</u>			
		PEAK	0.07542	0.10000	0.10417
		OFF-PEAK	0.05003	0.07461	0.07772
AG-B	<b>AG-B</b>				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.21633	0.24091	0.25095
		OFF-PEAK	0.09818	0.12276	0.12788
		<u>WINTER</u>			
		PEAK	0.09306	0.11764	0.12254
		OFF-PEAK	0.06791	0.09249	0.09634
AG-C	<b>AG-C</b>				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.09118	0.11576	0.12058
		OFF-PEAK	0.06288	0.08746	0.0911
		<u>WINTER</u>			
		PEAK	0.07712	0.10170	0.10594
		OFF-PEAK	0.05262	0.07720	0.08042
	DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>			
		MAX	12.65000	12.65000	13.18
AG-FA	<b>AG-FA</b>				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.16038	0.18496	0.19267
		OFF-PEAK	0.08633	0.11091	0.11553
		<u>WINTER</u>			
		PEAK	0.07654	0.10112	0.10533
		OFF-PEAK	0.05114	0.07572	0.07888



PG&E EQUIVALENT SCHEDULE	SVCE RATE SCHEDULE	UNIT/PERIOD	RATE (1)	SURCHARGES (2)	RATE (3)
AG-FB	AG-FB				
	ENERGY CHARGE (\$/KWH)				
	<u>SUMMER</u>				
	PEAK		0.18442	0.20900	0.21771
	OFF-PEAK		0.10636	0.13094	0.1364
	<u>WINTER</u>				
	PEAK		0.09479	0.11937	0.12434
	OFF-PEAK		0.06939	0.09397	0.09789
AG-FC	AG-FC				
	ENERGY CHARGE (\$/KWH)				
	<u>SUMMER</u>				
	PEAK		0.09515	0.11973	0.12472
	OFF-PEAK		0.06634	0.09092	0.09471
	<u>WINTER</u>				
	PEAK		0.08131	0.10589	0.1103
	OFF-PEAK		0.05592	0.08050	0.08385
	DEMAND CHARGE (\$/KW)				
	<u>SUMMER</u>				
	MAX		12.65000	12.65000	13.18



## Staff Report – Item 1d

**Item 1d: Adopt Resolution Approving Budget Allocation Adjustment for Additional Technical Support for the Reach Code Program, and Authorize the Chief Executive Officer to Execute Agreement with Integral Group for Developing a Building Decarbonization Joint Action Plan**

To: Silicon Valley Clean Energy Board of Directors

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

Date: 3/11/2020

### **RECOMMENDATION**

Staff recommends the Board:

1. Adopt Resolution No. 2020-08 to approve the revised budget allocation adjustment for the reach code program to provide additional support to member agencies; and,
2. Authorize the CEO to execute the attached agreement (not to exceed \$117,420) with Integral Group with non-substantive changes approved by the CEO, for developing a building decarbonization joint action plan for Silicon Valley Clean Energy (SVCE) and its member agencies.

### **EXECUTIVE COMMITTEE RECOMMENDATION**

The Executive Committee unanimously supported the staff proposal to extend the scope and budget for the reach code effort to provide additional support to member agencies. The Executive Committee acknowledged the desirability of providing support to the greater development community post-adoption of reach codes and recommended additional outreach within this effort to PG&E, construction groups, and other relevant organizations such as LEED and the Green Building Council (GBC). Members of the public also spoke in support of the staff recommendation. At the same meeting, staff provided a verbal update to the Executive Committee on the status of the competitive solicitation process to select a consultant for the building decarbonization joint action plan.

### **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 (abbrev. "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<sup>1</sup>. Additional programs across the six program areas were brought forward to the Board for review and approval throughout 2019 and early 2020. Given that buildings are responsible for approximately a quarter to one-third of community-wide greenhouse gas emissions, one of the programmatic focus areas identified in the Roadmap is the Built Environment.

With the adoption of the Roadmap in December 2018, SVCE Board approved \$400,000 for the overall reach code program, which included money for grants for our member agencies to cover labor costs associated with

<sup>1</sup> Power supply, built environment, mobility, energy efficiency & grid integration, innovation, and education & outreach

pursuing reach codes, the hiring of a dedicated outreach consultant, and to collaborate with Peninsula Clean Energy (PCE) by entering into a cost-share arrangement for the hiring of a technical reach code consultancy, TRC. By working with PCE, we have been able to support our separate member agencies with consistent model codes, liaise with the California Public Utilities Commission (CPUC) and other regional and statewide groups on reach codes, and serve community stakeholders with developments in both counties.

The technical reach code effort is still in effect with both primary objectives: supporting member agencies in adopting reach codes and subsequently supporting city staff with post-implementation tools and trainings. The adoption phase has lasted longer than anticipated and been utilized by almost our entire community (12 member agencies), above our original expectations. In working with our development community, we have identified a key need to increase technical support for the architects, developers, and affordable housing providers in their transition to all-electric buildings.

PCE's Board of Directors (BOD) approved the contract with TRC at their January 2020 meeting to both extend services to existing cities still in deliberation and the expansion of post-implementation support for the development stakeholder groups. As PCE has the contract with TRC approved, SVCE has the opportunity continue our cost-share arrangement with PCE on both the extension and expansion of services.

In addition to extending the reach code effort, to build on the progress of the 2019 Built Environment programs (Reach Codes, FutureFit Heat Pump Water Heater Program, All-Electric Showcase Awards), in February 2020, the Board approved a budget allocation of \$150,000 for an additional Built Environment initiative: to develop an SVCE and member community building decarbonization joint action plan (abbrev. "Building Decarb Plan"). Analogous to SVCE's Electric Vehicle Infrastructure Joint Action Plan<sup>2</sup>, the Building Decarb Plan development process will incorporate progress and learnings from the programs launched to date, existing plans and quantitative analysis, and feedback from member agencies, industry stakeholders and the public to develop and prioritize programs and activities for 2020 onward to advance building decarbonization in the service territory.

## **ANALYSIS & DISCUSSION**

### *Reach Code Program Extension*

Staff proposes an extension in scope and budget to cover two types of costs. First, several member agencies are still working through the reach code amendment process. Part of the additional budget will be used to provide them the same level of support as has been afforded to the member agencies who have already adopted reach codes. Second, to ensure a smooth adoption within our communities, the extension includes additional technical support for key stakeholders, including developers, architects and affordable housing providers. Within this support, SVCE's existing partners, TRC/DNVGL, will coordinate specific trainings, establish a support line, and make recommendations to building and EV infrastructure designs. Additional website content will be added to demonstrate all-electric technologies and EV charging solutions relevant to new construction.

### *Building Decarb Plan*

SVCE carried out a competitive solicitation process to select Integral Group as the consultant for this work. Staff issued a request for proposals (RFP) on January 21, which closed on February 7. The RFP garnered a strong response, with eight qualified proposals submitted. SVCE conducted in-person interviews with three finalist teams on February 18. The six-person evaluation panel for the interviews consisted of three SVCE staff members and three representatives from our member agencies. The proposal submitted by Integral Group was selected as the top finalist.

Integral Group is a local organization with deep expertise for making high-performance buildings cost-effective at scale, as well as in comprehensive building decarbonization action planning with utilities and governments. For instance, in SVCE territory, Integral Group has designed close to 10 million square feet of space, ranging from single family homes, to office retrofits, to confidential mega campuses in Mountain View. They attribute

<sup>2</sup> <http://tinyurl.com/SVCEEVIPlan>

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their design success as being built on creative thinking and innovative approaches to commonplace problems. Leveraging their practitioner knowledge, they have led the development of multiple strategic planning processes focused on building decarbonization, including the City of Oakland's Energy & Climate Action Plan, Washington DC's Carbon Neutrality Strategy, and the City of Irvine Strategic Energy Plan.

As subject matter experts with deep local understanding and relationships, Integral Group is well positioned to guide the development of SVCE's Building Decarb Plan. Their involvement in this process will help ensure that the SVCE community's interests are incorporated within the broader context of the built environment market and trends. The Building Decarb Plan development process is scheduled to begin in March and to conclude in July 2020.

**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.

**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 the proposed funding allocation adjustment for the reach code efforts remain within the approved programs budget. Regarding the reach code program, the \$200,000 budget extension would be taken out of the programs reserve fund, leaving \$1,350,000 in remaining program reserves. Regarding the agreement for the Building Decarb Plan, the Board approved \$150,000 in funds for implementing this program in February 2020 with Resolution No. 2020-06. The agreement with Integral Group for building decarbonization plan development services is for an amount not to exceed \$117,420, which falls within the Board approved funds.

**ATTACHMENTS**

1. Resolution No. 2020-08 to revise the budget allocation adjustment for the reach code program
2. Draft Agreement with Integral Group for Building Decarbonization Joint Action Plan Development Services

## **SILICON VALLEY CLEAN ENERGY AUTHORITY**

### **RESOLUTION NO. 2020-08**

#### **A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO APPROVE A BUDGET ALLOCATION ADJUSTMENT FOR THE IMPLEMENTATION OF THE REACH CODE INITIATIVE**

**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**, Resolution 2018-20 included an initial budget of \$400,000 in Fiscal Year 2019 for the Reach Code initiative; 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, 2020-01, and 2020-06 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, the heat pump water heater program, building decarbonization joint action plan, resilience at community facilities, and streamlining community-wide electrification; and

**WHEREAS**, the Board desires to allocate an additional \$200,000 for the extension of the Reach Code initiative in Fiscal Year 2020.

**NOW THEREFORE**, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby amend the budget for decarbonization programs adopted by

Resolution No. 2018-20 and amended by Resolution Nos. 2019-02, No. 2019-07, No. 2020-01, and No. 2020-06 by approving the allocation of an additional \$200,000 to the Reach Code initiative in Fiscal Year 2020.

**PASSED AND ADOPTED** this 11<sup>th</sup> day of March, 2020, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

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Chair

**ATTEST:**

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Andrea Pizano, Board Secretary

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY  
AND  
INTEGRAL GROUP  
FOR  
BUILDING DECARBONIZATION PLANNING CONSULTING SERVICES**

THIS AGREEMENT, is entered into this 12th day of March, 2020, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Integral Group, a California Corporation whose address is 427 13th Street, Oakland, CA 94612 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for consulting services to develop a building decarbonization joint action plan upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on March 12, 2020, and shall terminate on September 31, 2020, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred seventeen thousand, three hundred and thirty dollars (\$117,330.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Consultant and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to Authority and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to Authority for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to Authority by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by Authority, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, Authority may deduct the cost of such correction from any retention amount held by Authority or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

6. **INDEPENDENT PARTIES**

Authority and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless Authority and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Authority officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Authority shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Authority from Consultant as a result of Consultant's failure to promptly pay to Authority any reimbursement or indemnification arising under this section.

7. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members.

Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

9. **HOLD HARMLESS AND INDEMNIFICATION**

General Indemnification. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Authority and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those Authority agents serving as independent contractors in the role of Authority officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

10. **INSURANCE**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

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

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

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

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

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

## 11. CONFLICT OF INTEREST

Consultant warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the Authority Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried

by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

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

#### 14. **REPORTS**

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

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

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

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

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

F. Authority shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer (“Authority Representative”) shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Brenden McEneaney (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

B. Consultant shall promptly notify Authority should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Authority. Authority may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Authority and to provide Authority with the opportunity to review any response to discovery requests provided by Consultant. However, Authority’s right to review any such response does not imply or mean the right by Authority to control, direct or rewrite the response.

C. In the event Authority gives Consultant written notice of a “litigation hold”, then as to all data identified in such notice, Consultant shall, at no additional cost to Authority, isolate and preserve all such data pending receipt of further direction from the Authority.

D. Consultant’s covenants under this section shall survive the expiration or termination of this Agreement.

18. **NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant’s and Authority’s regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

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

TO CONSULTANT:  
Brenden McEneaney  
Integral Group  
427 13th Street  
Oakland, CA 94612  
Cc: Molly Schremmer

19. **TERMINATION**

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

In the event of Authority’s termination of this Agreement due to no fault or failure of performance by Consultant, Authority shall pay Consultant for services satisfactorily performed

up to the effective date of termination. Upon termination, Consultant shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Authority. Consultant shall have no other claim against Authority by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Authority that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

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

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

Authority reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

29. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in Authority's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other

causes beyond Consultant's reasonable control and not due to any act by Consultant.

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of Authority from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of Authority's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by Authority shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by Authority for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

34. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

36. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

37. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

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

RECOMMENDED FOR APPROVAL

\_\_\_\_\_

Aimee Gotway Bailey  
Director of Decarbonization & Grid Innovation

CONSULTANT NAME  
Integral Group

SILICON VALLEY CLEAN ENERGY  
AUTHORITY  
A Joint Powers Authority

By: \_\_\_\_\_  
Name: Brenden McEneaney  
Title: Principal  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Girish Balachandran  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

Counsel for Authority

ATTEST:

\_\_\_\_\_

Authority Clerk

## **Exhibit A** **Scope of Services**

Consultant will lead development of a comprehensive Building Decarbonization Joint Action Plan (“Building Decarb Plan”) that builds on existing SVCE programs and guides program activities in 2020 onward. The scope of the Building Decarb Plan will incorporate building decarbonization policies, programs and activities well-suited to CCAs and local jurisdictions, and the Building Decarb Plan will be developed within the context of statewide and regional efforts.

The proposed work is organized into the following tasks, to be completed in accordance with the schedule set forth in Exhibit B:

### **Task 1: Initial Stakeholder Engagement**

Through this task, Consultant will carry out stakeholder engagement to solicit initial input for the Building Decarb Plan, which will describe interests of CCAs and local jurisdictions pursuing building decarbonization, outline the state and regional context, identify proposed priorities that leverage CCAs and member city strengths and authorities, describe the opportunities and challenges facing each priority, and outline prioritized strategies and actions. Consultant will organize a collaborative stakeholder workshop, a public webinar and targeted one-on-one interviews.

#### **Deliverables:**

- One collaborative, half-day (estimated) workshop between SVCE, member agency staff, building decarbonization experts and other key, relevant stakeholders;
- One 1-hour (estimated) webinar to collect input from all interested stakeholders;
- Up to 6 targeted one-on-one interviews with stakeholders unable to participate in the stakeholder workshop or public webinar. An additional 6 targeted one-on-one interviews with stakeholders if requested by SVCE.
- Memo summarizing results of stakeholder engagement. The memo should capture and memorialize all contributions.

#### **Services:**

- Lead initial consultations with SVCE staff and member agencies as necessary to focus the Building Decarb Plan organization and stakeholder engagement process, including identification of specific individuals and groups with whom to engage.
- Work with SVCE staff and member agencies to leverage existing plans and quantitative analyses (e.g. SVCE’s buildings baseline study and DER/electrification assessment, member agency climate action plan analyses, etc.) to inform the development of the Building Decarb Plan.
- Provide a detailed conceptual outline of the Building Decarb Plan, workshop agenda, workshop materials and workshop facilitation plan for SVCE staff review.

- One in-person meeting to discuss the outline of the Building Decarb Plan, workshop agenda, workshop materials, and workshop facilitation plan, in order to receive SVCE staff and member agency feedback.
- Lead the preparation of workshop pre-read or other preparatory materials for attendees.
- Lead calendaring and outreach for all stakeholder engagement with the support of SVCE staff and member agencies.
- Coordinate all logistical support of each stakeholder engagement, including acceptable meeting space, webinar service, and meeting materials.
- Maintain channels for written comments and participation, especially from stakeholders unable to attend the workshop or webinar.
- Capture, organize and share notes from each stakeholder engagement activity.

## **Task 2: Develop Building Decarbonization Joint Action Plan**

This task is to use existing plans and quantitative analysis and stakeholder input from Task 1 to develop the Building Decarb Plan. The Consultant will solicit final feedback through stakeholder engagement to refine and improve the draft Building Decarb Plan and prepare the plan for final publication.

### **Deliverables:**

- A 10-15 page (estimated) Draft Building Decarb Plan produced for SVCE review and comment. Draft will include text, data, and information, with suggestions for graphics.
- One meeting to discuss the Draft Building Decarb Plan with SVCE staff to gather feedback.
- One 1-hour (estimated) webinar to collect stakeholder feedback on the Draft Building Decarb Plan.
- A 10-15 page (estimated) Final Building Decarb Plan incorporating SVCE comments on the Draft Plan, delivered in both Microsoft Word and PDF formats.
- One in-person briefing on the Final Building Decarb Plan for SVCE staff and member agencies.
- One in-person presentation on the Final Building Decarb Plan for the SVCE Board of Directors.

### **Services:**

- Lead drafting of one Draft and one Final Building Decarb Plan, reflecting any feedback received from stakeholder engagement, SVCE staff and member agencies;
- Solicit feedback from SVCE staff, member agencies, and other stakeholders on the Draft Building Decarb Plan, including one webinar open to all interested stakeholders;
- Establish a mechanism for capturing written stakeholder feedback (e.g. e-mail) on the Draft Building Decarb Plan throughout stakeholder engagement;
- Capture, organize and share with SVCE notes from each stakeholder engagement.

**SVCE Responsibilities (Applicable to Task 1 and Task 2)**

- SVCE will be Consultant's sole point of contact for purposes of decision-making, review, and approval on this project. Member agencies will be part of stakeholder engagement, but SVCE will act as the main aggregator of member feedback pertaining to Draft review and other similar tasks
- SVCE will provide graphic design services for the Building Decarb Plan.
- SVCE will bear any costs related to meeting space rental, catering, and audio/visual expenses for stakeholder meetings.
- SVCE will provide a webinar platform for use by Consultant on this project.

**Exclusions**

- For the avoidance of doubt, further substantive quantitative analysis of decarbonization strategies is not included in the Scope of Services for this Agreement.

Silicon Valley Clean Energy Building Decarbonization Joint Action Plan		<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"><i>Brendan McFieaney</i> Level Principal</div> <div style="text-align: center;"><i>Jenika McFieay</i> Associate Principal</div> <div style="text-align: center;"><i>Jimmy O'Hare</i> Sustainability Consultant</div> <div style="text-align: center;"><i>David Karheda</i> Senior Principal</div> </div>				Hourly Rate		Subtotal	
		\$ 250	\$ 180	\$ 145	\$ 250				
<b>Task 1</b>	<b>Initial Stakeholder Engagement</b>	60	114	206	6	\$ 66,890			
	Kickoff, initial consultations with SVCE staff/members, and existing plans and data review	10	20	32		\$ 10,740			
	Prepare detailed outline of Building Decarb Plan and Workshop Plan for SVCE and member agency review and feedback. Includes one in-person meeting to review.	12	28	26	2	\$ 12,310			
	Prepare workshop materials including pre-read materials	2	8	20		\$ 4,840			
	Plan/Facilitate Collaborative Workshop w/SVCE members, staff, and experts (half day)	8	24	30	4	\$ 11,670			
	Logistical Support of stakeholder engagement including, meeting planning, calendaring and capturing stakeholder written comments and participation			40		\$ 5,800			
	Stakeholder Webinar (1 hour)	2	2	8		\$ 2,020			
	6 Targeted Interviews (1 hour each), additional 6 interviews if requested by SVCE	24	24	24		\$ 13,800			
	Memo Summarizing Stakeholder Engagement Results and notes from each activity	2	8	26		\$ 5,710			
<b>Task 2</b>	<b>Develop Building Decarb Joint Action Plan</b>	24	100	172	6	\$ 50,440			
	Write 10-15 page Draft Building Decarb Plan for SVCE review and comment including one meeting to discuss with SVCE staff to gather feedback.	4	40	80	4	\$ 20,800			
	Solicit stakeholder feedback on Draft Plan (incl. meetings with SVCE staff)	4	24	24		\$ 8,800			
	One webinar to collect Stakeholder feedback on Draft Plan (1 hour)	2	2	4		\$ 1,440			
	Incorporate stakeholder, SVCE, and member agency feedback into Final Plan	4	24	48		\$ 12,280			
	One In-Person Briefing of SVCE staff and member agencies	6	6	12		\$ 4,320			
	One In-Person presentation on final plan for SVCE Board of Directors	4	4	4	2	\$ 2,800			
<b>Subtotal Personnel (Benefits Included)</b>		\$ 21,000	\$ 38,520	\$ 54,810	\$ 6,000	\$ 117,330			
<b>Hours</b>		<b>84</b>	<b>214</b>	<b>378</b>	<b>12</b>	<b>688</b>			

**Exhibit B**  
**Schedule of Performance**

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

<b>Task</b>	<b>Begin</b>	<b>Complete</b>
1. Initial Stakeholder Engagement	3/12/2020	5/29/2020
2. Develop Building Decarbonization Joint Action Plan	4/27/2020	7/31/2020
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

**Exhibit C**  
**Compensation**

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of one hundred seventeen thousand, three hundred and thirty dollars (\$117,330), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

<b>Task</b>	<b>Estimated Budget</b>
1. Initial Stakeholder Engagement	\$ 66,890
2. Develop Building Decarbonization Joint Action Plan	\$ 50,440
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
<b>Total</b>	<b>\$117,330</b>

Rates

<b>Personnel</b>	<b>Title</b>	<b>Hourly</b>
Brenden McEneaney	Principal	\$250
Janika McFeely	Associate	\$180
David Kaneda	Senior Principal	\$250
Jimmy O’Hare	Sustainability Consultant	\$145
Anais Engel	Sustainability Associate	\$130

Invoices

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

task(s) for which work was performed). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority. In no event shall reimbursable expenses collectively exceed the total sum of N/A.

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority Representative prior to commencement of any additional services. Consultant shall submit, at the Authority Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

**Exhibit D**  
**Insurance Requirements and Proof of Insurance**

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**  
Statutory coverage as required by the State of California.
- (2) **Liability:**  
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**  
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**  
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.



## Staff Report – Item 1e

**Item 1e:        Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule to Add Director of Regulatory and Legislative Policy Position**

To:                Silicon Valley Clean Energy Board of Directors

Prepared by:    Don Eckert, Director of Finance and Administration

Date:             3/11/2020

### **RECOMMENDATION**

Staff recommends that the Board approve Resolution 2020-09 amending the Silicon Valley Clean Energy ("SVCE") positions chart, job classifications and salary schedule to add the Director of Regulatory and Legislative Policy position.

### **BACKGROUND**

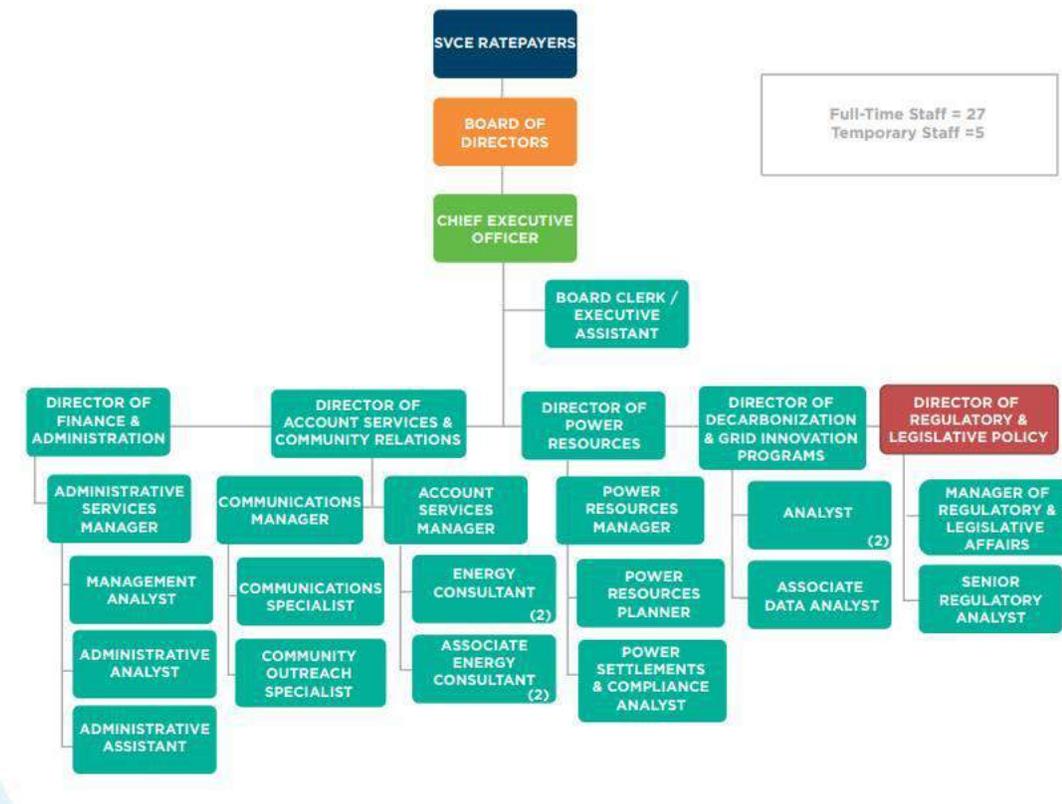
Amendments to the Positions Chart, Job Classifications and Salary Schedule were most recently approved by the Board at the September 11, 2019 Board of Directors meeting with the adoption of the FY 2019-20 Operating Budget.

### **ANALYSIS & DISCUSSION**

Regulatory and Legislative risk continues to remain a significant threat to the agency fulfilling its long-term vision of bending the carbon curve. Short-term issues such as volatility in the Power Cost Indifference Charge (PCIA) and long-term issues such as transparency in resource adequacy procurement and market restructuring will impact SVCE's margins.

In response to these regulatory and legislative threats and opportunities, staff recommends the addition of the Director of Regulatory and Legislative Policy position to further strengthen our ability to not only respond to issues but also forecast and prepare.

The recommended change does not change the headcount approved by the Board of Directors in the current fiscal year budget as the agency will not fill the Rates Manager position. The organizational chart on the following page is the Recommended Table of Organization for the remainder of FY 2019-20 (new position highlighted in maroon):



**STRATEGIC PLAN**

This recommendation supports the Regulatory and Legislative and Power Supply goals of the strategic plan.

**ALTERNATIVE**

Staff is open to suggestions from the Board.

**FISCAL IMPACT**

The cost of adding the Director of Regulatory and Legislative Policy will be partially offset by the agency not filling the Rates Manager position. The maximum fiscal impact to the agency is \$43,862 or the difference between the highest range of the two positions.

**ATTACHMENTS**

1. Draft Job Description for Director of Regulatory and Legislative Policy
2. Resolution 2020-09 Amending the Approved Positions Chart, Job Classifications and Salary Schedule to Add the Position of Director of Regulatory and Legislative Policy



## **DIRECTOR OF REGULATORY AND LEGISLATIVE POLICY**

**SALARY RANGE:** \$148,865 - \$233,929

### **SUMMARY DESCRIPTION**

The Director of Regulatory and Legislative Policy works under direction from the Chief Executive Officer and serves as policy head for regulatory and legislative matters for SVCE, works closely with local and state representatives, SVCE board members, lobbyists and external legal counsel, and performs related work as assigned.

The Director of Regulatory and Legislative Policy is the lead staff member for regulatory and legislative matters. The Director of Regulatory and Legislative Policy develops written and oral advice for the Chief Executive Officer, Outside General Counsel, and the Board of Directors on key legal and policy matters related to regulatory agencies and legislative policy developments and performs managerial and project management tasks. The Director of Regulatory and Legislative Policy directs, represents, and oversees the representation of, SVCE before various regulatory agencies in matters affecting community choice aggregators (CCAs) and other electric utilities. The Director of Regulatory and Legislative Policy engages in ratemaking proceedings, investigations, rulemakings, compliance matters, and proposed legislation; draft applications, briefs, legal memoranda, and discovery requests/responses; supervises the preparation of the testimony and exhibits of expert witnesses; examines and cross-examines witnesses and presents oral argument; and participates in negotiations and settlement discussions. The Director of Regulatory and Legislative Policy develops legislative and regulatory policies and strategies and works with internal staff and external contractors to implement proposed legislative and regulatory activities.

### **SUPERVISION RECEIVED AND EXERCISED**

The Director of Regulatory and Legislative Policy supervises SVCE's regulatory and legislative program, including but not limited to staff members and directs legal resources and other external professional service providers, such as lobbyists.

### **ESSENTIAL FUNCTIONS**

- Renders advice on regulatory and legislative issues, administers legal services, and directs and works collaboratively with internal staff and external counsel and contractors regarding a variety of regulatory and legislative issues affecting SVCE.
- Directs, represents, and oversees representation of, SVCE in energy-related administrative proceedings before regulatory agencies.
- Develops and reviews legislative policies and recommends positions on bills.
- Represents, and oversees representation of SVCE before local and state representatives and the state legislature.
- Supervises and manages staff assigned to regulatory and legislative duties.
- Updates SVCE's Chief Executive Officer, Outside General Counsel, and Board of

Directors on regulatory and legislative developments.

- Participates in SVCE management activities, including assisting in strategic planning, budget and forecast analysis, contractual reporting, annual audit, and other tasks as required.

## **KNOWLEDGE, SKILLS AND ABILITIES**

*Knowledge of:*

- California electric utility regulatory issues and regulatory practices and procedures.
- California legislative processes, legislative advocacy and negotiation with decision-makers.
- Familiarity with issues that have long-term impact to SVCE such as resource adequacy, industry restructuring, and the IOU's exit fees.
- Principles and practices of supervision in a public agency.
- Excel, Word, Adobe Acrobat, and PowerPoint.

*Ability to:*

- Develop high-quality writing, research and communication work products.
- Deliver clear and persuasive oral communication.
- Interact effectively with administrative and legislative bodies and SVCE's Chief Executive Officer and Board of Directors.
- Apply robust analytical and problem-solving skills.
- Utilize strong time management, project management, dispute resolution and interpersonal relations skills.
- Collaborate and/or negotiate with a wide range of stakeholders, including decision-makers, non-profit and advocacy organizations, community organizations, SVCE staff, and others.
- Exercise sound judgement, creative problem solving, and commercial awareness.
- Focus, direct and manage the efforts of subordinate staff members and external regulatory and legislative resources.
- Simultaneously manage staff on multiple priorities and issue areas across regulatory agencies and the legislature.
- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced dynamic environment.
- Take responsibility and work independently, as well as coordinate team efforts.
- Be thorough and detail-oriented.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy.
- Establish and maintain effective working relationships with those encountered during the performance of duties.
- Set and manage budgets for team staffing and external resources.

## **REQUIRED QUALIFICATIONS**

**Experience and Training Guidelines:** *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

**EDUCATION:** Preferred Juris Doctor degree from an accredited university, or Masters in Business Administration; or Masters in Public Administration; or Masters in Environmental

Science; or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the position.

**EXPERIENCE:** A minimum of seven (7) years of progressively responsible experience working on complex regulatory, legislative or energy matters at an electric utility, public agency/municipality or in a closely related field.

**LICENSE:** Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

**PHYSICAL AND WORKING CONDITIONS**

*The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.*

**ENVIRONMENT:** Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

**TRAVEL:** This position requires frequent travel both daytime and evenings.

**PHYSICAL:** While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

**VISION:** See in the normal visual range with or without correction; vision sufficient to read computer screens and printed documents; and, operate assigned equipment.

**HEARING:** Hear in the normal audio range with or without correction.

**-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----**

**RESOLUTION NO. 2020-09**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE APPROVED POSITIONS CHART, JOB CLASSIFICATIONS AND SALARY SCHEDULE TO ADD THE POSITION OF DIRECTOR OF REGULATORY AND LEGISLATIVE POLICY**

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

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

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

WHEREAS, the Board of Directors has amended the Organization Chart and Salary Schedule to add and delete positions and update salaries with the adoption of Resolution Nos. 2017-07, 2017-10, 2018-06, 2018-10, 2019-04 and 2019-15; and

WHEREAS, Resolution No. 2019-04 also renamed the Organization Chart as the Positions Chart; and WHEREAS, to meet the needs of the Authority , the Chief Executive Officer recommends that the Board amend the existing schedule of job classification titles and salary ranges to add the position of Director of Regulatory and Legislative Policy.

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

Section 1. The Authority’s schedule of job classification titles and salary ranges is amended to add the position of Director of Regulatory and Legislative Policy. The following schedule of job classification titles and salary ranges shall replace and supersede the schedule shown in Resolution 2019-15:

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Account Services Manager	111,648	175,447
Administrative Services Manager	120,952	190,067
Administrative Analyst	83,737	143,428
Administrative Assistant	55,824	88,601
Analyst	83,737	131,585
Associate Analyst	69,780	109,654
Associate Data Analyst	82,684	122,559

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Associate Energy Consultant	69,780	109,654
Associate Legislative Analyst	72,106	113,310
Board Clerk / Executive Assistant	102,344	165,651
Communications Manager	111,648	175,447
Communications Specialist	60,476	98,835
Community Outreach Specialist	60,476	98,835
Data Analyst	96,641	144,489
Director of Account Services and Community Relations	148,865	233,929
Director of Decarbonization and Grid Innovation Programs	132,056	203,831
Director of Finance & Administration	148,865	259,662
Director of Power Resources	176,776	277,791
Director of Regulatory and Legislative Policy	148,865	233,929
Energy Consultant	83,737	131,585
Management Analyst	102,344	160,827
Manager of Decarbonization and Grid Innovation Programs	120,952	190,067
Manager of Regulatory & Legislative Affairs	124,552	188,351
Power Resources Manager	139,561	219,309
Power Resources Planner	120,952	190,067
Power Settlements & Compliance Analyst	102,344	160,827
Rates Manager	120,952	190,067
Senior Analyst	97,692	145,542
Senior Communications Specialist	72,956	110,835
Senior Community Outreach Specialist	72,956	110,835
Senior Data Analyst	110,597	158,446
Senior Energy Consultant	97,692	145,542
Senior Rates Analyst	110,172	165,996
Senior Regulatory Analyst	97,692	153,516

Section 2. The organization of positions shall be as shown in Attachment 1: SVCE Approved Positions Chart. This new Approved Positions Chart shall replace and supersede the Approved Positions Chart adopted by Resolution 2019-15.

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

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

**ADOPTED AND APPROVED this 11th day of March, 2020 by the following vote:**

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

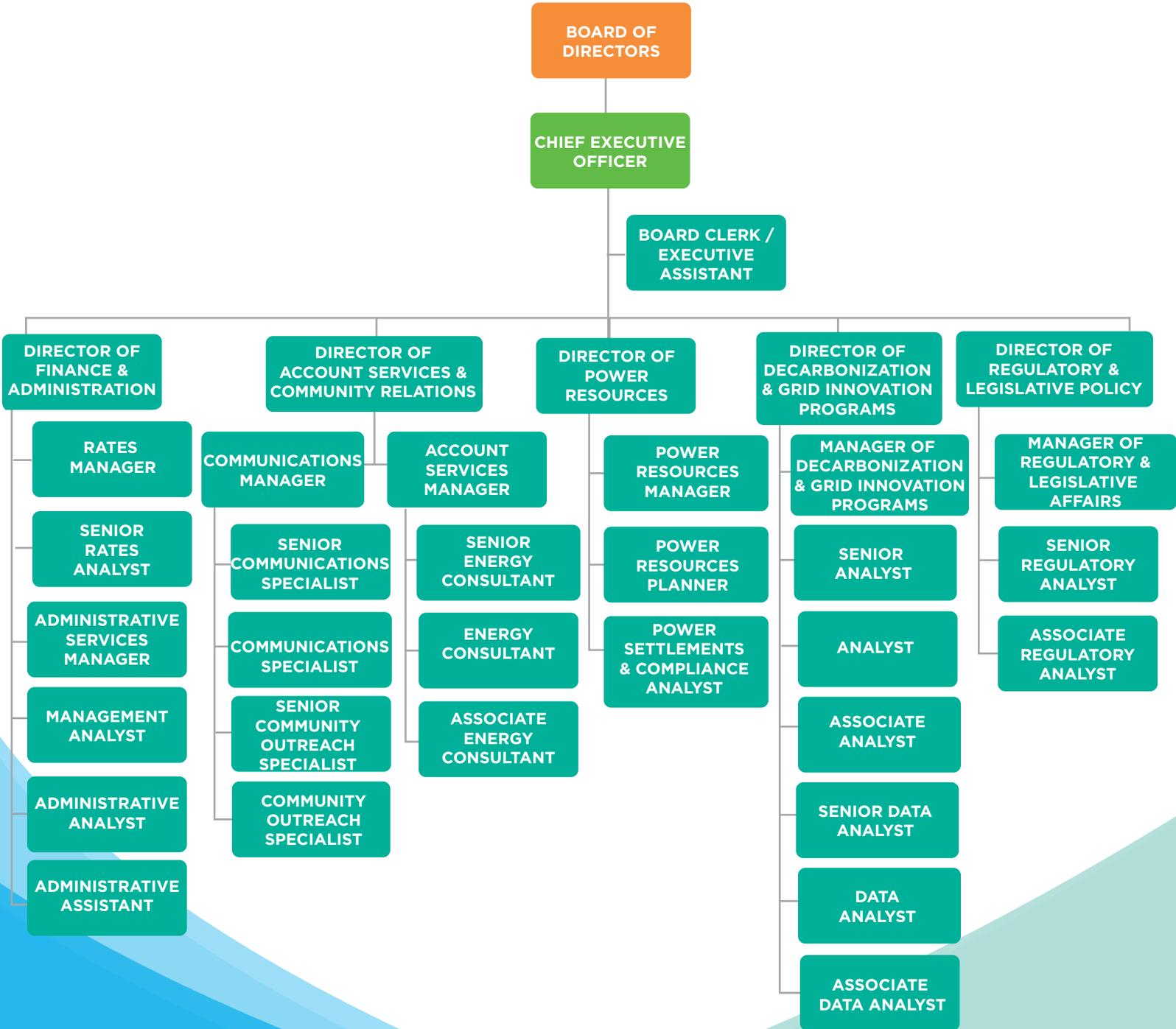
\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Clerk

**Attachment 1:** SVCE Approved Positions Chart

# POSITIONS CHART



\* More positions than funded for broadbanding purposes



**Staff Report – Item 1f**

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**Item 1f: Finance and Administration Committee Report**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 3/11/2020

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**No report as the Finance and Administration Committee has not met since January 17, 2020.**



**Staff Report – Item 1g**

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**Item 1g:      **Audit Committee Report****

To:               Silicon Valley Clean Energy Board of Directors

Prepared by:   Andrea Pizano, Board Clerk/Executive Assistant

Date:             3/11/2020

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**No report as the Audit Committee has not met since February 5, 2020.**



## Staff Report – Item 2

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### Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 3/11/2020

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### **REPORT**

#### **SVCE Staff Update**

Eric Kim joined SVCE as a Power Resource Planner on February 25, 2020. Prior to joining SVCE, Eric was with the California ISO for 7 years serving in a variety of roles spanning from operations to new resource implementation.

Eric will be responsible for modeling and reporting on various power procurement needs, supply cost and risk; he will also lend support to SVCE's decarbonization and grid Innovation efforts especially as they relate to developing custom products and distributed energy resource solutions for our larger customers. Eric holds a Bachelor of Science in Environmental Policy and Planning from UC Davis.

#### **SVCE Staff Training**

On February 25, 2020, Scott Summerfield of SAE Communications provided training to all staff on effective presentations. Scott will be meeting one-on-one with staff members for individual training sessions in the coming months.

SVCE staff participated in a half-day offsite meeting in Sunnyvale on February 28, 2020 to discuss Building Emotional Intelligence and Self-Awareness. This followed an earlier training, Building a High-Trust Workplace, which was covered in early February. These trainings are a series scheduled through June on topics including Communications Essentials, High-Performing Teams, and Working Across Generations.

#### **SVCE Generation Rates**

Staff is expecting notification of rate changes soon from PG&E with an effective date of May 1, 2020. The latest forecast is consistent to what staff has discussed with the Board earlier this year, Power Cost Indifference Charge (PCIA) is increasing and PG&E customer generation rates are decreasing. The PCIA is expecting to increase by 20% over current rates and PG&E generation rates are expected to decrease by 6%. Due to the under-collection in the PCIA balancing account, staff is planning for another significant increase in the PCIA later this year but that would not occur until PG&E files a petition, most likely this summer. These scenarios will negatively impact budgeted margins. The Board should anticipate rates to be an agenda item in April for discussion.

#### **Power Prepayment**

Due to SVCE being a tax-exempt load serving entity, it is allowed to participate in a power prepayment structure. Energy acquisition transactions are structured with 25-30 year tax-exempt bonds. The transactions provide the greatest energy discount when yield differentials in the taxable and tax-exempt markets are widest. This could result in up to 10% discounts on the power supply volume we nominate.

**Agenda Item: 2****Agenda Date: 3/11/2020**

SVCE and EBCE jointly solicited and RFP in December 2019. The RFP attracted five (5) large banks with the interview process concluding end of March. Staff will be updating the Board over the next 3-4 months.

**Power Resources – Master Consultant Agreement Update**

As approved at the November 14, 2018 and December 11, 2019 Board of Directors Meetings, Resolutions 2018-15 and 2019-20 granted authority to the CEO to execute a Master Consultant Agreement between Ascend Analytics, Flynn Resources Consulting, Inc., Hanover Strategy Advisors, LLC, and Energy and Environmental Economics (E3) to provide various strategic consulting, support, and risk management services to SVCE. SVCE has a target budget of \$400,000 for FY 2019-20, and a total budget of \$1,000,000 for FY 2019-2021 between the three vendors. Following outlines the remaining balance of the master agreement:

<b>Power Resources - Master Consultant Agreement - March 11, 2020 Update</b>			
<b>VENDOR</b>	<b>Expenses 2019-20 YTD</b>	<b>Balance</b>	
		<b>FY 2019-20</b>	<b>FY 2019-2021</b>
		\$ 400,000.00	\$ 1,000,000.00
<b>Ascend Analytics</b>	\$157,544.87		
<b>Energy &amp; Environmental Economics (E3)</b>	\$ 10,000.00		
<b>Flynn Resources Consulting, Inc.</b>	\$ 29,962.50		
<b>Hanover Strategy Advisors, LLC</b>	\$ -	<b>Remaining Balance</b>	
<b>TOTAL</b>	<b>\$197,507.37</b>	<b>\$ 202,492.63</b>	<b>\$ 802,492.63</b>

An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

**Programs – Master Consultant Agreement Update**

As approved at the June 12, 2019 Board of Directors Meeting, Resolution 2019-10 granted authority to the CEO to execute a Master Consultant Agreement between Sacramento Municipal Utility District (SMUD), Center for Sustainable Energy (CSE), and ADM, Associates, Inc. (ADM) to provide consulting and support related to decarbonization and innovation program design, implementation, management, and evaluation to SVCE. The Board of Directors approved a total budget of \$1,000,000 for all three consultants over the full contract term, which runs through the end of FY 2021. Following outlines the remaining balance of the master agreement:

<b>Programs Master Consultant Agreement - March 11, 2020 Update</b>		
<b>VENDOR</b>	<b>Expenses</b>	<b>Balance</b>
		<b>2019-2021</b>
		\$ 1,000,000.00
<b>Sacramento Municipal Utility District</b>	\$ 144,625.59	
<b>Center for Sustainable Energy</b>	\$ 32,637.50	
<b>ADM Associates, Inc.</b>	\$ 10,806.25	
<b>TOTAL</b>	<b>\$188,069.34</b>	<b>\$ 811,930.66</b>

An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

**CEO Agreements Executed**

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

- 1) ZappyRide: Build and Launch Electric Vehicle Platform, not to exceed \$35,000
- 2) Ascend Analytics, Amendment to Task Order #7: Request for 2019 Integrated Resource Planning Activities, not to exceed \$32,350

**Agenda Item: 2****Agenda Date: 3/11/2020**

- 3) Powerhouse Accelerator, LLC: Price Competition Services, not to exceed \$50,000
- 4) Keyes & Fox: Legal representation before the California Public Utilities Commission, not to exceed \$88,000

**CEO Power Supply Agreements Executed**

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

Counterparty_Name	Execution Date	Transaction Type	Product	Start Date	End Date	Notional Value
PG&E	2/7/2020	Purchase	Renewable Energy PCC1	1/1/2020	12/31/2020	\$1,890,000.00
Bonneville Power Authority	2/26/2020	Purchase	Non-Renewable Carbon Free	6/1/2020	9/30/2020	\$808,128.00
NextEra	1/30/2020	Purchase	Renewable Energy PCC1	3/1/2020	8/31/2020	\$305,000.00
Powerex	2/24/2020	Purchase	Non-Renewable Carbon Free	3/1/2020	12/31/2020	\$645,500.00
Recurrent Energy	2/14/2020	Amended	Renewable Energy PCC1	6/30/2021	6/29/2038	Resolution No. 2020-04
Monterey Bay Community Power	2/3/2020	Purchase	Local RA	4/1/2020	12/31/2020	\$420.00
Monterey Bay Community Power	2/3/2020	Sale	Local RA	4/1/2020	12/31/2020	\$420.00
East Bay Community Energy	2/7/2020	Purchase	System RA	4/1/2020	4/30/2020	\$25,800.00
East Bay Community Energy	2/7/2020	Sale	Local RA	4/1/2020	4/30/2020	\$37,800.00
PG&E	2/19/2020	Sale	Local RA	6/1/2020	6/30/2020	\$42,500.00
Calpine	2/28/2020	Purchase	System RA	1/1/2021	12/31/2023	\$8,383,200.00

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

**Presentations & Relevant Meetings Attended by CEO**

- Participated in CalCCA Monthly board, dues, executive, and legislative meetings;
- Participated in PG&E coop steering committee calls;
- Presented Community Summary results to the City of Gilroy City Council;
- March 4, 2020 Speaker at Rotary Club of San Jose

**ATTACHMENTS**

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



# Decarb & Grid Innovation Programs Update

**March 2020**

# 1. Reach Code Initiative (1 of 2)

- **Nine cities have adopted Reach Codes** – Morgan Hill, Mountain View, Milpitas, Saratoga, Monte Sereno, Los Gatos, Cupertino, Campbell, and Los Altos Hills.
- **Three more making progress** – Sunnyvale, Los Altos, and the County.
- **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
  - **Seven member agencies adopted EV reach codes**

# 1. Reach Code Initiative (2 of 2)

Member Agency	Status	Next Meeting	Date of Next Meeting	Code Language	Building Reach			EV Reach
					Encourage Gas Reduction (1 + 2 + 2A)	Limit Gas (1 + 2A)	Ban Gas (1 only)	Higher than CalGREEN
Mountain View		Approved		<a href="#">Begins on pg. 23</a>			X	X
Morgan Hill		Approved		<a href="#">Begins on pg. 45</a>			X	
Milpitas		Approved		<a href="#">Begins on pg. 1132</a>	X			X
Monte Sereno		Approved		<a href="#">Begins on pg. 3</a>	X <sup>1</sup>			X
Saratoga		Approved		<a href="#">Begins on pg. 33</a>		X		X
Los Gatos		Approved		<a href="#">Begins on pg. 93</a>			X	X
Cupertino		Approved		<a href="#">Ordinance</a>			X	X
Los Altos Hills		Approved		<a href="#">Ordinance</a>		X		X
Campbell		Approved		<a href="#">Begins on pg. 41</a>		X		
Los Altos		1st Reading					X	
Santa Clara County		Staff Proposal			X			
Sunnyvale		Staff Proposal				X		
Gilroy	-	Declined						

## Key

### Status

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

### Building Reach

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



# 2. FutureFit Home Program

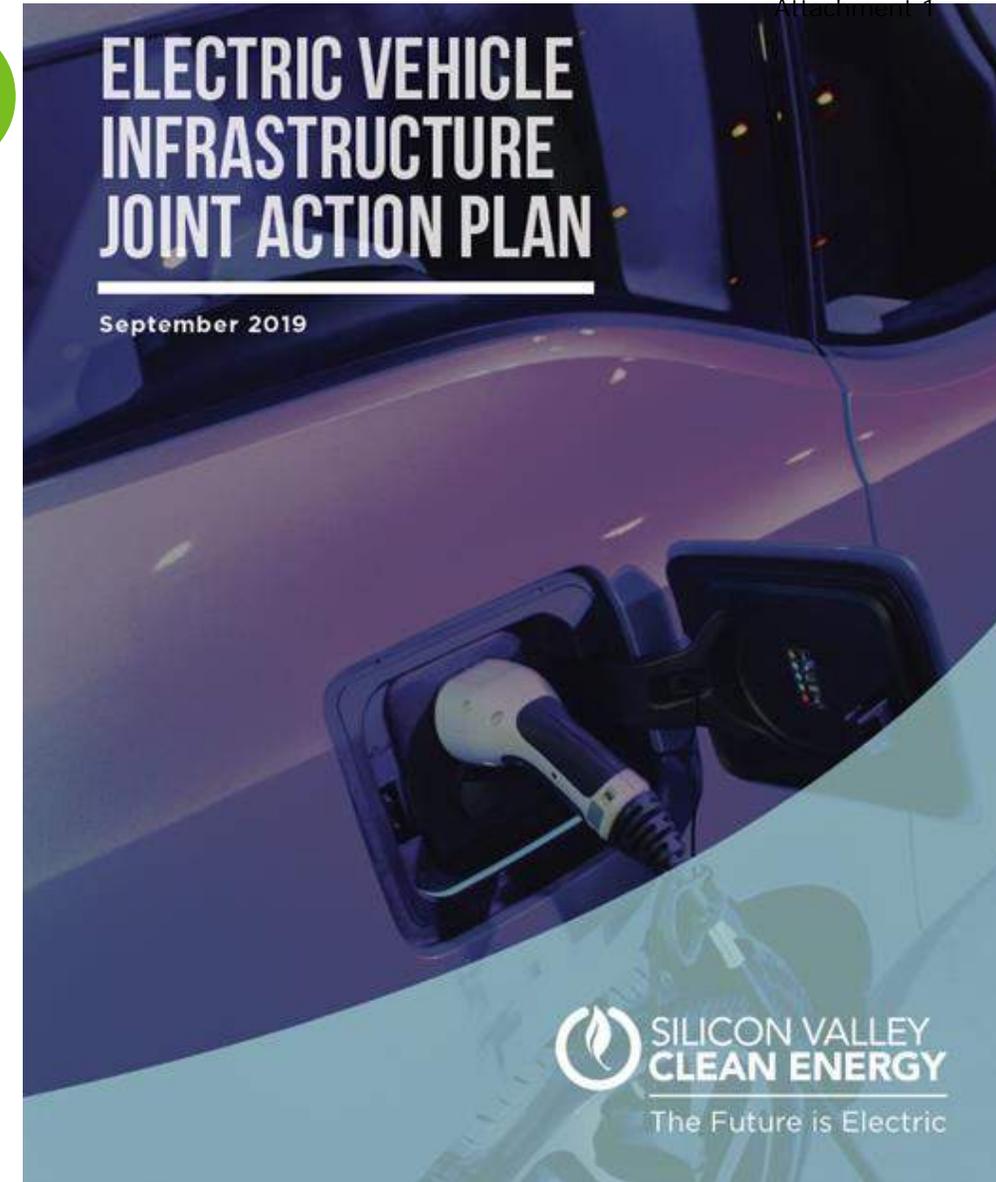
- Program launched in June 2019, providing rebates to replace 100 natural gas water heaters with electric heat pump water heaters
- Progress
  - **65 Completed.** Currently on a waitlist system.
  - 6 rebate slots available for CARE/FERA customers
    - Scheduling community meetings to address slower uptake with CARE/FERA customers
- Co-funded by BAAQMD



Program Rebates	
Heat Pump Water Heater Only	\$2,000
Data Monitor	\$300
Optional Additional Rebates	
Smart Performance Package	\$1,500
Service Panel, upgrade to 200A	\$2,500
CARE/FERA eligible customer	\$1,500

## 3. EV Programs (1 of 2)

- **CALeVIP** scoping is ongoing
- Second meeting of **Silicon Valley Transportation Electrification Clearinghouse** will be March 26
- Final development of **Regional EV Leadership Recognition**, with launch in coming months
- Working on contract for **Multifamily and Small/Medium Business Technical Assistance**



Digital version available at:

<https://www.svcleanenergy.org/programs/>

# 3. EV Programs (2 of 2)

## Priority Zone DC Fast Charging Incentives Program Now Live!

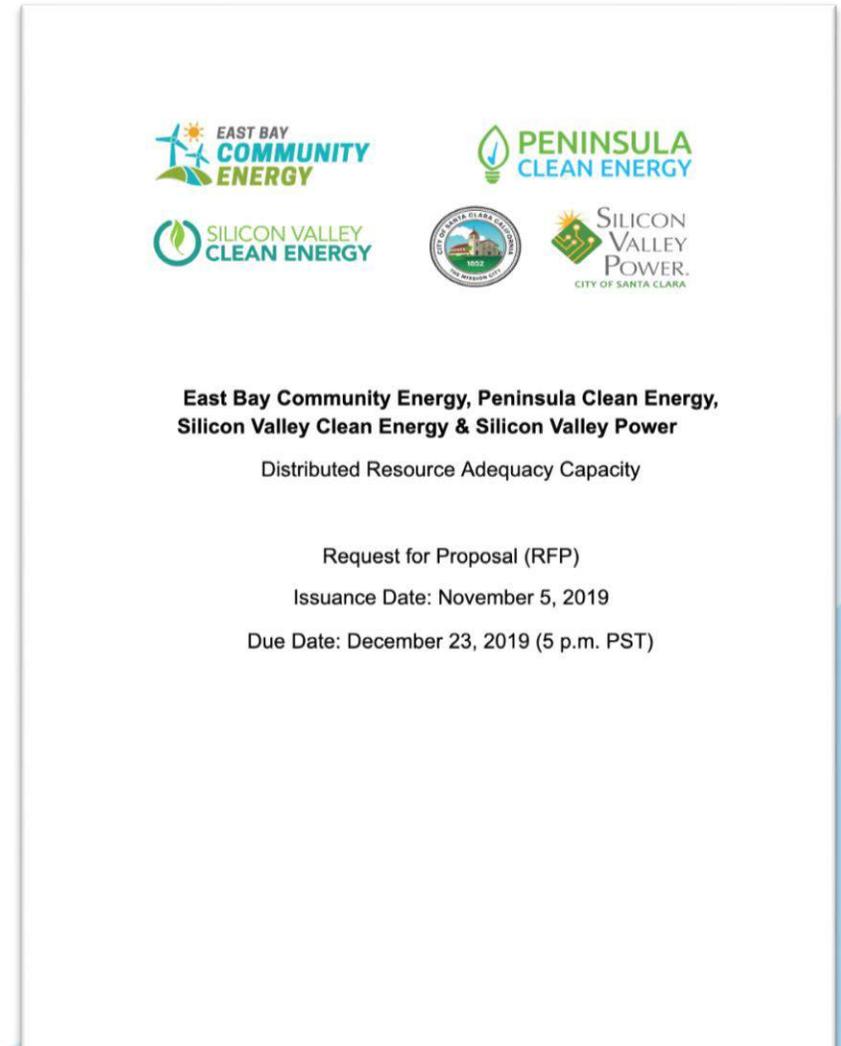
- Providing incentives in addition to CALeVIP for sites located near identified concentrations of multifamily housing
- SVCE will competitively select winning sites after application window closes
- Building relationships with charger developers, multifamily owners and residents
- Part of SVCE's multi-program support for multifamily EV market transformation



Additional information online  
at: <https://www.svcleanenergy.org/dcfastchargers/>

# 4. 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**



# 5. Customer Resource Center

- CRC provides online tools for community to learn about, see the value of, and take action to transition to electric vehicles and appliances.
- Approved with Decarb Roadmap
  - \$350k approved with Roadmap
  - \$250K annually for ongoing operation in FY2021, FY2022
- Website redesign and contract negotiations with vendors providing tools underway. Phased launch in Q3.



# 6. Other Updates

- SVCE submitted a **grant proposal to work with member agencies on energy resilience planning** to the CA Resilience Challenge from the Bay Area Council. Award decision anticipated in April.
- SVCE provided a support letter to Lawrence Berkeley Nat'l Lab for a CEC grant to create a **long-duration energy storage technology roadmap**. Award decision anticipated in Summer 2020.
- On Feb 14, SVCE guest lectured at **UC Davis's Sustainable Energy Immersion graduate course**. Aimee Bailey and Nick Pappas (CalCCA) co-led the class through a case study on building decarbonization challenges and opportunities.



Aimee Bailey, Alan Meier (Lawrence Berkeley), Nick Pappas (CalCCA) at UC Davis campus

# 1. Outreach Events & Sponsorships

Staff continues to meet with various key customers and stakeholders in the community. At the recent Acterra GoEV workshop, SVCE presented on CALeVIP and upcoming EV infrastructure programs. Tabling and presenting at community events helps inform customers on SVCE's latest news.

Past and upcoming events:

Date	Time	Description	Location
Feb. 14	8 AM – 2 PM	2020 State of the Valley Conference – <i>sponsor</i>	San Jose McEnery Convention Center
Feb. 23	2 – 4 PM	Acterra GoEV Workshop- <i>sponsor &amp; tabling</i>	Sunnyvale
Mar. 7	11 AM – 5 PM	Pathways to Climate Smart Careers- <i>sponsor &amp; tabling</i>	Fairmont San Jose
Mar. 25	5 – 7:30 PM	Chamber Business Expo - <i>tabling</i>	Mountain View
Mar. 29	11 AM – 4 PM	Holi Festival – <i>tabling</i>	Cupertino



Tabling at the Acterra GoEV Workshop

# 2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.25%	96.26%
Commercial	96.3%	



# 3. Member Agency Working Group Update

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

- Items
  - Level-of-Service to Vehicle-Miles-Traveled
- SVCE Updates
  - Priority Zone DC Fast Charging
  - Resilience RFP
  - Building Decarb Joint Action Plan RFP
  - HPWH & Reach Codes



# 4. Community Engagement Programs

## SVCE Education Fund:

SVCE has awarded five student organizations with funding for their climate related projects.



- Climate Youth Ambassador Program, regional – Conducting climate education to elementary students and the community
- Young Women Leaders (AAUW-Morgan Hill), regional – Hosting the Young Women Leaders Conference with a focus on climate change
- Saratoga eFish, Saratoga HS - Designing and building an electric vehicle prototype for the Shell EcoMarathon
- Silicon Valley Youth Climate Action, regional – Hosting the second annual Youth Climate Summit for environmental action
- Youth Environmental Power Initiative, Monta Vista HS – Creating climate videos and holding student conference on sustainability



# 5. Media

## Latest SVCE News

- [GridShift Hackathon Winners Take Home \\$16,000](#), Press Release, 02-11-20
- [Clean Financial Audit for Local Energy Agency](#), Press Release, 02-24-20

## News Mentions

- [Is Ormat Stock Ready to Surge On a Geothermal Power Comeback](#), *The Motley Fool*, 02-04-20
- [The Central Coast turns to geothermal vents for after-hours power](#), *Monterey County Now*, 02-06-20
- [Sunnyvale community briefs](#), *The Mercury News*, 02-10-20
- [SJW Group cuts emissions with clean energy, biofuels, solar installations](#), *Smart Energy Decisions*, 02-13-20





## SVCE Regulatory and Legislative Update

March, 2020

Hilary Staver, Manager of Regulatory and Legislative Affairs

The best way to summarize February is that it set us up for an extremely busy March. Between the Proposed Decisions in the Integrated Resource Planning and PCIA reform proceedings, the stakeholder proposals in the Resource Adequacy proceeding, and the imminently forthcoming draft CPUC staff report on further expansion of Direct Access, stakeholders were given a lot of new ideas and proposals to digest and respond to. On the other hand, we got some closure on the 2020 PCIA rates after a drawn-out ERRA proceeding culminated in a Decision on 2/27/20.

### Regulatory

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

The CPUC continues to wrap up the final stages of setting the 2020 Power Charge Indifference Adjustment (PCIA) and the PG&E rates that SVCE's rates compete with.

Setting the PCIA and PG&E's rates happens every year via the **Energy Resource Recovery Account (ERRA)** forecast proceeding. **On 2/27/20, the CPUC approved and issued a Decision with final PCIA and rate numbers for 2020 in PG&E's ERRA proceeding.** The Decision results in a forecast uncapped system average PCIA of 4.1 ¢/ kWh (a 55% 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 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 5.4 ¢/kWh, a 100% increase over 2019, beginning Q3 2020. SVCE and other CCAs' advocacy with the CPUC Commissioners' offices to make a final push on the contested items paid off with the Decision mainly aligning with the Joint CCA position. However, continuing advocacy to reconcile the cap with the undercollection mechanisms is ongoing.

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. **Counsel and CCA staff met with the lead Commissioner's advisors on 3/2 to go over contested issues.** 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)***

[Resource Adequacy](#) is the main program the CPUC uses to ensure that there is enough generating capacity on the system each year to meet peak demand. We currently have two proceedings open.

The older proceeding, [R.17-09-020](#), doesn't have much news this month. The last remaining open issue in this proceeding is the creation of a central buyer for local RA. Last year CalCCA and seven other parties brought a [settlement proposal](#) for the design of such a central buyer before the Commission in August 2019. The Commission has yet to respond to the proposal or otherwise rule on the structure of the central buyer, but we're expecting a Decision sometime in Q1 or Q2 of 2020.

This leads us into the newer RA proceeding ([R.19-11-009](#)), which will focus heavily on reviewing how much RA credit different types of resources are eligible for and other updates to the RA program. Later this year, it will also tackle 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 it lays out a very heavy schedule driving towards several Decisions by the end of Q2 2020. One of the highest priority issues for SVCE in this proceeding is how RA credit is calculated for hybrid resources such as solar plus storage, which SVCE and many other CCAs are building and which we need much more of to meet our statewide GHG reduction targets. **On 2/21/20 about a dozen different stakeholder proposals were submitted to the CPUC with suggested changes to the RA accounting framework. SVCE and CalCCA are currently reviewing these in preparation for comments due 3/23/20.**

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

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. **On 2/21/20 the CPUC released a [Proposed Decision](#) with the final version of the Reference System Plan for the 2019-2020 IRP cycle, along with updated compliance materials for the 2020 IRPs (due 7/1/2020).** SVCE is working with CalCCA to review and develop comments on the PD while continuing work on our own IRP. SVCE staff will provide a verbal update on the IRP work at the March Board meeting.

### ***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. SVCE has 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. CalCCA staff answered CPC staff questions regarding graphics used in the comments which the CPUC intends to incorporate into their findings. **The CPUC has indicated that they will release a draft version of the study for review by 3/9/20.** Depending on the recommendations of the study, SVCE may need to engage with DA-related legislation introduced in response to the study later in the 2020 legislative session.



### ***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, then went quiet for a while before the Commission issued a Proposed Decision on the outstanding issues on 2/25/20.** The PD notably requires the investor owned utilities to show the PCIA as a separate line item on all customer bills by 1/1/21 to accommodate their IT workflow. 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, submitted its final report to the CPUC on 2/21/20.** The report includes proposals for allocating GHG-free resources, RPS resources, and system/flex/local RA from the IOUs' portfolios to CCAs on a voluntary or involuntary basis (depending on the resource type). A final Decision from the Commission on these allocation proposals is expected in Q2 2020. **SVCE and CalCCA are currently developing responses to both the Working Group 1 PD and the Working Group 3 report.**

### **Legislative**

With the 2/21/20 bill introduction deadline behind us, focus now shifts to identifying key bills and preparing for the first round of policy committee hearings. The newly elected Legislative Ad Hoc Committee of the Board met for the first time on 3/4/20 to review CalCCA-lead efforts on PCIA reform and the development of a residual central buyer for RA, as well as other areas of interest. CalCCA will be holding its lobby day on 3/10, which will be attended by SVCE staff, lobbyists, and representation from the SVCE Board.

MARCH 2020

APRIL 2020

MAY 2020

JUNE 2020

MILESTONES

**Board of Directors, March 11:**

**Board of Directors, April 8:**

**Board of Directors, May 13:**

**Board of Directors, June 10:**

Consent:  
Minutes  
January 2020 Treasurer Report  
Approve Conflict of Interest Code CHanges

Consent:  
Minutes  
February 2020 Treasurer Report  
Resilience RFP Awards

Consent:  
Minutes  
March 2020 Treasurer Report

Regular Calendar  
Presentation of Mid-year budget - Tentative  
PPA Approval  
Rates Update  
IRP Results and Recommended Draft IRP

Regular Calendar  
2020 Bike to the Future Recap  
Rates Approval - Tentative  
Approval of IRP

Regular Calendar  
Strategic Plan Update

**Executive Committee, March 27:**

**Executive Committee, April 24:**

**Executive Committee, May 22:**

**Executive Committee, June 26:**

IRP Review  
Rates Update  
Board Succession Module Update

Resilience RFP Update

Strategic Plan Update

**Finance and Administration Committee, TBD:**

Power Prepay Agreement  
Budget Update



### Staff Report – Item 3

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**Item 3: 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: 3/11/2020

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#### **RECOMMENDATION**

Staff requests that the Board accept an informational update on its efforts related to development of the 2020 Integrated Resource Plan (IRP).

#### **BACKGROUND**

At the direction of the Board, and to comply with state law, staff has developed alternative portfolios intended to meet California’s clean energy mandates and SVCE’s carbon-free goals over the next ten years. SVCE is required to develop an IRP every two years describing, among other things, its energy and capacity procurement goals for the next ten years. The 2020 IRP covering 2021 through 2023 is due to the California Public Utilities Commission (CPUC) by July 1, 2020.

#### **DISCUSSION**

SVCE utilized Ascend Analytics to assist with the evaluation of alternative portfolios and performance relative to key goals including decarbonization, affordability and reliability. Ultimately, SVCE will need to select a preferred portfolio of resources to submit as part of its 2020 IRP. At the March 11, 2020 Board of Directors’ meeting, SVCE staff will provide an oral update on its progress towards selecting a preferred portfolio of resources.

#### **FISCAL IMPACT**

Acceptance of the informational update does not have a fiscal impact.



## Staff Report – Item 4

**Item 4: Adopt Resolution Authorizing the Chief Executive Officer to Execute Renewable Power Supply Power Purchase Agreements with Coso Geothermal Power Holdings LLC, and Any Necessary Ancillary Agreements and Documents**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources

Date: 3/11/2020

### **RECOMMENDATION**

Adopt Resolution No. 2020-10 (Attachment 1) authorizing the CEO to execute in substantial form the Power Purchase Agreement (PPA) with Coso Geothermal Power Holdings LLC., (“Coso”) for existing geothermal renewable supply from its Coso Geothermal Project (Attachment 2) and any necessary ancillary documents. Power delivery term: January 1, 2022 to December 31, 2036 (15 years), in an amount not to exceed \$330,754,000.

### **BACKGROUND**

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

The RFO closed on May 17, 2019 with more than one-hundred and eighty-seven (187) offers submitted from fifty-four (54) distinct projects including renewable energy from new and existing solar, solar plus storage, small hydroelectricity, wind and geothermal. Most of these proposed projects are located in California, while some were in neighboring states. SVCE and MBCP undertook an extensive screening, evaluation, ranking and economic analysis to develop a short-list of projects for further consideration and negotiations. The Coso Geothermal Project was offered into the Joint RFO by Middle River Power (“MRP”) who has the rights to market the output from the project. The Coso geothermal project was selected through this process and negotiations started in August 2019.

Six projects were shortlisted. One of the six (Ormat Geothermal) was approved by the Board in January. Negotiations continue with four additional developers and/or project owners. These four projects are all Solar with Storage projects. All six shortlisted projects qualify as PCC1 RPS resources and are expected to come on-line by 2023. Table 1 is a summary of SVCE’s progress towards meeting the long-term RPS goals and mandates.

<sup>1</sup> [https://www.svcleanenergy.org/wp-content/uploads/2019/05/SVCE-MBCP-2019-Carbon-Free-RFP-Protocol-Updated\\_05-06-2019.docx](https://www.svcleanenergy.org/wp-content/uploads/2019/05/SVCE-MBCP-2019-Carbon-Free-RFP-Protocol-Updated_05-06-2019.docx)

**Table 1: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period without Coso Geothermal**

	<b>2021-2024</b>	<b>2025-2027</b>	<b>2028-2030</b>
1. State Mandated RPS per Compliance Period - % of Retail Sales	40%	50%	60%
2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts	65%	65%	65%
3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)	26%	33%	37%
<b>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (Ormat geothermal, wind &amp; solar plus storage)</b>	<b>22.0%</b>	<b>24.0%</b>	<b>25.0%</b>

**DISCUSSION/ANALYSIS:**

Coso is an existing geothermal project built in 1987 comprised of four geothermal plants and nine turbines which and can produce up to 270 megawatts (MW) of electricity. The project is located at the U.S. Naval Weapons Center in Inyo County. Coso Operating Company, LLC. operates and maintains the project and holds the lease for the geothermal site with the U.S. Navy and the Bureau of Land Management. The Coso project had been under a long-term PPA with Southern California Edison Co. (SCE) which expired on January 31, 2019.

For the first five years of the PPA (2022 through 2026) SVCE will receive the output associated with approximately 43 MW. For the remaining term of the PPA (2027 through 2036), the PPA then steps down to reflect output from 28 MW. The project has a one percent annual degradation rate and is offered at a fixed price per megawatt hour (MWh) over the 15-year PPA with annual escalators. The PPA includes a discounted price should SVCE achieve and maintain an investment grade credit rating. An investment grade rating would result in savings of \$6.5 million over the life of the contract. The attached redacted PPA reflects the terms of SVCE's share of the project.

***Project Summary***

<b>Counterparty</b>	Coso Geothermal Power Holdings, LLC ("Coso")
<b>Product</b>	Bucket 1 (PCC1) Renewable Energy, existing geothermal
<b>Delivery Term</b>	15 years (January 1, 2022 through December 31, 2036)
<b>Project Name</b>	Coso Geothermal
<b>Location</b>	Inyo County, California
<b>Average Annual Contract Capacity</b>	Years 1 to 5: 43 MW Years 6 to 15: 28 MW
<b>Percentage of Retail Load Served</b>	Years 1 to 5: 10% Years 6 to 15: 6% Overall: 7%
<b>Contract Price Structure</b>	Fixed price per MWh with annual escalator

### ***Project Value and Merits***

Because geothermal is a baseload resource, it is expected to operate 24x7 unlike solar and wind resources which are considered intermittent. The baseload nature of the resource will better position SVCE to deliver carbon-free electricity in more hours of the day throughout the year while also helping meet SVCE's RPS requirements. State regulations continue to point to carbon-free electricity deliver over all hours of all seasons. Geothermal power provides strategic value to meet these requirements and may also prove to be a valuable resource for some of SVCE's larger customers desiring to have carbon-free resources which better meet their hourly load needs

The expected energy value (i.e., hourly compensation from the CAISO) associated with the project is favorable under various future market conditions. For starters, geothermal's generation profile is complementary to photovoltaic solar resources as it operates as a baseload resource even when solar and wind is not operating. These complementary hours have shown to carry a higher energy value which is expected to increase as more solar is added to the grid. Additionally, geothermal is not likely to be curtailed due to overgeneration and/or experience negative pricing at levels expected for wind and solar.

The carbon-free energy generated from the Project will meet approximately seven percent (7%) of SVCE's energy needs and four to six percent of SVCE's peak needs over the PPA term. On an annual basis, an average of 400 MW of system resource adequacy (RA) capacity is expected from the Project, which based on current California Public Utility Commission (CPUC) rules would count towards SVCE's overall RA requirements and provide reliability capacity to California's grid. Geothermal power provides much more RA capacity and therefore contributes to reliability in a much more effective manner than solar and wind technologies. Additionally, staff does not expect that the regulators will reduce the amount of capacity that can be counted for geothermal over time since the operating characteristics and the value to provide overall grid reliability from geothermal is proven.

Since Coso is an existing facility it does not carry development risk as do projects which are yet to be built. Additionally, SVCE does not expect that all the new resources contracted for or are in the process of contracting for will actually be developed.

The Coso geothermal project is a conventional facility and thus produces small amounts of anthropogenic emissions<sup>2</sup>. The inclusion of this project will result in incremental annual electricity supply emissions equivalent to 3.8 to 5.0 pounds of CO<sub>2</sub> per MWh depending on annual generation, comparable to SVCE's de minimis emissions in past years<sup>3</sup>. These emissions will be reported on SVCE's annual power content label or will be offset through the purchase of additional carbon-free resources. Overall, the geothermal project has significantly less (~90% less) supply emissions compared to a conventional natural gas power plant which could be 33.6 to 51.6 pounds of CO<sub>2</sub> based on an equivalent amount of generation as the Coso project.

### ***RPS Compliance***

SB350, passed in 2016, requires Load Serving Entities (LSE) such as SVCE to acquire a minimum of 65% of the state mandated RPS requirement through long-term PPAs (10 years or greater) starting with Compliance Period No. 4 "CP4" (2021-2024). The mandated overall RPS for CP4 is 40%, thus the long-term RPS procurement requirement is 26%. SVCE's existing PPAs will achieve a combined 22% RPS in CP4. The inclusion of the recommended Project will bring SVCE's long-term RPS in CP4 to 29% which is 3% above California's mandated long-term RPS requirement of 26%.

<sup>2</sup> For anthropogenic emissions associated with geothermal resources, the California Air Resources Board attributes 70 pounds of CO<sub>2</sub> per MWh, while The Climate Registry's Electric Power Sector protocol attributes 56 pounds per MWh.

<sup>3</sup> For comparison, in 2017 and 2018, SVCE reported supply portfolio emissions of 0.25 and 4.32 pounds of CO<sub>2</sub> per MWh, respectively. An equivalent amount is expected to be reported in 2019.

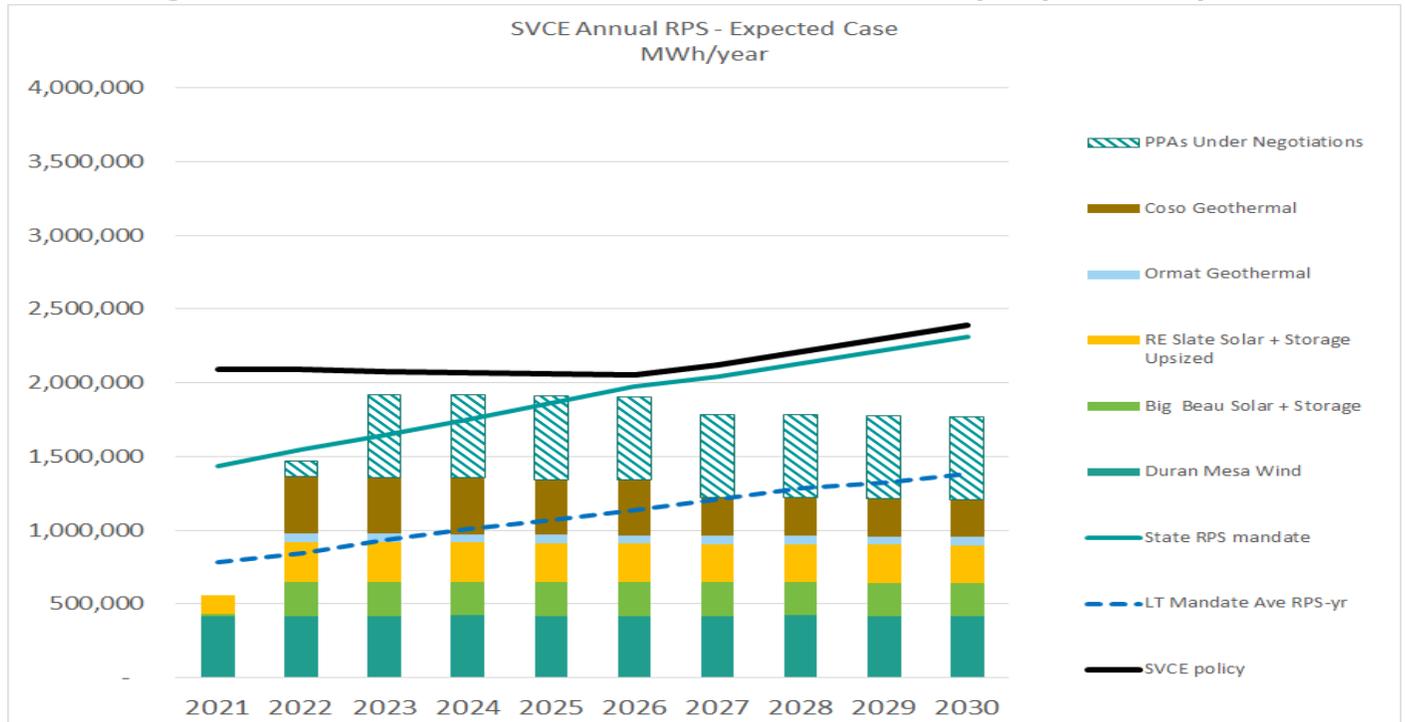
**Table 2: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period**

	2021-2024	2025-2027	2028-2030
1. State Mandated RPS per Compliance Period - % of Retail Sales	40%	50%	57%
2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts	65%	65%	65%
3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)	26%	33%	37%
<b>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (Ormat geothermal, wind &amp; solar plus storage)</b>	<b>22.0%</b>	<b>24.0%</b>	<b>25.0%</b>
<b>5. SVCE: RPS Achieved with Proposed Coso Geothermal Project</b>	<b>29.0%</b>	<b>33.0%</b>	<b>31.0%</b>
<b>6. Open Position relative to State Mandate (Row #3) +Above/(-) Short</b>	<b>+3%</b>	<b>0%</b>	<b>-6%</b>

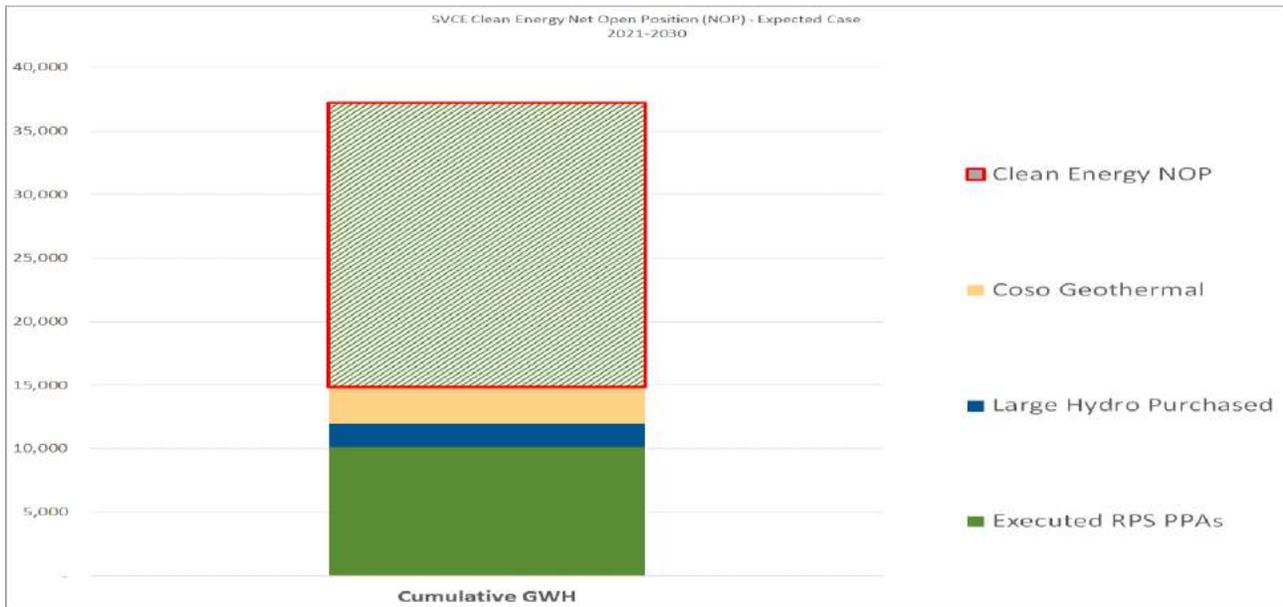
With the inclusion of Coso, and assuming all other contracted-for projects are developed or developed on time, SVCE will have met the long-term procurement mandates under SB 350 for CP4. Additional resources are being negotiated to a) accommodate variations in energy deliveries due to delays in construction from one or more projects; and b) meet SVCE’s overall clean energy goals.

Figure 1 illustrates SVCE’s progress towards meeting the Board-approved annual target of 50% RPS and mandated RPS under SB100. Figure 2 illustrates SVCE’s progress towards meeting its 100% clean energy goals through 2030 which is met with RPS-eligible and other carbon-free resources such as large hydroelectricity. Additional RPS resources will need to be sought to satisfy the Board-approved RPS policy and state mandates. Staff anticipates issuing a new request for proposal in the coming months.

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



**Figure 2: SVCE Clean Net Open Position with Coso Geothermal Project (2021-2030)**



**STRATEGIC PLAN**

SVCE’s Strategic Plan, Goal #10; Strategies 10.1.2 and 10.3.1, directs staff to acquire long-term agreements to meet California’s long-term renewable mandate and diversify deployment of renewable technologies. Approval of the resolution and execution of the Coso Geothermal Power Holdings LLC agreement will help satisfy Goal #10.

**ALTERNATIVE**

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

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

**FISCAL IMPACT**

The fiscal impact of the SVCE/ Coso Geothermal Power Holdings, LLC PPA will not exceed \$330,754,000 over the term of the PPA. All costs associated with the project will be included in the budget beginning in fiscal year 2021-2022.

**ATTACHMENTS**

1. Resolution 2020-10 Delegating Authority to the CEO to execute a PPA for Renewable Supply (PCC1) with Coso Geothermal Power Holdings LLC., and any necessary ancillary documents
2. SVCE/Coso Redacted Power Purchase Agreement

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

**RESOLUTION NO. 2020-10**

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

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

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

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

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

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

**WHEREAS**, one of the providers selected by SVCE through this competitive process is COSO GEOTHERMAL POWER HOLDINGS, LLC, based on its desirable offering of Products, pricing, and terms;

**WHEREAS**, Staff has presented to the Board, and the Board has reviewed, the negotiated form of a Power Purchase Agreement between SVCE and COSO GEOTHERMAL POWER HOLDINGS, LLC;

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

**WHEREAS**, the Board also wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Power Purchase Agreement and to do all things necessary or appropriate for the execution and delivery of, and the performance of SVCE’s obligations under, the Power Purchase Agreement and any other ancillary documents required for said purchase of power from COSO GEOTHERMAL POWER HOLDINGS, LLC.

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

Section 1. The Board hereby delegates authority to the Chief Executive Officer to execute the Power Purchase Agreement with COSO GEOTHERMAL POWER HOLDINGS, 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 three hundred thirty million seven hundred fifty-four thousand dollars (\$330,75,000.00) over the fifteen-year term.

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

**ADOPTED AND APPROVED this 11<sup>th</sup> day of March, 2020 by the following vote:**

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Montano				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

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**Chair**

**ATTEST:**

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**Clerk**

**CONFIDENTIAL  
PROPOSED EXECUTION VERSION**

**RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

**Seller:** Coso Geothermal Power Holdings, LLC, a Delaware limited liability company

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

**Description of Facility:** A geothermal project located in Inyo County, California with a current generating capacity of 130 MW, as further described in Exhibit A.

**Delivery Term:** Fifteen (15) Contract Years.

**Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

**Expected RA:**

Contract Year	Expected RA (MW)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

**Installed Capacity:** 130 MW, subject to annual degradation of [REDACTED] per Contract Year (“**Installed Capacity Degradation**”).

**Buyer’s Contract Capacity:** Installed Capacity times (a) [REDACTED] for Contract Years [REDACTED] and (b) [REDACTED] for Contract Years [REDACTED].

Contract Year	Buyer’s Contract Capacity (MW)
1	
2	
3	
4	





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**Exhibits:**

Exhibit A	Facility Description
Exhibit B	Reserved
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Reserved
Exhibit F-1	Form of Average Expected Energy Report
Exhibit F-2	Form of Monthly Available Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Letter of Credit
Exhibit I	Form of Replacement RA Notice
Exhibit J	Notices
Exhibit K	Operating Restrictions
Exhibit L	Metering Diagram
Exhibit M	Form of Guaranty

## RENEWABLE POWER PURCHASE AGREEMENT

This 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 owns, and operates 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 3.11.

“**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.

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\_\_\_\_\_  
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“**Ancillary Services**” means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, other products associated with Buyer’s Output Share

of the electric generation and Energy that the Facility is capable of providing and all other beneficial outputs associated with Buyer's Output Share not required for the operation of the Facility. For the avoidance of doubt, the Ancillary Services shall exclude the Green Attributes and associated RECs, as well as the Green Tag Reporting Rights and Tax Credits.

“**Annual Supply Plan**” means the Supply Plan for the Facility submitted by (or on behalf of) Seller on an annual basis pursuant to the CAISO Tariffs, as further described in the CAISO Reliability Requirements Business Practices Manual.

“**Approved Replacement Product Schedule**” means a schedule setting forth how and when Seller will deliver Replacement Product to Buyer pursuant to Section 4.7 where (a) Seller submits to Buyer a proposed schedule for delivering Replacement Product pursuant to Section 4.7 within ten (10) days prior to the first day of such proposed delivery of Replacement Product by Seller, (b) Buyer's (i) acceptance of such proposed schedule, (ii) delivery to Seller of proposed revisions to Seller's proposed schedule or (iii) deemed acceptance of Seller's proposed schedule, if Buyer fails to respond in accordance with subparts (b)(i) or (b)(ii) of this definition within five (5) days after receiving Seller's proposed schedule and (c) Seller's incorporation, if applicable, of any commercially reasonable proposed revisions timely received from Buyer.

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

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

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT) 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 Contract Capacity**” has the meaning set forth on the Cover Sheet.

“**Buyer's Annual Energy Share**” has the meaning set forth on the Cover Sheet.

“**Buyer's Output Share**” has the meaning set forth on the Cover Sheet.

**“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 Facility Energy and 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 Buyer’s Output Share, not to exceed the Expected RA for the applicable Contract Year, of 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.

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

**“CEC Certification and Verification”** means that the CEC has certified 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.

**“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, 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 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.

“**CIRA Tool**” means the CAISO Customer Interface for Resource Adequacy.

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

“**Compliance Actions**” has the meaning set forth in Section 3.11.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.11.

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

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

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

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Delivery Term Start Date and each subsequent Contract Year shall commence on the anniversary of the Delivery Term Start 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, Fitch or Moody's. If ratings by S&P, Fitch 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 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 an outage on the Participating Transmission Owner's transmission facilities, other than a System Emergency, that is not caused by Seller's actions or inactions 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.

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.3.

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

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

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

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

**"Delivered Energy"** means for each hour, the as-available electric energy generated by the Facility, associated with Buyer's Output Share (plus any additional Scheduled Energy in excess of the Expected Energy, as contemplated in Exhibit C), and not to exceed the Scheduled Energy for such hour, which is net of Electrical Losses and Station Use and delivered to the Delivery Point, as measured by a CAISO Approved Meter.

**"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 Delivery Term Start Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

**“Delivery Term Start Date”** means January 1, 2022.

**“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 between the Facility and the Delivery Point, including losses 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, expressed in units of kilowatt-hours or MWh.

**“Environmental Costs”** means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Facility’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 or Facility, 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, marketable emission trading credits, and 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 a Site or the Facility.

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

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

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

**“Expected RA”** means the quantity of Resource Adequacy Benefits attributable to Buyer’s Contract Capacity that Seller agrees to deliver to Buyer 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 Energy”** means the 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.

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

**“Fitch”** means Fitch Ratings, Inc., and its successors in interest.

**“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 generation 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 benefits to the environment from the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include Energy, Ancillary Services, Capacity Attributes or Tax Credits, including 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. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Gains and shall use information available to it

internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

**“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 Buyer’s Output Share of 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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 Energy Production”** means eighty-five percent (85%) of the total Buyer’s Annual Energy Share, measured in MWh, for the applicable Performance Measurement Period.

**“Guarantor”** means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P, a Credit Rating of BBB- or better from Fitch, or a Credit Rating of Baa3 or better from Moody’s, (c) has a tangible net worth of [REDACTED], (d) is

incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (e) 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 M, or as reasonably acceptable to Buyer.

“**Hazardous Substance**” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“**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.

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

“**Installed Capacity Degradation**” has the meaning set forth on the Cover Sheet.

“**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 required to satisfy the terms and conditions of this 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.

“**Investment Grade Credit Rating**” means with respect to a Person, that such Person has a Credit Rating of at least BBB- with an outlook designation of “stable” from S&P, BBB- with an outlook designation of “stable” from Fitch, or Baa3 with an outlook designation of “stable” from Moody’s.

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

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

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

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

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (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.

**“Lender Possession”** has the meaning set forth in Section 14.2(f).

**“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, A- with an outlook designation of “stable” from Fitch 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 H.

**“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. A Party shall use commercially reasonable efforts to obtain third party information in order to determine Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

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

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

“**Metering Diagram**” means that certain diagram set forth in Exhibit L.

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

“**Monthly Supply Plan**” means the Supply Plan submitted by (or on behalf of) Seller on a monthly basis pursuant to the CAISO Tariffs, as further described in the CAISO Reliability Requirements Business Practices Manual.

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

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

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

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

“**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.

“**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.

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

“**Pacific Prevailing Time**” or “**PPT**” means the local time in the State of California.

“**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, (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)

[REDACTED]; and

(b) at least one (1) year 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.

“**Physical Trade**” has the meaning set forth in the CAISO Tariff.

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

“**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 which, for the avoidance of doubt, the Parties agree is limited to Buyer’s Output Share of Delivered Energy, Green Attributes (Portfolio Content Category 1), Capacity Attributes, and Ancillary Services.

[REDACTED]

“**Production Forecast**” means, for any given period of time, the Facility’s average historical production during the same calendar month for the prior three (3) years, without factoring in any Lost Output Periods during such months.

“**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 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 safety and 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 Deficiency Amount**” has the meaning set forth in Section 3.8.

“**RA Excusable Event**” means (i) any event caused by a Planned Outage that is noticed prior to the RA Notification Deadline, (ii) the CAISO’s reduction in Facility NQC (as defined by CAISO) as a result of a change in Law occurring after the Effective Date or (iii) if generation asset(s) of the Facility are unavailable as a result of a Force Majeure Event.

**“RA Notification Deadline”** means ten (10) Business Days before the relevant deadlines for Buyer’s compliance with the resource adequacy requirements of the CPUC applicable to the relevant month during the Delivery Term.

**“RA Shortfall”** means the amount in MW equal to the positive difference, if any, of (i) the Expected RA amount for the applicable Contract Year, less (ii) the total amount of the Resource Adequacy Capacity identified and confirmed in the applicable Monthly Supply Plan for each day of an applicable month during the Delivery Term pursuant to Section 3.7(a), plus any Replacement RA provided in accordance with Section 3.7(a)(iv).

**“RA Shortfall Month”** means any month during the Delivery Term when there is an RA Shortfall.

**“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.

**“Renewable Energy Credit”** or **“REC”** 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 CAISO.

**“Resource Adequacy Availability Incentive Mechanism”** has the meaning given to such term by CAISO.

**“Resource Adequacy Benefits”** means Buyer’s Output Share of 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 Capacity”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Plan”** has the meaning set forth in the CAISO Tariff and, for purposes of this Agreement, that is submitted by Buyer.

**“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, 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 amount of Energy associated with an Inter-SC Trade between Seller and Buyer (or their designee) in the Day-Ahead Market.

**“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.

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

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

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

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

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

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

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

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

holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

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

“**Station Use**” means:

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

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

“**STC**” means the standard terms and conditions adopted by the California Public Utilities Commission to be incorporated into renewable energy agreements pursuant to the California Renewables Portfolio Standard.

“**Supply Plan**” has the meaning set forth in the CAISO Tariff.

“**System Emergency**” means (x) 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, or (iii) to preserve Transmission System reliability or (y) a “System Emergency”, or any equivalent term, as defined by CAISO or by the PTO.

“**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.

“**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 within the CAISO Grid from the Delivery Point.

“**Ultimate Parent**” means CGP Holding, LLC, a Delaware limited liability company.

“**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 terms “include” and “including” mean “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 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, 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) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all required conditions thereof have been satisfied and shall be in full force and effect;

(b) 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 Delivery Term Start 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

(as defined by CAISO) 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 in accordance with Section 3.10(a);

(c) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement and in accordance with 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 (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term, at no cost or liability to Seller, 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, or any component thereof, 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. 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 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 3.11, 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 3.11); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Reserved.**

3.7 **Capacity Attributes.**

(a) Throughout the Delivery Term and subject to Section 3.11, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility. During each month of the Delivery Term, Seller shall deliver the Capacity Attributes to Buyer by submitting a Monthly Supply Plan to CAISO identifying and confirming the Resource Adequacy Capacity associated with the Capacity Attributes to Buyer (or Buyer's designee). Subject to Buyer's instructions in accordance with Section 3.7(a)(ii), the total amount of such Resource Adequacy Capacity identified and confirmed for each day of each month during the Delivery Term shall equal the Expected RA for each applicable Contract Year, less any amounts attributable to an RA Excusable Event. Seller shall submit, or cause the Facility's Scheduling Coordinator to submit, Monthly Supply Plans on a timely basis with respect to each month during the Delivery Term in accordance with the CAISO Tariff and CPUC requirements.

(i) If CAISO rejects either the Annual Supply Plan, Monthly Supply Plan or Resource Adequacy Plan with respect to any part of the Capacity Attributes during the Delivery Term, Buyer and Seller 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.

(ii) Seller will have delivered and Buyer will have received the Capacity Attributes if (A) Seller's Monthly Supply Plan is accepted by CAISO for the applicable month during the Delivery Term in compliance with Buyer's instructions, including Buyer's instruction to withhold all or part of the Capacity Attributes from Seller's Monthly Supply Plan for the applicable month during the Delivery Term; provided, (I) Buyer provides any instructions within a reasonable amount of time prior to when such Monthly Supply Plan must be submitted in accordance with the CAISO Tariff and CPUC requirements and (II) if Buyer fails to provide instructions to Seller within a reasonable amount of time prior to when such Monthly Supply Plan

must be submitted in accordance with the CAISO Tariff and CPUC requirements, Seller shall submit such Monthly Supply Plan in accordance with Buyer's most recent timely submitted instructions (or, if no instructions have been submitted by Buyer, in accordance with Section 3.7(a)), or (B) Seller correctly submits the Monthly Supply Plan and the Monthly Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool (or otherwise accepted) for any reason other than a Seller error and are rejected by CAISO.

(iii) Seller has failed to deliver the Capacity Attributes if (A) Buyer has elected to submit the Capacity Attributes in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error and are rejected by CAISO or (B) Seller fails to submit the volume of Resource Adequacy Capacity for any month during the Delivery Term in accordance with Section 3.7(a); provided, in each case, such deficiency or rejection by CAISO is not remedied by Seller in the time frames permitted under the applicable regulations or such submissions are otherwise not subsequently accepted by CAISO. Notwithstanding the foregoing, Seller will not have failed to deliver the Capacity Attributes if Buyer fails or chooses not to submit its Resource Adequacy Plan with the CPUC or CAISO in a manner that does not properly identify and confirm the Capacity Attributes and any such Resource Adequacy Attributes.

(iv) If Seller is unable to provide the applicable Capacity Attributes in accordance with Section 3.10(a) for all or a portion of a month during the Delivery Term, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide Replacement RA or, if such inability is due to an RA Excusable Event, reduce the Capacity Attributes committed to Buyer equal to the Capacity Attributes that are not available due to such RA Excusable Event; *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 I at least sixty (60) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

(b) Throughout the Delivery Term and subject to Section 3.11, Seller shall maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide, in accordance with this Agreement, Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.11, Seller hereby covenants and agrees to transfer Resource Adequacy Benefits (which shall be in accordance with Buyer's Output Share) to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.11, Seller shall take all commercially reasonable administrative 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 (which shall be limited to Buyer's Output Share).

3.8 **Resource Adequacy Failure.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (a) the RA Shortfall,

multiplied by [REDACTED].

3.9 **CEC Certification and Verification.** Subject to Section 3.11, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **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. [STC REC-2].

(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 output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.11. The Parties agree any instance of the word "law" in this Section 3.10 shall have the same meaning as the defined term "Law" in this Agreement.

(c) 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. [STC REC-1]. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.11.

(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. [STC 17].

3.11 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement including (a) with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product or (b) Seller's obligations pursuant to Section 3.10, 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 [REDACTED] ("**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with its obligations under this Agreement 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 3.11 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its right to require Seller to take the Compliance Actions that are the subject of such Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions.

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, during the Delivery 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 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 Delivered Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. 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 vested in Buyer. Seller represents and warrants that Seller holds the rights to all such 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 in accordance with this Agreement.

#### 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 applicable 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 dedicated to buyer in accordance with Section 4.1(b) 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 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 Delivery Term Start Date, 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. During the Delivery Term, by 6:30 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 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 hourly expected Energy. Seller (or its SC) shall provide the Day-Ahead Forecast in the form of an Excel or CSV file delivered to Buyer’s File Transfer Protocol (FTP) site as set forth in Exhibit J.

4.4 **Reserved.**

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 consideration 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 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance on a day other than Saturday and Sunday 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 1<sup>st</sup> to September 30<sup>th</sup>, (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 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 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 Default or Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) 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 Default or Curtailment Periods (such period Seller was prevented from delivery to Buyer, the “**Lost Output Period**”). 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 3.11, 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, subject to Section 3.11, transfer the Renewable Energy Credits corresponding to Buyer’s Output Share 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 Delivery Term, 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 required to be transferred pursuant to this Agreement 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 in accordance with this Agreement.

(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 solely by an error or omission of Seller. If any WREGIS Certificate Deficit is caused solely by, 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 Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonable 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, subject to Section 3.11, 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 3.11, execute all documents or instruments reasonably required by Buyer in order for Buyer to obtain Green-E certification for the Facility.

4.10 **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 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.** Subject to the limitations set forth in Section 3.11 (solely with respect to a change in Law occurring after the Effective Date), 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 **Reserved.**

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, if applicable, 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 L, which shall be provided by Seller to Buyer at least thirty (30) days prior to Delivery Term Start Date. 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 ten (10) Business Days after the end of each month of the Delivery Term. 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 Energy and 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 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. 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 3-Month LIBOR rate published on the date of the invoice in The Wall Street Journal or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if (i) 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 or (ii) if a meter is shown to be inaccurate by more than one percent (1%) and if it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS. 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 undisputed 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 damages calculated pursuant to Section 4.8, 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 **Reserved**.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer within thirty (30) days of the Effective Date. 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 end of the Delivery Term, 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 Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Section 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 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 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 Performance Security; and

(c) Liquidate all Performance Security 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** Except as provided in Exhibit D, 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 J 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) 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, 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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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.

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, 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; provided, that such twelve (12) month cure period shall automatically be extended for an additional 180 days if the impacted Party is proceeding diligently to overcome such 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 Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding anything to the contrary, during any period in which Buyer is prevented from performing due to a Force Majeure Event, Seller may sell any Product Buyer is unable to receive to a third party.

## **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 ARTICLE 14, as appropriate; or

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

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

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

(ii) if, in any Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the total Expected Energy amount for such period;

(iii) in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-six percent (66%) of the total Expected Energy amount for such period;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Section 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Termination Payment;

(v) 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, A- by Fitch 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 forty five (45) days prior to the expiration of the outstanding Letter of Credit; or

(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 or (2) 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.

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 the Termination Payment calculated in accordance with Section 11.3 below;

(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 Termination Payment 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 Termination Payment described in this Section 11.3 is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section 11.3 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 Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to 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 liquidated damages or any other remedies are explicitly 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 (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) A THIRD-PARTY IP INFRINGEMENT CLAIM, (C) PART OF AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) 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. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALY 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 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN 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.

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.

(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 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 the operation of the Facility and for Seller 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.

## 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, not to be unreasonably withheld, conditioned or delayed. 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, if required pursuant to Section 14.3, require the prior written consent of the other Party, not to be unreasonably withheld, conditioned or delayed. 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, 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) (collectively, a "**Lender Possession**"), neither Lender nor its transferee shall have any liability or obligation under the Agreement or any related agreements as a result of such Lender Possession, nor shall Lender or its transferee be obligated or required to perform any of Seller's obligations arising under this Agreement or any related agreements, except during any period after such Lender Possession, in which case (i) the obligations of Lender (or its transferee, as applicable) shall be no more than Seller under the Agreement and any related agreements and (ii) Lender (or its transferee, as applicable) shall not be required to perform or be subject to any defenses or offsets by reason of any of Seller's obligations under the Agreement and any related agreements that were unperformed at the time of such Lender Possession (other than any defaults for failure to pay

amounts owed under the Agreement or any related agreements);

(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, 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.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 executed and deliver such further consents, approvals and acknowledgements 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 (beyond customary lender estoppels).

## 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 Affiliates, 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**").

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**”). Such 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 of Claim pursuant to Section 16.2 or to include any specified information reasonably requested by the other Party 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 Indemnified Party that Indemnified 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 [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], 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 [REDACTED]. 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 [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] 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 [REDACTED] 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) **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 cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** “**Confidential Information**” means information, whether oral or written, that is delivered by Seller to Buyer or by Buyer to Seller, including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with 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. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted. The Parties agree to work in good faith to agree on the scope of such redactions and Buyer’s public disclosure of this Agreement, redacted as agreed between the Parties, shall be in accordance with the requirements of Law and this Article 18.

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 (or any of its Affiliates) 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 required of the Disclosing Party, with no liability for any damages that arise from such disclosure. If Seller does take or attempts to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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 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 consented upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

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

19.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **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.

**COSO GEOTHERMAL POWER  
HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SILICON VALLEY CLEAN ENERGY  
AUTHORITY, a California joint powers  
authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Coso Geothermal Project

**Site includes all or some of the following APNs:** [REDACTED]

**County:** Inyo

**CEQA Lead Agency:** County of Inyo

**Type of Facility:** Geothermal

**Operating Characteristics of Facility:** Dual Flash Geothermal System

**Interconnection Point:** [REDACTED]

**Maximum Output:** [REDACTED]

**Delivery Point:** [REDACTED]

**Participating Transmission Owner:** Southern California Edison

**EXHIBIT B**  
**RESERVED**

**EXHIBIT C**  
**COMPENSATION**

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

(a) Delivered Energy. Subject to subparagraph (b) of this Exhibit C, for each MWh of Delivered Energy in each Settlement Period, Buyer shall pay Seller [REDACTED]

(b) Excess Deliveries During a Contract Year. If, at any point in any Contract Year, the amount of Delivered Energy for such Contract Year and subject to subparagraph (c) in this Exhibit C:

[REDACTED]

(ii) [REDACTED]

(c) Excess Energy. [REDACTED]

(d) Replacement Product. [REDACTED]

(e) Tax Credits. The Parties agree that the Contract Price is not 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

(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 the delivery of the Product at the Delivery Point, 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) to Buyer on a Day-Ahead basis using an Inter-SC Trade, as described in paragraph (b) below.

(b) Physical Trades. Before the deadline for submission of IST in the Day-Ahead Market, Seller and Buyer shall submit and match or cause their SCs to submit and match, a Physical Trade "from" Seller's Scheduling Coordinator "to" Buyer's Scheduling Coordinator at the Delivery Point. Such Physical Trade shall specify the MW amounts for the time periods as set forth in the Day-Ahead Schedule submitted by Seller to the CAISO in the Day-Ahead Market, which shall be based upon the Facility's Available Generating Capacity. Such Physical Trades shall be entered in the Day-Ahead Market. With regard to such Physical Trades, Buyer shall perform (or cause to be performed) such actions as necessary to submit and validate a Physical Trade by the "to" Scheduling Coordinator, and Seller shall perform (or cause to be performed) such actions as necessary to match and validate a Physical Trade by the "from" Scheduling Coordinator in a Physical Trade.

(c) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for CAISO Costs and shall be entitled to all CAISO revenues; provided, that, any net costs or charges assessed by the CAISO which are due to a Buyer Default shall be Buyer's responsibility. 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.

(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for the Facility.

**EXHIBIT E**  
**RESERVED**

**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]																								
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:

$$[(A - B) * (C - D)]$$

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



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 such undisputed amounts 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.

As used above:

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

“**Lost Output**” 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 Lost Output Period, which amount shall be calculated as the difference between (a) the Production Forecast, expressed in MWh, applicable to the Lost Output Period, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Lost Output Period, if any; provided that, if the applicable difference is negative, the Lost Output shall be zero (0).

“**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).

“**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 LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US \$ \_\_\_\_\_

Expiry Date: [*1 Year From Issuance*]

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 Coso Geothermal Power Holdings, LLC, 200 W. Madison, Suite 3810, Chicago, IL 60606 (“Applicant”), we, XXXXXXXXXX (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$ \_\_\_\_\_ (\_\_\_\_\_ United States Dollars) (“Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*Month, Day, Year*] (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in substantially 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. [XXXXXXXX] (“Drawing Certificate”).

Such Drawing Certificate must be sent either (but not both) by: (a) courier or first class United States mail to XXXXXXXXXX, attn: Standby Letters of Credit, or (b) facsimile to facsimile number (612) 303-5226, attention: Standby Letters of Credit (provided, however, that such address and facsimile number may be amended by us upon the provision of written notice of such amendment to you). Transmittal by facsimile 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.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to Issuer at XXXXXXXXXXXXXXXXXXXX. 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; provided, the Available Amount shall be reduced by the amount of each such drawing.

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 Expiration Date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date, we have sent to you written notice by overnight courier service that we elect not to 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 expiry 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.

All Issuer charges (including charges for transfers of this Letter of Credit) are for the account of Applicant.

This Letter of Credit shall not be amended except with the written concurrence of Beneficiary, Applicant, and Issuer.

Unless otherwise expressly stated herein, this Letter of Credit is subject to and governed by the rules of the "International Standby Practices 1998", International Chamber of Commerce, Publication No. 590 ("ISP 98"), and as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of California.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at XXXXXXXXXXXXX, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at XXXXXXXXXXX or XXXXXXXXXXX and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Silicon Valley Clean Energy Authority Attn: Girish

Balachandran, CEO 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Bank

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Authorized Signature

[Insert officer name]

[Insert officer title]

**X**

---

Authorized Signature, Applicant  
as authorization to issue in this form

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority ("Beneficiary"), 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by XXXXXXXX (the "Bank") by order of Coso Geothermal Power, LLC (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are parties to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ (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 full 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, a California joint powers authority

\_\_\_\_\_  
[Name and Title of Authorized Representative]

Date \_\_\_\_\_

## EXHIBIT I

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [*SELLER ENTITY*] (“**Seller**”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[*SELLER ENTITY*]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**NOTICES**

<b>Coso Geothermal Power Holdings, LLC ("Seller")</b>	<b>Silicon Valley Clean Energy Authority ("Buyer")</b>
<p><b>All Notices:</b></p> <p>Street: 9460 Double R Boulevard, Suite 104            City: Reno, NV 89521-5916            Attn: Joe Greco            Phone: 775-376-9702            Facsimile:            Email: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></p> <p>With a copy to:</p> <p>Street: 200 W Madison, Suite 3810            City: Chicago, IL 60606            Attn: Karolina Javaheri/Ed Karas</p> <p>Phone: 312-766-4499            Facsimile:            Email: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a>  <a href="mailto:ekaras@mrpgenco.com">ekaras@mrpgenco.com</a></p>	<p><b>All Notices:</b></p> <p>Street: 333 W. El Camino Real, Suite 290            City: Sunnyvale, California Zip: 94087            Attn: Girish Balachandran, CEO            Phone: (408) 721-5301            Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></p>
<p><b>Reference Numbers:</b></p> <p>Duns: [REDACTED]            Federal Tax ID Number: [REDACTED]</p>	<p><b>Reference Numbers:</b></p> <p>Duns: [REDACTED]            Federal Tax ID Number: [REDACTED]</p>
<p><b>Invoices:</b></p> <p>Attn: Karolina Javaheri            Phone: 312-766-4499            Facsimile:            E-mail: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></p>	<p><b>Invoices:</b></p> <p>Attn: Power Supply Group            Phone: (408) 721-5301            Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></p>
<p><b>Scheduling:</b></p> <p>Attn: Chris Ellis            Phone: 760-764-1300 x207            Facsimile:            E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></p>	<p><b>Scheduling:</b></p> <p>Attn: ZGlobal            Phone: (916) 221-4327            Email: <a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></p>

<p><b>Coso Geothermal Power Holdings, LLC</b> ("Seller")</p>	<p><b>Silicon Valley Clean Energy Authority ("Buyer")</b></p>
<p><b>Confirmations:</b> Attn: Joe Greco Phone: 775-376-9702 Facsimile: E-mail: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></p>	<p><b>Confirmations:</b> Attn: Monica Padilla, Director of Power Resources Phone: (408) 721-5301 x1009 Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></p>
<p><b>Payments:</b> Attn: Karolina Javaheri Phone: 312-766-4499 Facsimile: E-mail: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></p>	<p><b>Payments:</b> Attn: Finance Group Phone: (408) 721-5301 Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></p>
<p><b>Wire Transfer:</b> BNK: Wilmington Trust – Revenue Account ABA: [REDACTED] ACCT: [REDACTED]</p>	<p><b>Wire Transfer:</b> BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED]</p>
<p><b>With additional Notices of an Event of Default to:</b></p> <p>Attn: Joe Dubinski Phone: 816-374-3383 E-mail: <a href="mailto:jpdubinski@bclplaw.com">jpdubinski@bclplaw.com</a></p> <p>With a copy to: Attn: Joe Greco Phone: 775-376-9702 Email: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></p>	<p><b>With additional Notices of an Event of Default to:</b></p> <p>Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></p>
<p><b>Emergency Contact:</b> Attn: Control Room Phone: 760-764-1300 x600 E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></p> <p>With a copy to: Attn: Chris Ellis Phone: 760-764-1300 x207 E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></p>	<p><b>Emergency Contact:</b> Attn: Monica Padilla, Director of Power Resources Phone: (408) 721-5301 x1009 Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></p>

**EXHIBIT K**  
**OPERATING RESTRICTIONS**

**N/A**

**EXHIBIT L**  
**METERING DIAGRAM**

*[See next page.]*



**EXHIBIT M**  
**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 Article 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.

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: \_\_\_\_\_



**Staff Report – Item 5**

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**Item 5: Executive Committee Report**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 3/11/2020

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**The Executive Committee met on February 24, 2020 and this item will be addressed as an oral report to the Board.**



**Staff Report – Item 6**

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**Item 6:           Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee Report**

To:               Silicon Valley Clean Energy Board of Directors

Prepared by:   Andrea Pizano, Board Clerk/Executive Assistant

Date:            3/11/2020

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**The Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee met on March 4, 2020 and this item will be addressed as an oral report to the Board.**



# Silicon Valley Clean Energy Board of Directors Meeting

March 11, 2020

## Appendix A

Power Resource Contracts Executed by CEO

**EEI MASTER POWER PURCHASE AND SALE AGREEMENT  
SHORT TERM SALES CONFIRMATION  
BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY  
AND  
SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS  
AUTHORITY**

This confirmation ("Confirmation") confirms the transaction ("Transaction") between Pacific Gas and Electric Company, a California corporation, but limited for all purposes hereunder to its electric procurement and electric fuels functions ("Seller" or "Party B"), and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer" or "Party A"), each individually a "Party" and together the "Parties", dated as of the Execution Date, for the sale and purchase of the Product defined herein.

Except as otherwise expressly stated herein, this Confirmation is subject to, and incorporates by reference with the same force and effect as if set forth herein, all of the terms and provisions of the Parties' EEI Master Power Purchase and Sale Agreement, together with the Cover Sheet, dated as of 10/25/2017 (collectively, "Master Agreement"), and the corresponding Collateral Annex and Paragraph 10 to the Collateral Annex thereto. Such Collateral Annex and Paragraph 10 to the Collateral Annex shall be referred to collectively herein as the "Collateral Annex". The Master Agreement and the Collateral Annex shall be referred to collectively herein as the "EEI Agreement". The EEI Agreement and this Confirmation shall be referred to collectively herein as the "Agreement."

Capitalized terms used but not defined in this Confirmation shall have the meanings ascribed to them in the EEI Agreement, the RPS (defined herein), or the Tariff (defined herein). If there is a conflict between the terms in this Confirmation and those in the EEI Agreement, this Confirmation shall control.

[Standard contract terms and conditions shown in shaded text are those that "may not be modified" per CPUC Decisions ("D.") 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.]

<b>Seller:</b> Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions	<b>Buyer:</b> Silicon Valley Clean Energy Authority, a California Joint Powers Authority
<b>Contact Information:</b> <b>Name:</b> Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions ("Seller" or "Party B")	<b>Name:</b> Silicon Valley Clean Energy Authority, a California Joint Powers Authority ("Buyer" or "Party A")
<b>All Notices:</b> P.O. Box 770000, Mail Code N12E San Francisco, CA 94177  Attn: Candice Chan Director, Energy Contract Management & Settlements Phone: (415) 973-7780 E-mail: <a href="mailto:CWW9@pge.com">CWW9@pge.com</a>	<b>All Notices:</b> 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087  Attn: Monica Padilla Director of Power Resources Phone: (408) 721-5301 ext. 1009 Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a>

	<p align="center"><b>Invoices:</b></p> <p>Attn: Amol Patel Senior Manager, Electric Settlements Phone: (415) 973-6510 Email: <a href="mailto:AXPX@pge.com">AXPX@pge.com</a></p>	<p align="center"><b>Invoices:</b></p> <p>Attn: SVCE power settlements Phone: (408) 721-5301 Email: <a href="mailto:svcepowersettlements@svcleanenergy.org">svcepowersettlements@svcleanenergy.org</a></p>
	<p align="center"><b>Scheduling:</b></p> <p>Attn: Day-Ahead Scheduling Phone: (415) 973-6222 Email: <a href="mailto:DAEnergy@pge.com">DAEnergy@pge.com</a></p>	<p align="center"><b>Scheduling:</b></p> <p>Attn: Eric Vaa (ZGlobal) Phone: (916) 221-4327 Email: <a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></p>
	<p align="center"><b>Payments:</b></p> <p>Attn: Amol Patel Senior Manager, Electric Settlements Phone: (415) 973-6510 Email: <a href="mailto:AXPX@pge.com">AXPX@pge.com</a></p>	<p align="center"><b>Payments:</b></p> <p>Attn: SVCE power settlements Phone: (408) 721-5301 Email: <a href="mailto:svcepowersettlements@svcleanenergy.org">svcepowersettlements@svcleanenergy.org</a></p>
	<p align="center"><b>Wire Transfer:</b></p> <p>BNK: ABA: ACCT: Duns: Federal Tax ID Number:</p>	<p align="center"><b>Wire Transfer:</b></p> <p>BNK: River City Bank ACCT Title: SVCE ABA: [REDACTED] ACCT: [REDACTED] DUNS: 080462990 Federal Tax ID Number: [REDACTED]</p>
	<p align="center"><b>Credit and Collections:</b></p> <p><b>Credit and Collections:</b> Attn: Manager, Credit Risk Management Phone: (415) 972-5188 Email: <a href="mailto:PGERiskCredit@pge.com">PGERiskCredit@pge.com</a></p>	<p align="center"><b>Credit and Collections:</b></p> <p><b>Credit and Collections:</b> Attn: SVCE power settlements Phone: (408) 721-5301 Email: <a href="mailto:svcepowersettlements@svcleanenergy.org">svcepowersettlements@svcleanenergy.org</a></p> <p><b>Collateral:</b> Attn: SVCE power settlements Phone: (408) 721-5301 Email: <a href="mailto:svcepowersettlements@svcleanenergy.org">svcepowersettlements@svcleanenergy.org</a></p>
	<p align="center"><b>Defaults:</b></p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Pacific Gas and Electric Company 77 Beale Street, Mail Code B30A San Francisco, CA 94105 Attn: Legal Department Email: <a href="mailto:routinelaw@pge.com">routinelaw@pge.com</a></p>	<p align="center"><b>Defaults:</b></p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Address: 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></p> <p>Attn: Stephen Hall Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></p>

	<b>Contract Manager:</b>	
	Attn: Ted Yura Senior Manager, Contract Management Phone: (415) 973-8660 Email: <a href="mailto:THY1@pge.com">THY1@pge.com</a>	

**ARTICLE 1  
COMMERCIAL TERMS**

<b>Seller:</b> PACIFIC GAS AND ELECTRIC COMPANY, limited for all purposes hereunder to its electric procurement and electric fuels functions	<b>Buyer:</b> Silicon Valley Clean Energy Authority, a California joint powers authority									
<b>Product:</b>	The Product shall consist of Electric Energy and associated Green Attributes from the Project, as further described and subject to the provisions herein.									
<b>Project:</b>	All Product sold hereunder shall be generated from one or more facilities, listed in Appendix A to this Confirmation or identified pursuant to Section 8.2 herein, each meeting the requirements set forth in 6.1 (collectively, the "Project").  Seller shall have sole discretion throughout the Term to designate and re-designate, as applicable, the Project by selecting one or more of the facilities from Appendix A or pursuant to Section 8.2 herein.  Buyer shall not be entitled to, and shall not receive, any amount of Green Attributes produced by the Project that is in excess of the Total Quantity.  Buyer shall not be entitled to, and shall not receive, any amount of Electric Energy produced by the Project that is in excess of the Energy Quantity.									
<b>Quantity:</b>	(a) <u>For Green Attributes</u> : "Total Quantity", with respect to an applicable year, shall be equal to those volumes of Green Attributes specified for that applicable year in the Delivery Term Quantity Schedule set forth below and shall be conveyed during the Green Attributes Delivery Period to Buyer as provided herein.  (b) <u>For Electric Energy</u> : "Energy Quantity", with respect to an applicable year, shall be equal to those volumes of Electric Energy produced by the Project specified for that applicable year in the Delivery Term Quantity Schedule set forth below and shall be delivered during the Energy Delivery Period to Buyer as provided herein.  <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="3" style="text-align: center;">Delivery Term Quantity Schedule</th> </tr> <tr> <th style="text-align: center;">Year</th> <th style="text-align: center;">Green Attributes (MWh)</th> <th style="text-align: center;">Electric Energy (MWh)</th> </tr> </thead> <tbody> <tr> <td style="background-color: black; color: black;">[REDACTED]</td> <td style="background-color: black; color: black;">[REDACTED]</td> <td style="background-color: black; color: black;">[REDACTED]</td> </tr> </tbody> </table>	Delivery Term Quantity Schedule			Year	Green Attributes (MWh)	Electric Energy (MWh)	[REDACTED]	[REDACTED]	[REDACTED]
Delivery Term Quantity Schedule										
Year	Green Attributes (MWh)	Electric Energy (MWh)								
[REDACTED]	[REDACTED]	[REDACTED]								
<b>Energy Price:</b>	The Energy Price shall mean the Index Price for each MWh of Delivered Energy delivered to Buyer under this Agreement.									
<b>Green Attributes Price:</b>	The Green Attributes Price shall mean, with respect to an applicable year, that price in dollars for each MWh of Green Attributes conveyed to Buyer under this Agreement, as specified in the table below.									

	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;">Year</td> <td style="text-align: center;">Green Attributes Price (\$)</td> </tr> <tr> <td style="text-align: center;">[REDACTED]</td> <td style="text-align: center;">[REDACTED]</td> </tr> </table>	Year	Green Attributes Price (\$)	[REDACTED]	[REDACTED]
Year	Green Attributes Price (\$)				
[REDACTED]	[REDACTED]				
<p><b>Term of Transaction:</b></p>	<p>Except for the obligations in Sections 4 (Filings and Approvals) and 9 (Confidentiality) which shall be effective and binding as of the Execution Date, the term of the Transaction shall commence upon the Effective Date and shall continue until the end of the Delivery Term, provided that this Agreement shall thereafter remain in effect as to those terms and conditions that expressly survive termination or expiration of the Agreement (“Term”).</p> <p>This Confirmation, and the Transaction and Term hereunder, shall terminate early in the event of a failure to satisfy the Green Attributes Condition Precedent defined below or as otherwise provided in the Agreement.</p> <p>Termination because of a failure to satisfy the Green Attributes Condition Precedent shall terminate all of the Parties’ obligations under the Confirmation as of the Transaction Termination Date as provided in Section 4.2, except for the Parties’ confidentiality obligations under Article 9 herein.</p>				
<p><b>Credit Requirements:</b></p>	<p>(a) This Confirmation’s credit requirements for the Electric Energy portion of the Product shall be governed by the EEI Agreement.</p> <p>(b) This Confirmation’s credit requirements for the Green Attributes portion of the Product shall apply as specified below:</p> <p style="padding-left: 40px;">(i) If the EEI Agreement has a Collateral Annex, then the Exposure Amount for the Green Attributes portion of the Product shall be equal to the product of the following: (I) fifteen percent (15%), multiplied by (II) the volume of the undelivered Green Attributes, multiplied by (III) the Green Attributes Price.</p> <p>(c) Notwithstanding anything to the contrary contained in the EEI Agreement, if the conditions in subsections (i) and (ii) below are satisfied during the Delivery Term, then this Confirmation’s credit requirements for the Green Attributes portion of the Product under Section (b) above shall <i>not</i> apply for that time period during which all such conditions are satisfied:</p> <p style="padding-left: 40px;">(i) Buyer’s customers are Pacific Gas and Electric Company’s distribution or transmission customers and Pacific Gas and Electric Company is the billing agent for those customers; and</p> <p style="padding-left: 40px;">(ii) Pacific Gas and Electric Company 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.</p> <p>If at any time during the Term, one or more of the conditions in subsections (i) and (ii) in this Section (c) 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 (b) above by that date which is no later than thirty (30) calendar days following the date of the Condition Notice.</p> <p>(d) Section 8.1 of the EEI Agreement, entitled “Party A Credit Protection”, and all corresponding provisions of (i) the Cover Sheet to Section 8.1 of the EEI Agreement and</p>				

	(ii) the Collateral Annex with respect to such Section 8.1 and the applicable provisions thereto of Paragraph 10 to the Collateral Annex do not apply to this Confirmation.
<b>Delivery Term:</b>	The “Delivery Term” shall consist of both the Energy Delivery Period and the Green Attributes Delivery Period.
<b>Energy Delivery Period:</b>	Subject to the satisfaction, or waiver in writing by both Parties, of the Green Attributes Condition Precedent, the “Energy Delivery Period” shall (1) commence as of the later of 3/1/2020 and that date upon which CPUC Approval occurs, and (2) end on the earlier of the conclusion of hour ending 2400 (PPT) on 12/31/2020 and that date upon which the amount of Electric Energy delivered by Seller satisfies the Energy Quantity.
<b>Green Attributes Delivery Period:</b>	Subject to the satisfaction, or waiver in writing by both Parties, of the Green Attributes Condition Precedent, the “Green Attributes Delivery Period” shall commence on the first day that Seller conveys Green Attributes to Buyer and shall end on that date upon which the amount of Green Attributes conveyed to Buyer satisfies the Total Quantity.  Seller shall convey Green Attributes to Buyer in the form of WREGIS Certificates. Seller shall transfer WREGIS Certificates into Buyer’s WREGIS account in an amount required to satisfy the Total Quantity.
<b>Delivery Point:</b>	The “Delivery Point” shall be any of the following as selected by Seller in its discretion: NP15, SP15, and/or ZP26. Buyer shall take title and risk of loss of the Electric Energy from the Project at the applicable Delivery Point selected by Seller.
<b>Scheduling Obligations:</b>	Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator for the Project. Buyer hereby authorizes Seller, or its third party Scheduling Coordinator designee, to deliver the Electric Energy to the CAISO at the Delivery Point.
<b>Condition Precedent to the Green Attributes Obligations:</b>	Notwithstanding any other provision of this Confirmation to the contrary, all of the Parties’ obligations except for the Parties’ confidentiality obligations under Article 9 herein, are conditioned upon (a) Seller’s receipt, or the Parties’ written waiver, of CPUC Approval as defined below ; and (b) Seller’s receipt of the Performance Assurance from Buyer no later than five (5) Business Days following Seller’s Notice to Buyer of CPUC Approval (defined below) (collectively, “Green Attributes Condition Precedent”).

**ARTICLE 2  
DEFINITIONS**

2.1 “Balancing Authority” has the meaning set forth in the Tariff.

2.2 “Balancing Authority Area” has the meaning set forth in the Tariff.

2.3 “Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

2.4 “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over the Chapter 11 Cases.

2.5 “Broker or Index Quotes” means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an

Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets.

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

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

2.8 "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the Tariff.

2.9 "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

2.10 "CARB" means the California Air Resources Board or its successor agency.

2.11 "CEC" means the California Energy Commission or its successor agency.

2.12 "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.

2.13 "Contract Price" means the Energy Price plus the Green Attributes Price.

2.14 "CPUC" means the California Public Utilities Commission or its successor entity.

2.15 "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For the purpose of this Section 2.12, a CPUC Energy Division disposition which contains such findings, or deems approved an advice letter requesting such findings, shall be deemed to satisfy the CPUC decision requirement set forth above.

Also, for the purpose of this Section 2.12 only, the references therein to “Buyer” shall mean “Seller”.

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

2.17 “Delivered Energy” means the Electric Energy from the Project that is delivered by Seller to Buyer at the Delivery Point.

2.18 “Electric Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

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

2.20 “Execution Date” means the latest signature date found on the signature page of this Agreement.

2.21 “Effective Date” has the meaning set forth in Article 1.

2.22 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (a) the loss of Buyer’s markets; (b) Buyer’s inability economically to use or resell the Product purchased hereunder; (c) the loss or failure of Seller’s supply unless caused by a force majeure event at the Project; or (d) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

2.23 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

2.24 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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<sup>1</sup>; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Electric Energy. Green Attributes do not include (i) any Electric Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

2.25 “Index Price” means the Trading Hub price (as defined in the Tariff) associated with the Delivered Energy to the Delivery Point for each applicable hour as published by the CAISO on the CAISO website or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

2.26 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For the purposes of the definition of “CPUC Approval” in Section 2.12 and Sections 6.1(a), 6.1(b) and 8.3(b) in this Confirmation, the term “law” shall have the meaning set forth in this definition.

2.27 “Letter of Credit” means an irrevocable, non-transferable, standby letter of credit the form of which shall be substantially as contained in Appendix B to this Agreement; provided that, if the issuer is a U.S. branch of a foreign commercial bank, the intended beneficiary may require changes to such form; and the issuer must be a Qualified Institution on the date of delivery of the Letter of Credit to the Secured Party. In case of a conflict of this definition with any other definition of “Letter of Credit”

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

contained in the EEI Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Agreement applies.

2.28 "Market Quotation Average Price" means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the Party obtaining the quotations and in accordance with the Notice provided pursuant to Section 5.2 of the EEI Agreement, which designates the Early Termination Date. If fewer than three quotations are obtained, it will be deemed that the Market Quotations Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined. For purposes of this Section 2.24, "Reference Market-Maker" means a leading dealer in the relevant market selected by a Party determining its exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

2.29 "Notice" means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail). The contacts table of this Confirmation contains the names and addresses to be used for Notices.

2.30 "Qualified Institution" means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must (i) have a Credit Rating of at least: (a) "A-, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies, and (ii) have assets of at least \$10 billion US Dollars.

2.31 "Real-Time Market" has the meaning set forth in the Tariff and shall include any market that CAISO may establish prior to or during the Term that clears at an interval between the Day-Ahead Market and the Real-Time Market.

2.32 "Renewable Energy Credit" or "REC" has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

2.33 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (a) costs reasonably incurred by Buyer in purchasing such substitute Product and (b) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to

utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

2.34 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (a) costs reasonably incurred by Seller in reselling such Product and (b) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or absent a sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, further, that in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

2.35 "Tariff" means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

2.36 "Transactions" as used in the EEI Agreement shall mean the "Transaction" as defined in the preamble above.

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

2.38 "WREGIS Certificate" 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.

2.39 "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

### ARTICLE 3 CONVEYANCE OF ELECTRIC ENERGY AND GREEN ATTRIBUTES

#### **3.1 Seller's Delivery of Electric Energy.**

Subject to the terms and conditions of this Agreement, beginning on the first day of the Energy Delivery Period and continuing until the last day of the Energy Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Delivered Energy.

#### **3.2 Seller's Conveyance of Green Attributes.**

(a) Green Attributes. Subject to the terms and conditions of this Agreement, beginning on the first day of the Green Attributes Delivery Period and continuing until the last day of the Green Attributes Delivery Period, Seller shall convey and sell, and Buyer shall purchase and receive, those

Green Attributes associated with the Delivered Energy.

(i) Seller represents and warrants that Seller holds the rights to such Green Attributes from the Project and Seller agrees to convey such Green Attributes to Buyer as included in the delivery of the Product from the Project subject to the terms and conditions of this Agreement.

(ii) As set forth above, Seller shall convey only that amount of Green Attributes required to meet the Total Quantity and shall do so only during the Green Attributes Delivery Period.

(b) The Green Attributes in the amount of the Total Quantity shall be deemed to be conveyed to and received by Buyer under this Confirmation as set forth herein. During the Green Attributes Delivery Period, Seller shall convey to Buyer the Green Attributes associated with the Delivered Energy within: twenty-five (25) Business Days following the occurrence of both (I) the deposit into Seller's WREGIS account of the WREGIS Certificates for the Green Attributes for the applicable Calculation Period and (II) Buyer's payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein. Seller shall transfer such WREGIS Certificates in an amount equivalent to the Total Quantity to Buyer's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer.

#### **ARTICLE 4 CPUC FILING AND APPROVAL**

##### **4.1 Filing for CPUC Approval.**

Within sixty (60) days after the Execution Date, Seller shall file with the CPUC a request for CPUC Approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC Approval. Seller shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Confirmation or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Notwithstanding anything to the contrary in the Confirmation, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category 1, as defined in California Public Utilities Code Section 399.16(b)(1).

##### **4.2 Termination Right and Transaction Termination Date.**

In the event that: (a) the CPUC issues a final and non-appealable order not approving this Agreement in its entirety, (b) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (c) approval by the CPUC has not been received by Seller on or before sixty (60) days from the date on which Seller files for CPUC Approval, then either Party may, in its sole discretion, elect to terminate this Agreement upon Notice to the other Party provided in accordance with Article 10.7 of the EEI Agreement. Such Notice shall become effective one (1) Business Day after its provision. The effective date of the Notice shall constitute the "Transaction Termination Date". Any termination elected and noticed in accordance with this Section 4.2 shall terminate all of the Parties' rights and obligations under the Agreement as of the Transaction Termination Date.

**4.3 Effect of Termination.**

Any termination of the Agreement properly exercised by a Party under Section 4.2 shall be without liability or obligation, except for the Parties' confidentiality obligations under Article 9 herein and in the EEI Agreement and shall have no effect on the status of the EEI Agreement.

**ARTICLE 5  
COMPENSATION**

**5.1 Calculation Period.**

The "Calculation Period" shall be each calendar month or portion thereof that Delivered Energy was conveyed to Buyer and for which associated Green Attributes will be transferred to Buyer under this Confirmation as described in Section 3.2(b).

**5.2 Monthly Cash Settlement Amount.**

Buyer shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period. The "Monthly Cash Settlement Amount" for a particular Calculation Period shall be equal to the sum of (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour; and

(b) equals the Green Attributes Price multiplied by the quantity of Green Attributes (in MWhs) that will be conveyed as described in Section 3.2(b) and that are associated with the Delivered Energy in the Calculation Period; and

(c) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour.

**5.3 Payment Date.**

Notwithstanding anything to the contrary in Article Six of the EEI Agreement, payment of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be due and payable four (4) calendar months following the applicable Calculation Period and on or before the later of: (a) the twentieth (20th) day of the month in which the Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (b) ten (10) days following the date of Buyer's receipt of an invoice issued by Seller for such applicable Calculation Period; provided that, if such payment due date is not a Business Day, then on the next Business Day. Payment to Seller shall be made by wire transfer pursuant to the Notices section of this Agreement. This provision shall survive termination or expiration of the Agreement for all amounts due prior to such termination or expiration.

**5.4 Invoices.**

The invoice shall include a statement detailing the amount of Delivered Energy, and associated Green Attributes, transferred to Buyer during the applicable Calculation Period. For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon Buyer's receipt by e-mail of such

invoice in PDF format from Seller. Invoices to Buyer shall be sent by email to set forth in the Notices section of this Agreement.

## ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

### 6.1 Seller's Representations, Warranties, and Covenants.

(a) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this 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.

(b) 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.

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(i) For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Confirmation.

(ii) For further clarity, the phrase "first delivery" as used in the immediately preceding paragraph means the first date of the Green Attributes Delivery Period.

(d) In addition to the foregoing, Seller warrants, represents and covenants, as of the Execution Date and throughout the Delivery Term, that:

(i) Seller has the contractual rights to sell all right, title, and interest in the Product required to be delivered hereunder;

(ii) Seller has not sold the Product required to be delivered hereunder to any other person or entity;

(iii) at the time of delivery, all rights, title, and interest in the Product required to be delivered hereunder are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;

(iv) Seller shall not substitute or purchase any Product from any generating resource other than the Project or the market for delivery hereunder; and

(v) the facility(s) designated by Seller as the Project and all electrical output from the facility(s) designated as the Project are, or will be, by the first date of the Green Attributes Delivery Period, registered with WREGIS as RPS-eligible.

(e) As of the Execution Date and throughout the Energy Delivery Period, Seller represents, warrants and covenants that the Project meets the criteria in either (A) or (B):

- (A) The Project either has a first point of interconnection with a California Balancing Authority, or a first point of interconnection with distribution facilities used to serve end users within a California Balancing Authority Area; or
- (B) The Project has an agreement to dynamically transfer electricity to a California Balancing Authority.

(f) If and to the extent that the Product sold by Seller is a resale of part or all of a PPA between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below as of the Effective Date and throughout the Energy Delivery Period:

- (i) The original upstream third party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
- (ii) This Agreement transfers only Electric Energy and Green Attributes that have not yet been generated prior to the commencement of the Energy Delivery Period;
- (iii) The Delivered Energy transferred hereunder is transferred to Buyer in real time; and
- (iv) If the Project has an agreement to dynamically transfer electricity to a California Balancing Authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a Balancing Authority participating in the dynamic transfer arrangement.

**6.2** To the extent a change in Law occurs after the Effective Date that causes the representations, warranties, and/or covenants in Section 6.1 that continue beyond the Effective Date 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.

**6.3** “Commercially reasonable efforts” as set forth in this Article 6 and as applicable to Seller only shall not require Seller to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000.00) in the aggregate during the Term.

**6.4** The Parties agree that the following sections of the EEI Agreement shall not be applicable to this Confirmation or Transactions hereunder until Seller’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 in the Agreement with respect to Seller: Buyer acknowledges and agrees that (i) representations and warranties under Section 10.2(x) of the EEI Agreement are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) until Seller’s exit from the Chapter 11 Cases has occurred, the existence or continuation of Seller being Bankrupt is not an Event of Default with respect to Seller under this Agreement (including pursuant to Section 5.1(g) of the EEI Agreement) and does not entitle Buyer to terminate this Agreement solely because of such existence or continuation.

**ARTICLE 7**  
**TERMINATION AND CALCULATION OF TERMINATION PAYMENT**

In the event this Transaction becomes a Terminated Transaction pursuant to Section 5.2 of the EEI Agreement, then the Settlement Amount with respect to this Transaction shall not be calculated in accordance with the EEI Agreement, but instead shall be calculated as follows:

The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for the Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of the quotes of at least three (3) Broker or Index Quotes based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to the Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) such Broker or Index Quotes with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.

**ARTICLE 8**  
**GENERAL PROVISIONS**

**8.1 Buyer Audit Rights.**

In addition to any audit rights provided under the EEI Agreement, Seller shall, during the Term as may be requested by Buyer, provide documentation (which may include, for example, meter data as recorded by a meter approved by the Project's governing Balancing Authority) sufficient to demonstrate that the Product has been conveyed and delivered to Buyer.

**8.2 Facility Identification.**

If Seller determines that any Product to be delivered in a calendar month shall be from a facility or facilities other than those in Appendix A, then Seller shall provide Notice to Buyer identifying the facility or facilities that constitute the Project within three (3) Business Days prior to the delivery of Electric Energy from such facility or facilities in such calendar month.

**8.3 Governing Law.**

(a) Notwithstanding any provision to the contrary in the EEI Agreement, the Governing Law applicable to this Agreement shall be as set forth herein. This Section 8.3 does not change the Governing Law applicable to any other confirmation or transaction entered into between the Parties under the EEI Agreement.

(b) **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.

For the purposes of Section 8.3(b) above, the words “party” and “parties” shall have the meaning ascribed to them in the preamble of this Confirmation, and the word “agreement” shall mean the term “Agreement” as defined in the preamble of this Confirmation.

## **ARTICLE 9 CONFIDENTIALITY**

**9.1** The confidentiality provisions in Section 10.11 of the EEI Agreement shall apply herein, except that each of Buyer and Seller may disclose the following information regarding this Confirmation, without prior Notice or consent of the other Party:

- (a) Party names;
- (b) Resource(s);
- (c) Term;
- (d) Project name, location(s), and information in Appendix A;
- (e) Capacity of each facility designated as the Project;
- (f) The fact that a facility designated as the Project is on-line and delivering;
- (g) Delivery Point;
- (h) The quantity of Product expected or actually delivered under this Confirmation; and
- (i) Information provided by Seller pursuant to Section 8.1 of this Confirmation

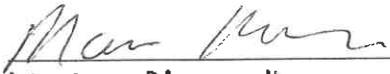
**9.2** The Parties agree that the Agreement may be shared on a confidential basis, without prior Notice or consent of the other Party, with the Parties’ counsel and advisors, the United States Trustee for the Northern District of California, and on a confidential professional eyes only basis with counsel and advisors engaged by any official committee of creditors appointed by the United States Trustee for the Northern District of California pursuant to section 1102(a)(1) of the Bankruptcy Code.

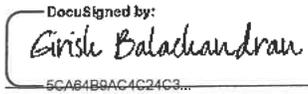
**9.3** Except as set forth in this Article 9 and the EEI Agreement, each Party shall provide prior Notice to the other Party of disclosure of confidential information of such other Party for purposes of compliance with any applicable regulation, rule, or order of the CPUC, Federal Energy Regulatory Commission, CEC, the Bankruptcy Court, or other Governmental Authorities.

**ACKNOWLEDGED AND AGREED TO BY EACH PARTY'S DULY AUTHORIZED REPRESENTATIVE OR OFFICER:**

**PACIFIC GAS AND ELECTRIC COMPANY,**  
a California corporation, limited for all  
purposes hereunder to its electric procurement  
and electric fuels functions.

**SILICON VALLEY CLEAN ENERGY, a**  
California joint powers authority, by its duly  
authorized officers

Signature:   
Name: Marino Monardi  
Title: Director, Structured Energy Transactions  
Date: 2/7/2020

Signature:   
Name: Girish Balachandran  
Title: CEO  
Date: 2/4/2020

**APPENDIX A to  
EEI Master Power Purchase and Sale Agreement  
Short Term Sales Confirmation**

**PROJECT**

Name of Facility	Resource	Location	CEC RPS ID	Host Balancing Authority
Etiwanda - Metropolitan Water District (MWD)	Conduit Hydroelectric	Rancho Cucamonga, CA	60271A	CAISO
Kansas South	Solar PV	Lemoore, CA	61264A	CAISO
Westlands Solar Farms	Solar PV	Huron, CA	61755A	CAISO
Orion Solar	Solar PV	Unincorporated Kern County, CA	61570A	CAISO
Kent South	Solar PV	Lemoore, CA	61262A	CAISO
Algonquin SKIC 20 Solar	Solar PV	Taft, CA	61558A	CAISO
CED Corcoran Solar 3, LLC	Solar PV	Corcoran, CA	62783A	CAISO
Westside Solar, LLC	Solar PV	Unincorporated Fresno County, CA	61185A	CAISO
Aspiration Solar G LLC	Solar PV	Tranquility, CA	61486A	CAISO
Bayshore Solar A	Solar PV	Lancaster, CA	63133A	CAISO
Bayshore Solar B	Solar PV	Lancaster, CA	63134A	CAISO
Bayshore Solar C	Solar PV	Lancaster, CA	63135A	CAISO
Java Solar Project	Solar PV	Lemoore, CA	63137C	CAISO
RE Gaskell West 3	Solar PV	Rosamond, CA	63619C	CAISO
RE Gaskell West 4	Solar PV	Rosamond, CA	63617C	CAISO
RE Gaskell West 5	Solar PV	Rosamond, CA	63618C	CAISO
West Antelope	Solar PV	Lancaster, CA	61850A	CAISO
Western Antelope Blue Sky Ranch A	Solar PV	Lancaster, CA	61517A	CAISO
Wind Resource I	Wind	Tehachapi, CA	61467A	CAISO
SPS White River West	Solar PV	Alpaugh, CA	62045A	CAISO
Wind Resource II	Wind	Tehachapi, CA	61468A	CAISO

Columbia Solar Energy, LLC	Solar PV	Pittsburg, CA	62051A	CAISO
Alamo Solar, LLC	Solar PV	Oro Grande, CA	61453A	CAISO
Corcoran Solar LLC	Solar PV	Corcoran, CA	62285A	CAISO
Old River One LLC	Solar PV	Bakersfield, CA	60853A	CAISO
Shafter Solar	Solar PV	Shafter, CA	62325A	CAISO
Morelos Del Sol	Solar PV	Lost Hills, CA	62272A	CAISO
Rising Tree Wind Farm II LLC	Wind	Mojave, CA	62426A	CAISO
Kekawaka Creek Hydroelectric Facility	Small Hydro	Zenia, CA	60186A	CAISO
Woodmere Solar Farm	Solar PV	Bakersfield, CA	62429A	CAISO
Portal Ridge Solar C Project	Solar PV	Lancaster, CA	61684A	CAISO
SR Solis Oro Loma Teresina, LLC - Project A	Solar PV	Unincorporated Fresno County, CA	62841A	CAISO
SR Solis Oro Loma Teresina, LLC - Project B	Solar PV	Unincorporated Fresno County, CA	62841A	CAISO
Sunray - 20	Solar PV	Daggett, CA	62694A	CAISO
SR Solis Rocket, LLC - Project A	Solar PV	Avenal, CA	62840A	CAISO
SR Solis Rocket, LLC - Project B	Solar PV	Avenal, CA	62840A	CAISO
San Joaquin 1A	Solar PV	San Joaquin, CA	61837A	CAISO
Montezuma Wind Energy Center	Wind	Birds Landing, CA	60543A	CAISO
CalRenew-1	Solar PV	Mendota, CA	60475A	CAISO
Shiloh II Wind Project	Wind	Rio Vista, CA	60639A	CAISO
High Plains Ranch II	Solar PV	California Valley, CA	60603A	CAISO
Topaz Solar Farm	Solar PV	Santa Margarita, CA	61698A	CAISO
Hatchet Ridge	Wind	Burney, CA	60741A	CAISO

CM10 (fka Sempra El Dorado Solar)	Solar PV	Boulder City, NV	60713A	CAISO
Ivanpah Unit 1	Solar Thermal	Nipton, CA	62273A	CAISO
Ivanpah Unit 3	Solar Thermal	Nipton, CA	62275A	CAISO
AV Solar Ranch One	Solar PV	Lancaster, CA	60790A	CAISO
SFWP (RPS) - Kelly Ridge	Small Hydro	Oroville, CA	60266A	CAISO
SFWP (RPS) - Sly Creek	Small Hydro	Oroville, CA	60267A	CAISO
Alpine Solar Project	Solar PV	Lancaster, CA	60755A	CAISO
CM48 (fka Sempra Copper Mountain 1)	Solar PV	Boulder City, NV	60786A	CAISO
Mt. Poso	Biomass	Bakersfield, CA	60695A	CAISO
Agua Caliente Solar Project	Solar PV	Roll, AZ	60894A	CAISO
High Plains Ranch III	Solar PV	California Valley, CA	60603A	CAISO
Mojave Solar Project	Solar Thermal	Hinkley, CA	60848A	CAISO
Genesis Solar Energy Project	Solar Thermal	Blythe, CA	60605A	CAISO
Calpine Geysers - Unit 5 & 6	Geothermal	Middletown, CA	60002A	CAISO
Calpine Geysers - Units 7 & 8	Geothermal	Middletown, CA	60003A	CAISO
Calpine Geysers - Unit 12	Geothermal	Middletown, CA	60004A	CAISO
Calpine Geysers - Unit 13	Geothermal	Middletown, CA	60005A	CAISO
Calpine Geysers - Unit 16	Geothermal	Middletown, CA	60006A	CAISO
Calpine Geysers - Unit 17	Geothermal	Middletown, CA	60007A	CAISO
Calpine Geysers - Unit 18	Geothermal	Middletown, CA	60008A	CAISO
Calpine Geysers - Unit 20	Geothermal	Middletown, CA	60009A	CAISO

Calpine Geysers - Sonoma	Geothermal	Middletown, CA	60010A	CAISO
Calpine Geysers - Unit 11	Geothermal	Middletown, CA	60025A	CAISO
Calpine Geysers - Unit 14	Geothermal	Middletown, CA	60026A	CAISO
Calpine Geysers - Calistoga Power Plant	Geothermal	Middletown, CA	60117A	CAISO
Calpine Geysers - Aidlin Power Plant	Geothermal	Middletown, CA	60115A	CAISO
DTE Stockton	Biomass	Stockton, CA	60964A	CAISO
Big Creek Waterworks	Small Hydro	Hyampom, CA	60900A	CAISO
Norman Ross Burgess - Three Forks Water Power Project	Small Hydro	Zenia, CA	60502A	CAISO
Alpaugh 50	Solar PV	Alpaugh, CA	60945A	CAISO
Alpaugh North	Solar PV	Alpaugh, CA	60946A	CAISO
Atwell Island	Solar PV	Alpaugh, CA	60947A	CAISO
Corcoran	Solar PV	Corcoran, CA	60948A	CAISO
White River	Solar PV	Alpaugh, CA	60949A	CAISO
Avenal Park (Eurus)	Solar PV	Avenal, CA	60912A	CAISO
Sun City Project (Eurus)	Solar PV	Avenal, CA	60913A	CAISO
Sand Drag (Eurus)	Solar PV	Avenal, CA	60914A	CAISO
Desert Center Solar Farm	Solar PV	Desert Center, CA	61068A	CAISO
El Dorado Irrigation District	Small Hydro	Pollock Pines, CA	60601A	CAISO
Coram Brodie	Wind	Tehachapi, CA	60973A	CAISO
Mesquite Solar 1	Solar PV	Tonopah, AZ	60875A	CAISO
Shiloh III Wind Project	Wind	Rio Vista, CA	61069A	CAISO
North Star Solar 1	Solar PV	Mendota, CA	61198A	CAISO
Vasco Wind Energy Center	Wind	Livermore, CA	61344A	CAISO
Montezuma II Wind Energy Center	Wind	Collinsville, CA	61345A	CAISO
North Sky River Energy Center	Wind	Tehachapi, CA	61385A	CAISO

Copper Mountain Solar 2	Solar PV	Boulder City, NV	60990A	CAISO
Shiloh IV	Wind	Rio Vista, CA	61617A	CAISO
NID (RPS) - Bowman	Small Hydro	Nevada City, CA	60171A	CAISO
NID (RPS) - Dutch Flat	Small Hydro	Nevada City, CA	60264A	CAISO
NID (RPS) - Rollins	Small Hydro	Nevada City, CA	60265A	CAISO
SPI Burney	Biomass	Burney, CA	60087A	CAISO
SPI Lincoln	Biomass	Lincoln, CA	60088A	CAISO
SPI Quincy	Biomass	Quincy, CA	60089A	CAISO
SPI Sonora	Biomass	Sonora, CA	60576A	CAISO
SPI Anderson II	Biomass	Anderson, CA	61146A	CAISO
Kansas	Solar PV	Stratford, CA	61263A	CAISO
Henrietta Solar	Solar PV	Lemoore, CA	61841A	CAISO
ABEC Bidart-Old River LLC	Biomethane	Bakersfield, CA	62369A	CAISO
ABEC Bidart-Stockdale LLC	Biomethane	Bakersfield, CA	60886A	CAISO
Diablo Winds (2)	Wind	Livermore, CA	60030A	CAISO
PGE Alta	Small Hydro	Placer, CA	60033A	CAISO
PGE Centerville	Small Hydro	Butte, CA	60034A	CAISO
PGE Chili Bar	Small Hydro	El Dorado, CA	60035A	CAISO
PGE Coleman	Small Hydro	Shasta, CA	60037A	CAISO
PGE Cow Creek	Small Hydro	Shasta, CA	60038A	CAISO
PGE Crane Valley	Small Hydro	Madera, CA	60039A	CAISO
PGE Deer Creek	Small Hydro	Nevada, CA	60040A	CAISO
PGE De Sabla	Small Hydro	Butte, CA	60041A	CAISO
PGE Dutch Flat 1	Small Hydro	Placer, CA	60042A	CAISO
PGE Halsey	Small Hydro	Placer, CA	60043A	CAISO
PGE Hamilton Branch	Small Hydro	Lassen, CA	60044A	CAISO
PGE Hat 1	Small Hydro	Shasta, CA	60045A	CAISO
PGE Hat 2	Small Hydro	Shasta, CA	60046A	CAISO
PGE Inskip	Small Hydro	Tehama, CA	60047A	CAISO

PGE Kerckhoff 1	Small Hydro	Fresno, CA	62360A	CAISO
PGE Kern Canyon	Small Hydro	Kern, CA	60048A	CAISO
PGE Kilarc	Small Hydro	Shasta, CA	60049A	CAISO
PGE Lime Saddle	Small Hydro	Butte, CA	60050A	CAISO
PGE Narrows 1	Small Hydro	Nevada, CA	60052A	CAISO
PGE Newcastle	Small Hydro	Placer, CA	60053A	CAISO
PGE Oak Flat	Small Hydro	Plumas, CA	60276A	CAISO
PGEoenix	Small Hydro	Tuolumne, CA	60054A	CAISO
PGE Potter Valley	Small Hydro	Lake, CA	60055A	CAISO
PGE Rock Creek RPS	Existing Large Incremental Hydroelectric	Plumas, CA	62269A	CAISO
PGE San Joaquin 1A	Small Hydro	Madera, CA	60056A	CAISO
PGE San Joaquin 2	Small Hydro	Madera, CA	60057A	CAISO
PGE San Joaquin 3	Small Hydro	Madera, CA	60058A	CAISO
PGE South	Small Hydro	Tehama, CA	60059A	CAISO
PGE Spaulding 1	Small Hydro	Placer, CA	60060A	CAISO
PGE Spaulding 2	Small Hydro	Placer, CA	60061A	CAISO
PGE Spaulding 3	Small Hydro	Placer, CA	60062A	CAISO
PGE Spring Gap	Small Hydro	Tuolumne, CA	60063A	CAISO
PGE Toadtown	Small Hydro	Butte, CA	60064A	CAISO
PGE Tule River	Small Hydro	Tulare, CA	60065A	CAISO
PGE Volta 1	Small Hydro	Tehama, CA	60066A	CAISO
PGE Volta 2	Small Hydro	Tehama, CA	60067A	CAISO
PGE West Point	Small Hydro	Amador, CA	60068A	CAISO
PGE Wise 1	Small Hydro	Placer, CA	60069A	CAISO
PGE Wise 2	Small Hydro	Placer, CA	60070A	CAISO
PGE A_G_Wishon	Small Hydro	Madera, CA	60032A	CAISO
PG&E AT&T Park Solar Arrays	Solar PV	San Francisco, CA	60634A	CAISO
PG&E SF Service Center Solar Array 1	Solar PV	San Francisco, CA	60635A	CAISO
PG&E SF Service Center Solar Array 2	Solar PV	San Francisco, CA	60636A	CAISO

PGE Five Points	Solar PV	Five Points, CA	61432A	CAISO
PGE Stroud	Solar PV	Helm, CA	61434A	CAISO
PGE Westside	Solar PV	Five Points, CA	61433A	CAISO
PGE Cantua	Solar PV	Cantua Creek, CA	61823A	CAISO
PGE Giffen	Solar PV	Cantua Creek, CA	61822A	CAISO
PGE Huron	Solar PV	Huron, CA	61821A	CAISO
PGE Gates	Solar PV	Huron, CA	62353A	CAISO
PGE Guernsey	Solar PV	Hanford, CA	62354A	CAISO
PGE West Gates	Solar PV	Huron, CA	62352A	CAISO
Vaca-Dixon Solar (PG&E)	Solar PV	Vacaville, CA	60966A	CAISO

## APPENDIX B

### FORM OF LETTER OF CREDIT

#### *Issuing Bank Letterhead and Address*

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: *[insert issue date]*

**Beneficiary:** Pacific Gas and Electric Company  
77 Beale Street, Mail Code B28L  
San Francisco, CA 94105  
Attention: Credit Risk Management

**Applicant:** [Insert name and address of Applicant]

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* ("Applicant"), we hereby issue in favor of Pacific Gas and Electric Company (the "Beneficiary") our irrevocable standby letter of credit No. *[insert number of letter of credit]* ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* ("Letter of Credit Amount"). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on *[insert expiry date]* (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
  - A. "Pursuant to the terms of that certain EEI Power Purchase and Sale Agreement (the "Agreement"), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, or any Confirmation thereunder or related thereto, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
  - B. "Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;

3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date in case of an interruption of our business as stated below), at our offices at *[insert issuing bank's address for drawings]*.

All demands for payment shall be made by presentation of original drawing documents and a copy of this Letter of Credit; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank's receiving department]*, with original drawing documents and a copy of this Letter of Credit to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and will effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

*[insert name of issuing bank]*

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_ *[print or type name]*

Title: \_\_\_\_\_ *[print or type title]*

*[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]*

**APPENDIX B**  
**FORM OF LETTER OF CREDIT**  
**EXHIBIT A – SIGHT DRAFT**

TO  
*[INSERT NAME AND ADDRESS OF PAYING BANK]*

AMOUNT: \$ \_\_\_\_\_ DATE: \_\_\_\_\_

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC  
COMPANY THE AMOUNT OF U.S.\$ \_\_\_\_\_ ( \_\_\_\_\_ U.S. DOLLARS)

DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

*[INSERT PAYMENT INSTRUCTIONS]*

DRAWER

BY: \_\_\_\_\_  
NAME AND TITLE



**Department of Energy  
Bonneville Power Administration  
Power Business Line  
CONFIRMATION AGREEMENT**

**From:** Bonneville Power Administration  
P O Box 3621  
Portland, OR 97208-3621

**To:** Silicon Valley Clean Energy  
333 W. El Camino Real, Suite 290  
Sunnyvale, CA 94087

**BPA Preschedule:** 503-230-3813  
**BPA Real Time:** 503-230-3341

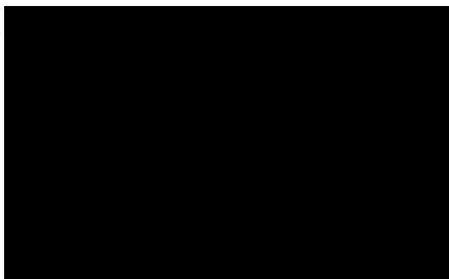
**BPA Contract:** 20PM-16085 -Amendment No. 1  
**Trade Date:** 10/18/2019

This confirmation agreement ("**Confirmation Agreement**") sets forth the terms of this transaction agreed to by the **Bonneville Power Administration ("BPA")** and **Silicon Valley Clean Energy**, a California joint powers authority ("**SVCE**") (each a "Party" and together the "Parties"), in which BPA agrees to provide to SVCE: (1) the right to purchase Federal Surplus Power as Import Resource Adequacy ("RA") Capacity as specified herein; and (2) a sale of ACS Energy when fulfilling the RA obligation. This Confirmation Agreement amends and, once fully executed by the Parties, supersedes and replaces in its entirety the prior confirmation between the Parties dated 10/18/2019. For the purposes of this Confirmation Agreement, the Enabling Agreement shall be deemed to include the Exhibit C-SS Specified Source Confirmation Attachment published by the WSPP. Transactions hereunder are in accordance with the Agreement to Enable Future Purchases, Sales, and Exchanges of Power and Other Services 19PM-16003 ("Enabling Agreement"). The definitions and provisions contained in the Enabling Agreement, in the decision of the California Public Utilities Commission ("CPUC") as contained in Decision ("D.") 04-10-035, D.05-10-042 and D.06-07-031, and in any subsequent or modifying rulings or decisions related to RA ("RA Rules"), and in the tariffs and protocols of the California Independent System Operator ("CAISO"), as amended from time to time ("Tariff"), shall apply to this Confirmation Agreement and are incorporated by reference; provided that, to the extent that any provision in this Confirmation Agreement is inconsistent with any provision of the Enabling Agreement, then the provision in this Confirmation Agreement shall govern the rights and obligations of the Parties hereunder.

**Buyer:** SVCE  
**Seller:** BPA  
**BPA Trader:** Mark Miller  
**Phone:** 503-230-4003

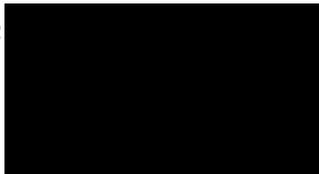
**Broker:** None  
**Holiday:** NERC

**Products:**



**SVCE Trader:** Monica Padilla

**Product Description:**



**Point of Delivery:** MALIN500 (Malin\_5\_N101)(COB N-S)

**Resource ID:** BPA1\_MALIN500\_I\_F\_BPARA

Start Date	End Date	Demand Limit	RA Capacity Price \$/kW-month	Hours	Amount (MW)	Revenue/ Cost
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Start Date	End Date	Demand Limit	ACS Energy Price \$/MWh	Hours	Amount (MWh)	Revenue/ Cost

## I. RA Capacity Product Provisions:

### 1. Definitions:

- a. "Import RA Capacity Product", or "Import RA Capacity" means the qualified and deliverable capacity from the System Resource that can be counted toward SVCE's System Resource Adequacy Requirements ("RAR") as described in the CPUC's RA Rules, and all other resource adequacy requirements established by any other regional entity responsible for RAR including but not limited to the CAISO. Import RA Capacity also includes the energy component of the ACS Energy product, which shall be delivered to the CAISO during the Delivery Term of this Confirmation Agreement; provided, however, that Import RA Capacity does not confer to SVCE any right to the Contract Quantity of BPA's System Resource other than the right to count such Contract Quantity toward SVCE's RAR during the Delivery Term. Specifically, no federal energy associated with BPA's System Resource is required to be made available to SVCE as part of this RA Capacity obligation, and SVCE shall in no way be responsible to compensate BPA for any commitments to CAISO as set forth in this Transaction.
- b. "Contract Quantity" means, for purposes of the RA Capacity Product, the amount of Import RA Capacity stated in megawatts ("MW"), made available twenty-four hours per day, seven days per week, to the RA Capacity Delivery Point through transmission service that is not recallable for economic reasons, and which is backed by operating reserves in the originating control area, delivered to the RA Capacity Delivery Point as set forth in this Confirmation Agreement.
- c. "Delivery Term" means the period of time beginning on the Start Date and ending on the End Date.
- d. "Flat" is defined as HE 0100 through HE 2400.
- e. "RA Capacity Delivery Point" means the Point of Delivery, the CAISO Scheduling Point Malin (COB) which maps to the CAISO Branch Group PACI\_MSL where SVCE holds intertie import capability.
- f. "Resource Adequacy Requirements" or "RAR" means the resource adequacy requirements established for SVCE by the CPUC pursuant to the RA Rules, or by any other governmental body having jurisdiction.
- g. "RA Rules" means orders of the California Public Utilities Commission as contained in D.04-01-050, D.04-10-035, D.05-10-042, D.06-04-40, D.06-06-064, D.06-07-031, D.06-12-037, D.07-06-029, D.08-06-031, D.09-06-028, D.10-06-036, D.10-12-038, D.11-06-022, D.11-10-003, D.12-06-025, D.13-06-024, D.14-06-050, D.15-06-063, D.16-06-045, and any other existing, subsequent, or modifying decisions, resolutions, orders or rulings issued by the CPUC from time to time in the Resource Adequacy phases of Rulemaking R.04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.11-10-023, R.14-02-001, R.14-10-001, and R.17-09-020 or by any applicable successor proceeding.
- h. "System Resource" means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point. System Resource does not include any energy source with an e-tag from a busbar of a nuclear or coal-fired generating facility. However, the Parties understand that the ACS Energy sale has an Emissions Factor (set forth below in Exhibit C-SS Specified Source Confirmation Attachment) which takes into account some portion of nuclear and/or unspecified generation within BPA's System Resource.

2. **CAISO Dispatch Requirements:** Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, BPA shall provide the full Contract Quantity to the CAISO in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, section 40.6 of the Tariff. SVCE shall have no liability for the failure of BPA to comply with such Tariff provisions, including any penalties or fines imposed on BPA by the CAISO for such noncompliance.

**3. Representations:**

3.1 BPA and SVCE represent and expressly agree that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure SVCE's (or a subsequent purchaser's) right to the use of the Contract Quantity for the sole benefit of SVCE's RAR, consistent with the CAISO Tariff and RA Rules, including:

- a. Meeting requirements established by the CAISO Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to "deliverability" standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by BPA's Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by SVCE's Scheduling Coordinator (as such terms are defined in the CAISO Tariff);
- b. Negotiating in good faith to make necessary amendments, if any, to this Confirmation Agreement mutually agreed upon to conform this Confirmation Agreement to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain for each of the Parties; and
- c. At all times using "Good Utility Practice" as defined in the CAISO Tariff.

3.2 BPA represents that throughout the Delivery Term:

- a. SVCE or subsequent purchaser has the exclusive right to count the Contract Quantity of Import RA Capacity Product from BPA's System Resource toward SVCE's RAR;
- b. No portion of the Contract Quantity of Import RA Capacity Product has been sold by BPA to any third party in order to satisfy RAR; and
- c. BPA shall meet all terms applicable to it under CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and Import RA Rules approved by the CPUC as applying to the RA Capacity Product.

**4. Indemnity Against Penalties and Replacement:** If BPA fails to fulfill its obligation under this Confirmation Agreement to provide Import RA Capacity, and such failure is not excused under this Confirmation Agreement or the Enabling Agreement or by SVCE's failure to perform, then BPA agrees to indemnify SVCE for:

- a. any monetary penalties assessed by the CPUC and/or the CAISO against SVCE for SVCE's failure to meet the requirements of the RA Rules or Tariff as a direct result of BPA not fulfilling its obligation under this Confirmation Agreement. Such failure may be excused to the extent BPA provides SVCE with sufficient notice to take action necessary to avoid such monetary penalties being assessed and
- b. if BPA reimburses costs incurred by SVCE, using reasonable efforts to replace, if required, any RA Capacity to equal in total the volume of Contract Quantity and Delivery Term specified in Section 3.

Notwithstanding the foregoing, if approved by the CPUC and/or the CAISO, BPA may replace any Product necessary for SVCE to make its equivalent RA demonstration with another System Resource.

**5. Resale of Import RA Capacity:**

- a. SVCE may re-sell all or a portion of the Contract Quantity and any associated rights, in each case, acquired under this transaction. In the event SVCE re-sells all or a portion of the Contract Quantity of Import RA Capacity and any associated rights acquired under this transaction ("Resold Import RA Capacity") BPA agrees to follow SVCE's instructions with respect to providing such Resold Import RA Capacity to subsequent purchasers of such Resold RA Capacity. With respect to any Resold Import RA Capacity, BPA continues to be liable to SVCE for any damages due to the failure of BPA to comply with the terms of this transaction; provided, and BPA shall have no contractual obligation or liability to any subsequent purchaser.

- b. BPA's obligations under this Section 5 are contingent on SVCE 1) providing BPA with the information required by this Section 5 no later than two (2) Business Days prior to the deadline for filing the Supply Plan for the Resold Import RA Capacity; 2) any requested assignment being consistent with federal law applicable to BPA. Further, any resale of Import RA Capacity by SVCE to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable federal law, and BPA shall not be required to take any action hereunder or execute any documents or instruments that would not be permitted under the Tariff, CAISO business practices or applicable federal law.
- c. In the event there is any Resold Import RA Capacity, SVCE agrees to immediately notify BPA of such sale and agrees to provide BPA with all the information specified below promptly following such sale (and any other information reasonably requested by BPA so that BPA may perform its obligations in this Section 5) and promptly notify BPA of any subsequent changes to such information with respect to any particular sale:
  - i. Benefitting load serving entity SC identification number (SCID),
  - ii. Volume (in MW) of Resold Import RA Capacity,
  - iii. Sale delivery period for Resold Import RA Capacity.

## II. ACS Energy Provisions

1. BPA is recognized by the California Air Resources Board (CARB) as an Asset Controlling Supplier (ACS), as that term is defined in the California Mandatory Greenhouse Gas Emissions Reporting Requirements, California Code of Regulations title 17, section 95102 ("CARB GHG Regulations").
2. "ACS Energy" means energy that can be reported using CARB-approved emission factors, subject to the requirements to claim specified source power.
3. "Contract Quantity" means, for purposes of the ACS Energy Product, the MWh amount of ACS Energy specified on page one of this Confirmation Agreement.
4. BPA shall act as its own CAISO scheduling coordinator (SC) to deliver the Contract Quantity of ACS Energy, consistent with Exhibit C-SS of this Confirmation Agreement, to the California ISO (CAISO) and retain all revenues associated with such deliveries. BPA reserves the right to assign its SC responsibilities to a third party for the purposes of making ACS Energy deliveries to the CAISO.
5. BPA shall ensure the e-tag qualifies as ACS energy and lists the following:
  - a. SVCE's SC, ZES001, in the Carbon Copy Field of the tag
  - b. "Silicon Valley Clean Energy" in the Comments Field of the tag
  - c. Advanced notice to SVCE or its SC, of the e-tag is not required. If SVCE re-sells the ACS Energy, BPA will use the information provided from SVCE to populate the fields in (a) and (b) above with information identifying the subsequent purchaser.
6. BPA shall invoice SVCE the ACS Energy Price described on page one of this Confirmation Agreement for each MWh delivered to the CAISO due to this Confirmation Agreement.

## III. Additional Provisions

1. **Confidentiality:** Each Party recognizes that this Confirmation Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Notwithstanding the Enabling Agreement, the Parties agree that SVCE, and any subsequent purchaser, may disclose this Confirmation Agreement to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support its RAR showings, if applicable, and BPA may disclose the transfer of the Import RA Capacity under this Confirmation Agreement to the Scheduling Coordinator in order for such Scheduling Coordinator to timely submit accurate Supply Plans (as such terms are defined in the Tariff).
2. **Entire Agreement, No Oral Agreements or Modifications:** This Confirmation Agreement sets forth the terms of this transaction and, along with the Enabling Agreement, shall constitute the entire agreement between the Parties for the purchase and sale of the Product. Notwithstanding any other provision of the Enabling Agreement, this transaction may be confirmed only by a Documentary Writing executed by both

Parties, and no amendment or modification to this transaction shall be enforceable except under a Documentary Writing executed by both Parties.

- 3. **Joint Powers Authority:** SVCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation Agreement.
- 4. **Counterparts:** This Confirmation Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation Agreement by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
- 5. **Surplus Power Use Outside Pacific Northwest:** BPA has determined it has surplus power available in the amount marketed for the term of this Confirmation Agreement. All sales of surplus power for use outside the Pacific Northwest under this Confirmation Agreement are subject to the provisions of Public Law 88-552 and Section 9(c) of Public Law 96-501. BPA shall have the right to curtail a portion of, or terminate all of: (a) the capacity associated with a surplus firm peaking capacity sale on 60 months' written notice; or (b) the energy associated with a surplus energy sale on a 60-day written notice specifying the amounts and duration of the curtailment or termination, if such capacity and/or energy is needed to meet the capacity and/or energy requirements in the Pacific Northwest. Such curtailments to SVCE shall be limited to the amounts and duration necessary to cover BPA's projected Pacific Northwest needs. The sale of capacity and/or energy to SVCE under this Confirmation Agreement shall continue in months during which such capacity and/or energy is not needed, as determined by BPA, in the Pacific Northwest.
- 6. **BPA Specified Asset Controlling Supplier (ACS) Provisions:** The Parties agree this is a confirmation for the delivery of BPA Specified ACS energy sourced from "BPAPOWER" on a NERC e-tag. The Parties further agree this transaction includes the WSPF Exhibit C-Specified Source (C-SS) provisions set forth or referenced in Exhibit C-SS attached hereto. This Confirmation Agreement and the attached Exhibit C-SS memorialize the terms of the Parties' agreement. All prior terms are superseded by the terms of this Confirmation Agreement and Enabling Agreement. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Enabling Agreement or the WSPF Agreement, as applicable.

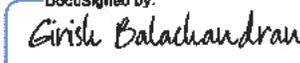
We are pleased to enter into this transaction. Please sign and return an executed copy of this Confirmation Agreement via fax to BPA 503-230-7463 or email to [PTCContractAdmin@bpa.gov](mailto:PTCContractAdmin@bpa.gov).

**AGREED AND ACCEPTED**

Bonneville Power Administration

Silicon Valley Clean Energy

  
 Mark E. Miller  
 Account Executive Date: 02/26/2020

DocuSigned by:  
  
 5CA64B9AC4C24C3...  
 Print Name: Girish Balachandran  
 Title: CEO Date: 2/26/2020

**EXHIBIT C-SS  
SPECIFIED SOURCE  
CONFIRMATION ATTACHMENT**

<b>a. Identity of Source:</b>
The following (i) facility, generator, unit or (ii) ACS system ("Source"): <b>BPA ACS System</b>
Source CARB IDs, if applicable and available: <b>ARB ID #4000</b>
California Energy Commission RPS ID, if Source is an ERR: <b>N/A</b>
WREGIS ID#, if applicable: <b>N/A</b>
<b>b. Source EF<sub>sp</sub>:</b>
<b>0.0117 MT CO<sub>2</sub>e per MWh</b>
<b>c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed): Carbon Adjustment <u>applies unless</u> the following box is checked:</b>
<input checked="" type="checkbox"/> Carbon Adjustment <u>does not</u> apply and instead of Carbon Adjustment, Seller shall compensate Purchaser as follows, in addition to Purchaser's remedies in Section 21 of the WSPF Agreement, if Seller fails to schedule and deliver energy from the Source unless excused pursuant to the terms of the applicable Schedule or this Confirmation: For each MWh that BPA does not deliver from the BPA ACS System, or if BPA does not deliver [REDACTED] MWh, BPA shall pay a fixed damage amount of [REDACTED] for each MWh below [REDACTED] MWh not delivered from the BPA ACS System.
<b>d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification): EF True-Up <u>does not apply unless</u> one or more of the following boxes that are checked cause a change to EF<sub>sp</sub> or EF<sub>asn</sub>:</b>
<input type="checkbox"/> Change in generator operations or fuel source.
<input type="checkbox"/> Prospective or retroactive change in law (including AB32).
<input type="checkbox"/> Other, as follows:
<input type="checkbox"/> All other circumstances.
<input type="checkbox"/> EF True Up damages are limited as follows: [e.g., caps]
<b>e. RECs Disclosure (not applicable for an ACS system Source): Seller represents and warrants that the Source is not an ERR, <u>unless</u> the box is checked below. This is a disclosure, not an option, and failure to check this box does not excuse performance if the Source is or becomes an ERR.</b>
<input type="checkbox"/> The Source is an ERR, and Section 6.c therefore applies.
<b>f. Regulation Incorporation: This transaction is <u>not</u> Regulation Incorporation <u>unless</u> the following box is checked:</b>
<input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.
<b>g. Additional provisions:</b>

**TRANSACTION CONFIRMATION**  
**(California Category 1 RECs**  
**RPS Bundled Electric Energy)**

NextEra Energy Marketing, LLC and Silicon Valley Clean Energy Authority, a California joint powers authority, are parties to that certain Edison Electric Institute Master Purchase and Sale Agreement dated March 14, 2019, as amended and supplemented from time to time (the "Master Agreement" or "Agreement"). This confirmation ("Confirmation" or "Transaction") entered into as of the date first written above (the "Effective Date") confirms the understanding reached between our organizations concerning the Transaction under the Master Agreement as set forth below. Notwithstanding any contrary provisions in the Master Agreement, any conflict between this Confirmation and the Master Agreement shall be resolved in favor of this Confirmation.

We confirm the following terms of our Transaction:

**Buyer:** Silicon Valley Clean Energy Authority ("SVCEA")

**Seller:** NextEra Energy Marketing, LLC ("NEM")

**Effective Date:** January 30, 2020

**Term:**

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

**Product:**

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

**Delivery Period:**

The Delivery Period for the Product shall begin on the Effective Date and go through December 31, 2020; except that, the REC component of the Product shall be delivered on or before April 15, 2021.

**Contract Quantity:**

Seller shall deliver 100% of the Firm Quantity to Buyer in the applicable volumes set forth in Exhibit A.

**Delivery Point:**

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

**Project:**

The term "Project" shall mean the renewable generation facility or facilities specified in Exhibit B and any facilities added to Exhibit B, excluding biomass and biogas, in accordance with this Confirmation (collectively, the "Facilities"), in each case, (a) which has been certified by the California Energy Commission

("CEC") as an ERR, and (b) which has its first point of interconnection to the WECC transmission grid within the metered boundaries of a California balancing authority area.

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

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

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

**WREGIS Certificate Delivery:**

Seller shall transfer the WREGIS Certificates corresponding to the RECs sold hereunder from Seller's WREGIS Account to Buyer's WREGIS Account as described in the WREGIS Operating Rules, and Buyer shall receive such WREGIS Certificates, within fifteen (15) Business Days of availability in WREGIS, but in no event shall WREGIS Certificates be transferred that do not contain the California RPS Certification Number nor is designated as eligible for the California RPS Program ("RECs Delivery"). The transfer of the WREGIS Certificates to Buyer shall be deemed to transfer title to all of the Green Attributes associated with the Product hereunder. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e. kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

Without limiting Seller's obligations herein, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

**Contract Price:**

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

**Energy Price:**

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

**REC Price:**

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

**Scheduling:**

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

**Settlements & Payments:**

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

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

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

- (i) Vintage month, quantity, price and monthly charge for the RECs delivered to Buyer in the prior month(s) pursuant to the "WREGIS Certificate Delivery" section of this Confirmation;
- (ii) Cumulative total RECs delivered to Buyer under this Transaction.

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

**Regulatory Determination or Change in Law Provision:**

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

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

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

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

#### ADDITIONAL TERMS:

1. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified or pre-certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. 聖節四聯 製型
2. Seller, and, if applicable, its successors, represents and warrants that it owns the Product under a long term contract of at least 10-years duration with the Project for the entire duration of the Delivery Period of this Agreement.
3. Seller shall provide any documentation reasonably requested by Buyer to assist with Buyer's California RPS Program compliance filings.
4. **Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]
5. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]
6. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2]
7. **Green Attributes.** Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

8. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. [STC 16]
9. Additional Seller Obligations: Seller represents and warrants that the Project will have executed the following agreements in accordance with the CAISO Tariff prior to the start of, and in effect throughout, the Delivery Period: Participating Generator Agreement and CAISO Interconnection Agreement.
10. Return and Refund of RECs:
- (a) If a Regulatory Determination or a Change in Law results in any Product previously delivered under this Confirmation not satisfying the Eligibility Requirements, then provided Buyer has complied with its obligations under "Eligibility Requirements" or "Change in Law", as the case may be, then in addition to any other rights and remedies the Parties may have pursuant to this Confirmation (but otherwise as Buyer's sole and exclusive remedy), Seller shall refund to Buyer 100% of the REC Price previously paid for such Green Attributes, without interest.
  - (b) Buyer's right to a refund for Green Attributes that do not satisfy the Eligibility Requirements as a result of a Regulatory Determination shall be conditional on Buyer first establishing to Seller's reasonable satisfaction, that Buyer has used commercially reasonable efforts (to the extent within Buyer's control) to agree to amendments or take other actions so that the Product will satisfy the Eligibility Requirements.
  - (c) If a Regulatory Determination or a Change in Law results in any Product previously delivered under this Confirmation not satisfying the Eligibility Requirements, then neither Party shall be liable for any payment of damages pursuant to the Master Agreement (except as set forth herein), as amended by this Confirmation, or for any failure to deliver or receive the Green Attributes component of the Product.

#### ADDITIONAL DEFINITIONS:

"Buyer's WREGIS Account" means the WREGIS account in the name of SVCEA.

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

"CAISO Balancing Authority" means the CAISO Balancing Authority as identified in Section 3.5.1.1.1. of CPUC Decision 11-12-052.

"CAISO Tariff" means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

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

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

“California Renewables Portfolio Standard” or “California RPS Program” means the renewable energy program and policies established by California State Senate Bills 1078, 107 and X1-2, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, including without limitation all applicable eligibility criteria and requirements thereof in force and effect, as jointly administered by the CEC, the California Public Utilities Commission and the California Air Resources Board.

“Category 1 Transaction” means procurement of product that satisfies the portfolio content category requirements under Public Utilities Code Section 399.16(b)(1) as adopted in Senate Bill X1-2, enacted on April 12, 2011 in the First Extraordinary Session of the Legislature, and as implemented by the CPUC pursuant to CPUC Rulemaking 11-05-005.

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

“Commercial Operation Date” has the meaning set forth in the CAISO Tariff.

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

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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<sup>1</sup>; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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

"Renewable Energy Credit" or "REC" means a renewable energy credit as defined by and in accordance with Section 399.12(h) of the California Public Utilities Code.

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

"Seller's WREGIS Account" means the WREGIS account in the name of NEM, or NEM's designee.

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

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

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

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

The parties agree that telephone conversations may be recorded; that such recordings are evidence of binding transactions; and that they are admissible evidence in the event of a dispute.

**NextEra Energy Marketing, LLC**

**Silicon Valley Clean Energy Authority, a California joint powers authority**

By: [Signature]  
Name: Alfred Bartley  
Title: Supervisor, Trading Risk Management  
Date: January 30, 2020

DocuSigned by:  
Girish Balachandran  
5CA64B9AC4C24C3  
By: \_\_\_\_\_  
Name: Girish Balachandran  
Title: CEO  
Date: 1/30/2020



Exhibit A

Calendar Year	Contract Price	Firm Quantity (MWh)
[REDACTED]		

**EXHIBIT B  
(PROJECT)**

Facilities Comprising the Project as of the Effective Date

Name of Facility	Delivery Point	CEC RPS ID	Delivery Period	Host Balancing Authority
Sky River LLC	The CAISO interconnection point for Resource ID JAWBNE_2_SRWND	60399E 60400E 60401E	January __, 2020 through December 31, 2020	CAISO

# Powerex

**AGREEMENT BETWEEN**  
**Powerex Corp. \* and Silicon Valley Clean Energy Authority**  
**Powerex Deal No. LC-GXH344**

This document (“**Confirmation**”) confirms the agreement reached between Powerex Corp.\* (“**Powerex**” or “**Seller**”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“**SVCEA**” or “**Buyer**”) regarding the sale and purchase of the Product in accordance with the EEI Master Power Purchase and Sale Agreement dated as of November 28, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the “**Master Agreement**”) as amended and supplemented by this Confirmation under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

**Seller:** Powerex

**Buyer:** SVCEA

**Transaction:** This Transaction is for Buyer to procure Low Carbon Energy, all in accordance with the terms and conditions of this Confirmation.

**Product:** “**Low Carbon Energy**”, being energy delivered from an ACS System or Carbon Free Source listed in Schedule A and scheduled to the CAISO Balancing Authority, in quantities as provided for under the “**Delivery Term and Contract Quantity**” Section of this Confirmation.

The Parties recognize that a schedule of energy to the CAISO Balancing Authority is a delivery to the California Independent System Operator (“**CAISO**”) and not directly to the Buyer. Scheduling energy to the CAISO Balancing Authority shall constitute delivery of Low Carbon Energy provided such energy was delivered from an ACS System or Carbon Free Source listed in Schedule A.

**Contract Price:** In this Confirmation,

“**CAISO Credit**” means the Energy Price paid by the CAISO for the Low Carbon Energy.

“**Energy Price**” means, for each MWh of Low Carbon Energy delivered, the applicable Locational Marginal Price, as defined in the CAISO Tariff and published by CAISO, at the CAISO Point where CAISO models the physical injection of such energy.

The Contract Price for each MWh of Low Carbon Energy delivered to Buyer in accordance herewith shall consist of the LCE Price less the CAISO Credit.

**Payment:** Invoicing and payment for the Low Carbon Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. Seller’s

invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer.

**Change in Law:**

If due to (i) any action by a Governmental Authority, or (ii) any change in Applicable Law ((i) and (ii), collectively, a "Change in Law"), occurring after the Reference Date that results in material change(s) to Buyer's or Seller's obligations with regard to the Product(s) sold under this Confirmation or that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product(s) sold hereunder in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder with regard to any Product hereunder in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, neither Party shall be obligated to perform any obligation hereunder (other than payment obligations) to the extent that doing so would cause such Party to be materially adversely affected.

**Delivery Term and Contract Quantity:**

The Delivery Term for the Product is March 1, 2020 through December 31, 2020, inclusive (the "Delivery Term").

During the Delivery Term, Seller shall deliver to Buyer the Contract Quantity of Low Carbon Energy as specified in the table below ("Contract Quantity"):

<u>Product</u>	<u>Delivery Term</u>	<u>Contract Quantity</u> (MWh)
[REDACTED]		

A minimum of [REDACTED] of the Contract Quantity shall be delivered from one or more Carbon Free Source(s). The balance of the Contract Quantity (i.e. [REDACTED] MWh) may be delivered by Seller from any one or combination of ACS Systems or Carbon Free Sources.

For greater certainty, there shall be no minimum or maximum obligation to deliver Low Carbon Energy in any hour during the Delivery Term.

Low Carbon Energy shall be scheduled in accordance with "Scheduling" below.

**Delivery Point:**

Seller may deliver Low Carbon Energy to any CAISO Point. For greater certainty, in the event an e-Tag includes more than one CAISO Point, the Delivery Point shall be the last point of delivery (POD) or "sink" CAISO Point on such e-Tag.

**Title:**

Title to the Low Carbon Energy shall be deemed to pass from Seller to Buyer at the Delivery Point.

**Scheduling:**

Seller will perform or cause to be performed all scheduling and tagging requirements for Low Carbon Energy. Energy deliveries shall be scheduled pursuant to WECC and CAISO requirements to the Delivery Point.

**Scheduling:** Seller shall schedule or cause to be scheduled, at its sole discretion, Low Carbon Energy from an ACS System or Carbon Free Source listed in Schedule A to the CAISO Balancing Authority on a day-ahead, hour-ahead, sub-hourly and/or real-time basis.

All Low Carbon Energy shall be scheduled in accordance with Generally Accepted Utility Practice.

**Tagging:** Each e-tag for Low Carbon Energy will include the following, depending on the ACS System or Carbon Free Source from which Low Carbon Energy is delivered:

<u>E-Tag Location</u>	<u>Low Carbon Energy</u>
Last CA (Control Area) under 'Physical Path'	CAISO Balancing Authority
Last or 'sink' PSE (Purchasing Selling Entity) under 'Physical Path'	ZES001
NERC Source	As set forth in Schedule A
Misc(Token/Value) field	As set forth in Schedule A
Comment field	Silicon Valley Clean Energy

For greater certainty, no e-Tags will be generated for deliveries from a Carbon Free Source within the CAISO Balancing Authority.

Any scheduling provisions may be altered by mutual agreement of the Parties.

Seller scheduling contacts:

	Phone	Fax
Prescheduler:	(604) 891-5007	(604) 891-5045
Real-Time:	(604) 891-5091	(604) 891-5045
Mid-office Agreement:	(604) 891-5057	(604) 891-5045
Email:	cash.desk@powerex.com	

Buyer scheduling contacts

Prescheduler:	(916) 221-4327	N/A
Real-Time	(916) 221-4327	N/A
Mid-office Agreement	(916) 221-4327	N/A
E-mail:	<a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a>	

**Definitions Applicable  
to this Transaction**

For the purposes of this Confirmation, the following terms used in this Confirmation shall have the following meanings:

- (a) "ACS System" means an ACS system set forth in Schedule "A" hereto. Seller may add additional ACS systems by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A provided that at the time such ACS system is added the current CARB-assigned emission factor must be equal to or lower than the current CARB-assigned emission factor for the Powerex ACS System.
- (b) "Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of or guidance with respect to the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the applicable ACS System or Carbon Free Source, or the terms of the Confirmation.
- (c) "Asset Controlling Supplier" or "ACS" means "asset-controlling supplier" or "Asset Controlling Supplier", as such terms are defined in the Mandatory Reporting Rule and Cap and Trade Regulation.
- (d) "CAISO Balancing Authority" means, as the context requires, CAISO as "Balancing Authority" or "CAISO Balancing Authority Area", as such terms are used in the CAISO Tariff.
- (e) "CAISO Point" means any Location in the CAISO Balancing Authority or CAISO Controlled Grid, including any Scheduling Point (as such terms are defined in the CAISO Tariff).
- (f) "CAISO Tariff" means the applicable tariff and protocol provisions of the CAISO (as amended from time to time).
- (g) "Cap and Trade Regulation" means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (h) "CARB" means the California Air Resources Board of the California Environmental Protection Agency.
- (i) "Carbon Free Source" means any energy source that is located within the WECC area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Reporting Rule and the Cap and Trade Regulation. Carbon Free Source does not include any Category 3 Renewables or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility. Seller may add additional Carbon Free Sources by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A.

- (j) "Category 3 Renewable" means renewable energy credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.
- (k) "Effective Date" means the date on which both Parties have executed and delivered this Confirmation.
- (l) "Generally Accepted Utility Practice" means a practice established by WECC or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.
- (m) "Governmental Authority" means any federal, provincial, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or any applicable transmission authority, having or asserting jurisdiction over a Party or this Transaction.
- (n) "Mandatory Reporting Rule" means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (o) "Reference Date" means the date that Powerex has executed this Confirmation (as reflected on the signature page hereto).

### Special Conditions

2. Events of Default; Remedies. For purposes of this Transaction:
  - (a) For the purposes of determining payments under Section 5.2 of the Master Agreement, with respect to this Transaction, the economic benefits or losses of the Non-Defaulting Party resulting from termination of this Transaction shall be based on energy delivered from a low- or zero-carbon source, including an alternate ACS, provided such source is not a nuclear-powered or coal-fired generation technology facility(ies).
  - (b) The remedies for failure to deliver the Product provided for in the Master Agreement as amended by this Confirmation are the sole and exclusive remedies and all other remedies are waived.
3. Failure to Deliver/Receive. The maximum liability of either Party pursuant to Section 4.1 or 4.2 of the Master Agreement for any failure to schedule, deliver or receive all or a portion of the Product shall not exceed and shall be limited to the amount of the Product that was not scheduled, delivered or received, as the case may be, and in no event will the liability of a Party pursuant to Section 4.1 or 4.2 of the Master Agreement for any failure to schedule, deliver or receive all or a portion of the Product include any liability in respect of penalties, ratcheted demand or similar charges.
4. Importer/Compliance Obligation. For Low Carbon Energy delivered pursuant to this Confirmation that is imported into California, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulation. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation (as such term is defined in the Cap and Trade Regulation) under the Cap and Trade Regulation associated with any imported Low Carbon Energy that Seller schedules and delivers to the CAISO Balancing Authority and that they will work together such that Seller may claim that such Low Carbon Energy is from a "specified source" (as such term is defined in the Mandatory Reporting Rule) to mitigate such Compliance Obligation. This provision is based on the Cap and Trade Regulation and Mandatory Reporting Rule as of the Reference Date

of this Confirmation. In the event that the regulatory requirements for mitigating the Compliance Obligation change after the Reference Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements.

- 5. Condition Precedent. This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Seller and Buyer have executed and delivered this Confirmation to the other Party before 3 p.m. Pacific Prevailing Time on February 28, 2020. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

This Confirmation is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. \*

Silicon Valley Clean Energy Authority, a California joint powers authority

By: Mark Holman

By: Girish Balachandran

Name: Mark Holman  
Managing Director

Name: Girish Balachandran

Title: \_\_\_\_\_

Title: CEO

Date: 02/21/2020

Date: 2/24/2020

\* Powerex Corp., doing business in California as Powerex Energy Corp.

Contacts:

Powerex:

SVCEA:

Anthony Des Lauriers  
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Fax: (604) 891-5056

Monica Padilla  
Tel: (408) 721-5301

## SCHEDULE A

Carbon Free Sources and ACS Systems

<u>ACS System or Carbon Free Source</u>	<u>NERC Source</u>	<u>CARB ID</u>	<u>E-tag Misc. Value</u>	<u>Emissions Factor (MT CO<sub>2</sub>e per MWh) (2020 Deliveries)</u>
Powerex	BCHA	3101	3101	0.0342
Bonneville Power Administration	BPAT	4000	4000	0.0117
Tacoma Power	TPWR	104567	104567	0.0168
Rocky Reach (Chelan County PUD)	MIDC	500055	500055/500003/500040	0
Mid-C Hydro - Rock Island (Chelan County PUD)	MIDC	500003	500055/500003/500040	0
Lake Chelan Hydroelectric Facility Mid-C Hydro	MIDC	500040	500055/500003/500040	0
Boundary Hydroelectric Units	BNDY	500043	500043	0
Kerr Dam	KERR	500014	500014	0

# 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.

**Description of Facility:** A 93 MW solar photovoltaic electric generating facility combined with a 46.5 MW / 186 MWh lithium ion battery storage facility.

### **Milestones**

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Evidence of Site Control</b>	Complete (4/24/2018)
<b>Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR</b>	10/31/2019
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Complete (1/15/2016: Phase 1; 11/22/2016: Phase 2)
<b>Executed Interconnection Agreement</b>	Complete (10/11/2017)
<b>Financial Close</b>	11/30/2020
<b>Expected Construction Start Date</b>	11/30/2020
<b>Initial Synchronization</b>	02/15/2021
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</b>	04/15/2021
<b>Expected Commercial Operation Date</b>	06/30/2021

**Delivery Term:** Seventeen (17) Contract Years

**Expected Energy:**

<b>Silicon Valley Clean Energy</b>	
<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	

**Guaranteed Capacity:** 93 MW

**Storage Contract Capacity:** 46.5 MW

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

**Storage Facility Loss Factor:** 0.88

**Contract Price**

The Renewable Rate shall be:

Contract Year	Renewable Rate
[REDACTED]	

The Storage Rate shall be:

Contract Year	Storage Rate
[REDACTED]	

**Product**

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

**Scheduling Coordinator:** Buyer

**Security:**

**Development Security:** [REDACTED]

**Performance Security:** [REDACTED]

Dollars [REDACTED]

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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 February 14, 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.

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

“**Annual Load Notice**” has the meaning set forth in Section 8.10(c).

“**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 Credit Support”** means (i) cash or (ii) a Letter of Credit, in the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000), deposited with Seller or in escrow at a financial institution reasonably acceptable to Seller, in conformance with Section 8.10.

**“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.

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the 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.

**“Commercial Operation Delay Damages”** means an amount equal to Forty Thousand Six Hundred Eighty-Eight Dollars (\$40,688).

**“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.

**“Curtailed 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.

**“Curtailed Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailed Order; provided that the Curtailed Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Customer Load Baseline”** means the actual metered load of Buyer’s customers in MWh served by Buyer during the period of October 1, 2017 through September 30, 2018 as reported in the CAISO T+48 data report.

**“Daily Delay Damages”** means an amount equal to Fifty Four Thousand Two Hundred Fifty Dollars (\$54,250).

**“Damage Payment”** means the dollar amount that is equal to the Development Security amount required hereunder.

**“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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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.

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

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

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

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

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

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (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 BBB+ with an outlook designation of “stable” from S&P or Baal with an outlook designation of “stable” from Moody’s, 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.

**“REC Replacement Price”** means the lesser of (a) Seller’s actual, documented costs of procuring Lost RECs or (b) [REDACTED]

**“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. For example, if the conversion of Charging Energy to Discharging Energy caused a twenty-five percent (25%) loss in Energy, the Storage Facility Loss Factor would be (.75).

**“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.

“**Ultimate Parent**” means Recurrent Energy, LLC, a Delaware limited liability company.

“**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, 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 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 (c.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. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term 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 [REDACTED] 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 (including any obligations set forth in Section 3.10, 3.11, 4.3(g) or 4.4(d)), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear

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.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

#### **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

##### **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 such 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

Curtailed or Curtailed 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 Curtailed Order, Buyer Bid Curtailed or Curtailed 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 Curtailed Order, Buyer Bid Curtailed or Curtailed 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 eighty percent (80%) of the total Expected Energy 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**"). 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; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during such Contract Years (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.

#### 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 ninety-eight percent (98%) (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.

#### 8.10 **Buyer Creditworthiness.**

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

(b) The "**Coverage Ratio**" shall be determined from Buyer's audited financial statements and Buyer shall include with the Credit Notice all information, including its audited financial statements, used in determining the Coverage Ratio. The Coverage Ratio is calculated as follows:

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

Where:

- "**Actual PPA Payment to Seller**" means the actual amount of payments made (or due to be, but not timely, made) by Buyer to Seller under this Agreement during the twelve (12) month fiscal year for which the Section 8.10(b) Coverage Ratio is being calculated.
- "**Total Revenues**" means the Total Operating Revenues value as referenced in Buyer's Statement of Revenues, Expenses and Changes in Net Position financial statement for the twelve (12) month fiscal year for which the Section 8.10(b) Coverage Ratio is being calculated.
- "**Total Expenses**" means the Total Operating Expenses value as referenced in Buyer's Statement of Revenues, Expenses and Changes in Net Position financial

statement for the twelve (12) month fiscal year for which the Section 8.10(b) Coverage Ratio is being calculated.

- o **“Total Cash Reserve Balance”** means the Cash and Cash Equivalents value as referenced in Buyer’s Statement of Revenues, Expenses and Changes in Net Position financial statement as of the end of the twelve (12) month fiscal year for which the Section 8.10(b) Coverage Ratio is being calculated as adjusted to include only cash and cash equivalents that are not committed (whether by lien, pledge or other encumbrance).

(c) No later than February 15 of each year beginning in 2019, Buyer shall determine and provide to Seller a Notice indicating its Annual Customer Load served during the prior fiscal year (**“Annual Load Notice”**).

(d) As used in this Agreement, the **“Coverage Threshold”** with respect to any fiscal year shall be 1.25, except that, beginning in 2019, if (i) the Annual Customer Load in the Annual Load Notice is not more than eighty five percent (85%) of the previous year’s Annual Customer Load, or (b) if the Annual Customer Load is not more than eighty percent (80%) of the Customer Load Baseline, then the Buyer’s Coverage Threshold shall be 1.5.

(e) In the event that Buyer’s Coverage Ratio is less than the Coverage Threshold for any fiscal year, Buyer shall provide Buyer Credit Support to Seller within fifteen (15) Business Days of the date that the Credit Notice is due. Buyer shall maintain Buyer Credit Support until the Coverage Ratio is equal to or greater than the Coverage Threshold over a four-consecutive calendar quarter period. Buyer shall not be obligated to maintain Buyer Credit Support once the Coverage Ratio exceeds the Coverage Threshold over a four-consecutive calendar quarter period. If Buyer’s obligation to maintain Buyer Credit Support is excused as a result of its reaching a Coverage Ratio in excess of the Coverage Threshold over a four-consecutive calendar quarter period that does not correspond to Buyer’s full fiscal year, the provisions of Section 8.10(e) shall apply anew to Buyer at the end of Buyer’s then current fiscal year.

(f) If the issuer of Buyer’s Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Seller’s properly documented request to draw on such Letter of Credit by such issuer, Buyer shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount required by the definition of Buyer Credit Support.

(g) The provisions of this Section 8.10 (excluding Buyer’s obligations under Sections 8.10(a) and (c)) shall not apply for so long as Buyer maintains an Investment Grade Credit Rating.

(h) Buyer acknowledges and agrees that the obligations and covenants set forth in this Section 8.10 are and shall be deemed material for purposes of Section 11.1(a)(iii).

8.11 **Seller’s First Priority Security Interest in Cash or Cash Equivalent Collateral.**

To secure its obligations under this Agreement, and until released as provided herein, Buyer hereby grants to Seller a present and continuing first-priority security interest in, lien on (and right to net against), and assignment of the Buyer Credit Support and any other cash collateral and cash equivalent collateral posted pursuant to Section 8.10 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Seller (the "**Lien**"), and Buyer agrees to take all action as Seller reasonably requires in order to perfect the 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 Buyer, an Early Termination Date resulting from an Event of Default caused by Buyer, or an occasion provided for in this Agreement where Seller is authorized to retain all or a portion of the Buyer Credit Support, Seller may do any one or more of the following (in each case subject to the final sentence of this Section 8.11):

(a) Exercise any of its rights and remedies with respect to the Buyer Credit Support, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Seller as Buyer Credit Support; and

(c) Liquidate all Buyer Credit Support then held by or for the benefit of Seller free from any claim or right of any nature whatsoever of Buyer, including any equity or right of purchase or redemption by Buyer.

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

**8.12 Buyer's Reporting of Financial and Credit Information.** Beginning on the first full calendar quarter of the Contract Term and continuing until the expiration of the Contract Term, Buyer shall provide to Seller a report that includes the following information:

(a) within sixty (60) days after the end of each fiscal quarter:

(i) the number of customers of Buyer as of the end of such fiscal quarter;

and

(ii) unaudited quarterly financial statements of Buyer; and

(b) within one hundred twenty (120) days after the end of each fiscal year, annual audited financial statements of Buyer (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.

Buyer shall cooperate with Seller or any Lender to provide such documentation reasonably requested by Seller or any Lender in order to verify Buyer's compliance with Sections 8.10 and 8.12.

## **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

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such

consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time, Seller delivers or attempts to deliver 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 the final day of the Termination Cure Period;

(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 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 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 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;

(iv) if, in any two consecutive Contract Years, the Monthly Storage Availability is not, on average, at least seventy percent (70%);

(v) 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 BBB by S&P or Baa2 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)) 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.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

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 arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

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

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Indemnification.**

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

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

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 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

[REDACTED]

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

[REDACTED]

(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

[REDACTED]

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

liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] 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 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 **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 of 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: Michael Arndt  
Title: Vice President

SILICON VALLEY CLEAN ENERGY  
AUTHORITY



2/14/2020

By: \_\_\_\_\_  
Name: GIRISH BALACHANDRAN  
Title: CEO

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** RE Slate 1

**Site includes all or some of the following APNs:**

026-040-016; 024-200-012; 024-200-017; 024-200-018; 024-200-020; 024-190-008;  
024-190-019; 024-190-033; 024-190-037; 024-190-045; 024-190-047; 024-190-049;  
024-190-057; 024-190-062; 024-190-072; 026-020-017; 026-020-018

**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): 46.5 MW

Maximum Discharging Capacity (MW): 46.5MW

Maximum Stored Energy Level (MWh): 186 MWh

**Operating Restrictions of Storage Facility:** see Exhibit Q

**Guaranteed Capacity:** 93 MW AC

**Storage Contract Capacity:** 46.5MW AC

**Maximum Output:** The Facility cannot in any event deliver more than an aggregate of 93 MW AC to the Delivery Point at any point in time.

**Delivery Point:** P-Node

**Facility Meter:** See Exhibit R

**Storage Facility Meter Locations:** See Exhibit R

**P-node:** MUSTANGS\_2\_B1 (230 kV Mustang Switching Station)

**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) the date that is ninety (90) days before the Expected Commercial Operation Date or (y) the date identified in the COD Certificate as the "Commercial Operation Date".

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall:
  - i. pay Commercial Operation Delay Damages for each day following November 1, 2021 until the Commercial Operation Date; and
  - ii. no later than twelve (12) months after the Commercial Operation Date, procure and deliver to Buyer the Lost RECs with respect to the period commencing on the Guaranteed Commercial Operation Date until the Commercial Operation Date, and Buyer shall pay Seller the REC Replacement Price for such delivered Lost RECs;

provided, that in no event shall Seller be obligated to pay aggregate Commercial Operation 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 Commercial Operation Delay Damages and Interconnection Delay Damages (defined below), if any, accrued during the prior month, which invoice shall also show the total REC Replacement Price payable for such prior month as a credit to Buyer. Upon Buyer's request, and in order to evidence the REC Replacement Price, Seller shall provide Buyer with three (3) quotes from leading brokers in Product contracts that are not Affiliates of either Party. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages, Lost RECs at the REC Replacement Price, and Interconnection 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 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation 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); **provided**, that:

- a. if, no later than May 1, 2022, Seller provides notice to Buyer that Seller's ability to interconnect the Facility to the CAISO Grid has been delayed due to an

Interconnection Delay, which notice includes reasonable documentation from the Transmission Provider of the Interconnection Delay, then:

- i. the Termination Cure Period will automatically be extended by a period of ninety (90) days (the “**Interconnection Cure Period**”), and
  - ii. Seller shall pay Interconnection Delay Damages (in addition to providing Lost RECs at the REC Replacement Price) to Buyer for each day following the commencement of the Interconnection Cure Period until the Commercial Operation Date, subject to the limitation set forth in Section 7 of Exhibit B.
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:
- a. a Force Majeure Event occurs;
  - 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 Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - c. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions to either the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred twenty (120) days (i.e., each such date may be extended for a maximum of one hundred twenty (120) days), for any reason, including a Force Majeure Event, and no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written Notice to Buyer as required in the next sentence. Seller shall provide prompt written Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **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 one hundred twenty (120) 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

[REDACTED]

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

[REDACTED]

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.

7. **Cap on Seller Liability Prior to Commercial Operation Date.** Notwithstanding any other provision of this Agreement, Seller's liability prior to the Commercial Operation Date shall be capped as follows:

- a. Daily Delay Damages and Commercial Operation Delay Damages shall be capped in the aggregate at an amount equal to one hundred percent (100%) of the Development Security;

- b. Interconnection Delay Damages shall be capped in the aggregate at an amount

- c. the Damage Payment for an Event of Default under Section 11.1(b)(ii) shall be capped in the aggregate at an amount equal to one hundred percent (100%) of the Development Security; and
- d. Seller's total aggregate liability for an Event of Default by Seller occurring before the Commercial Operation Date shall not exceed the sum of (a) plus (b) plus (c).

**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, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(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 one hundred fifteen percent (115%) but is less than one hundred twenty-five percent (125%) of the Expected Energy for such Contract Year, for each additional MWh of Facility Energy (but not Deemed Delivered Energy, for which no additional compensation shall be paid), if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Renewable Rate or (ii) the Day-Ahead price for the applicable Settlement Interval; provided that if there is a Negative LMP during such Settlement Interval, then the price applicable to all such additional MWh of Facility Energy in such Settlement Interval shall be zero dollars (\$0).

(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 zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("Negative LMP Costs").

(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%. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Facility Energy, plus Deemed Delivered Energy, exceeds one hundred twenty-five percent (125%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered

(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

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																								
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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]																								
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:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Contract Year, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) [REDACTED] and (y) the market value of Replacement Green Attributes

D = the Renewable Rate for the Contract Year, in \$/MWh

“**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 than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) 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 than ninety-five percent (95%) 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 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 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. [XXXXXXXX]

Date:  
Bank Ref.:  
Amount: US\$[XXXXXXXXXX]  
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. [XXXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] 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. [XXXXXXXX] 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

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 [XXXXXXXXXX]. 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. [XXXXXXXX]. 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]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, 333 W. El Camino Real, Suite 290, Sunnyvale, CA 94087, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [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) [*or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit*]1 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 \_\_\_\_\_

1 Bracketed language to be included if a new LC is issued, but may be excluded if an amendment to the LC issued under the Original PPA is issued.

## 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 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

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 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<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT N**

**NOTICES**

<p><b>RE Slate 1 LLC</b> ("Seller")</p>	<p><b>Silicon Valley Clean Energy Authority</b></p>
<p><b>All Notices:</b></p> <p>Street: 3000 Oak Road, Suite 300 City: Walnut Creek, CA 94597 Attn: Office of the General Counsel</p> <p>Phone: 415-675-1500 Facsimile: 415-675-1501 Email: <a href="mailto:legal@recurrentenergy.com">legal@recurrentenergy.com</a></p>	<p><b>All Notices:</b></p> <p>Street: 333 W. El Camino Real, Suite 290 City: Sunnyvale, CA 94087 Attn: Girish Balachandran, CEO</p> <p>Phone: 408-721-5301 Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></p>
<p><b>Reference Numbers:</b></p> <p>Duns: N/A Federal Tax ID Number: [REDACTED]</p>	<p><b>Reference Numbers:</b></p> <p>Duns: 08-046-2990 Federal Tax ID Number: [REDACTED]</p>
<p><b>Invoices:</b></p> <p>Attn: Accounts Payable Phone: 415-675-1500 Facsimile: 415-675-1501 E-mail: <a href="mailto:AP@recurrentenergy.com">AP@recurrentenergy.com</a></p>	<p><b>Invoices:</b></p> <p>Attn: SVCE Power Settlements Phone: 408-721-5301 E-mail: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></p>
<p><b>Scheduling:</b></p> <p>Attn: Operations Phone: 415-675-1500 Facsimile: 415-675-1501 Email: <a href="mailto:Ops@recurrentenergy.com">Ops@recurrentenergy.com</a></p>	<p><b>Scheduling:</b></p> <p>Attn: TBD Phone: TBD Email: TBD</p>
<p><b>Confirmations:</b></p> <p>Attn: Operations Phone: 415-675-1500 Facsimile: 415-675-1501 Email: <a href="mailto:Ops@recurrentenergy.com">Ops@recurrentenergy.com</a></p>	<p><b>Confirmations:</b></p> <p>Attn: Monica Padilla, Director of Power Resources Phone: 408.721.5301 x1009 Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></p>
<p><b>Payments:</b></p> <p>Attn: Accounts Receivable Phone: 415-675-1500 Facsimile: 415-675-1501 E-mail: <a href="mailto:AR@recurrentenergy.com">AR@recurrentenergy.com</a></p>	<p><b>Payments:</b></p> <p>Attn: SVCE Power Settlements Phone: 408-721-5301 E-mail: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></p>
<p><b>Wire Transfer:</b></p> <p>BNK: Wells Fargo Bank, N.A. ABA: [REDACTED] ACCT: [REDACTED]</p>	<p><b>Wire Transfer:</b></p> <p>BNK: River City Bank ACCT Title: SVCE ABA: [REDACTED] ACCT: [REDACTED]</p>

<b>RE Slate 1 LLC</b> ("Seller")	<b>Silicon Valley Clean Energy Authority</b>
<b>Credit and Collections:</b> Attn: Accounts Receivable Phone: 415-675-1500 Facsimile: 415-675-1501 E-mail: <a href="mailto:AR@recurrentenergy.com">AR@recurrentenergy.com</a>	<b>Credit and Collections:</b> Attn: SVCE Power Settlements Phone: 408-721-5301 E-mail: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a>
<b>With additional Notices of an Event of Default to:</b>  Attn: Development Phone: 415-675-1500 Facsimile: 415-675-1501 Email: <a href="mailto:Development@recurrentenergy.com">Development@recurrentenergy.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: 503-313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Operations Phone: 415-675-1500 Facsimile: 415-675-1501 Email: <a href="mailto:Ops@recurrentenergy.com">Ops@recurrentenergy.com</a>	<b>Emergency Contact:</b> Attn: Monica Padilla, Director of Power Resources Phone: 408.721.5301 x1009 Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a>

## 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 - I

- 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;

- (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;

- (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:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{\text{MNTHHRS}_m}$$

where:

$m$  = relevant month “m” in which availability is calculated;

$\text{MNTHHRS}_m$  is the total number of On-Peak Hours for the month;

$\text{UNAVAILHRS}_m$  is the total number of On-Peak Hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, System Emergencies, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in  $\text{UNAVAILHRS}_m$  for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

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.

### 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”), which is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:

$$AA = 100\% - [(98\% - \text{Monthly Storage Availability}) \times 2]$$

- (iii) If the Monthly Storage Availability is less than 70%, then:

$$AA = 0$$

## 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.
4. Total Discharging Energy for any single day (00:00 to 23:59) shall not exceed 186 MWh, calculated as the sum of the difference in Stored Energy Level between the start and end of a Discharging Notice for all Discharging Notices within that single day.
5. Total Discharging Energy may not exceed 67,890 MWh per Contract Year.
6. Stored Energy Level may not remain above 75% for more than 24 consecutive hours without a Discharging Notice that returns the Stored Energy Level to 5%.
7. Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 30 minutes prior to the beginning of the applicable Buyer Curtailment Period, unless the curtailment is effectuated through CAISO Automated Dispatch System (ADS), in which case the advanced notification required will match that provided by the CAISO ADS.
8. Minimum Buyer Curtailment Period: 30 minutes (i.e., six (6) consecutive Settlement Intervals).
9. Maximum ramp rate for Buyer Curtailment Periods: ten percent (10%) of the Installed Capacity per minute (i.e., the 93 MWac Generating Facility can ramp 8.8275 MW/minute or to full capacity in 10 minutes); provided if the CAISO Master File for the Facility reflects, or CAISO otherwise requires, a more rapid ramp rate, the rate in the CAISO Master File or required by CAISO shall apply.
10. Notwithstanding the Guaranteed Capacity of 93 MW AC and the Storage Contract Capacity of 46.5 MW AC, the Facility cannot in any event deliver more than an aggregate of 93 MW AC to the Delivery Point at any point in time.



## WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Monterey Bay Community Power Authority**, a California joint powers authority ("**Seller**") and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("**Purchaser**"), and each individually a "**Party**" and together the "**Parties**", dated as of **February 3rd, 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, and C are incorporated into this Confirmation.

**Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**ARTICLE 2**  
**DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Sale and Delivery of Product**

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.
- (b) Seller will deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Contract Quantity.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility.<sup>1</sup> A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

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<sup>1</sup> Note to draft: Seller to revise as appropriate.

its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.<sup>2</sup>

## **2.2 Adjustments to Contract Quantity**

(a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller's Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller's obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the "Swap Reduction Option"). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

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<sup>2</sup> For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

### **2.3 Seller's Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser's Compliance Showings related to such Showing Month; and
- (b) the designation of any Replacement Unit by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

### **2.4 Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

### **2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity**

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the

CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser's right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

## **2.6 Purchaser's Re-Sale of Product**

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, Seller and the Unit's Scheduling Coordinator shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

### **ARTICLE 3** **PAYMENTS**

#### **3.1 Payment**

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

#### **3.2 Allocation of Other Payments and Costs**

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Shown Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify

Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

#### **ARTICLE 4**

#### **OTHER PURCHASER AND SELLER COVENANTS**

##### **4.1 CAISO Requirements**

Seller must schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

##### **4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

##### **4.3 Seller's Representations and Warranties**

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

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

- (b) the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

#### **4.4 Market Based Rate Authority**

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

### **ARTICLE 5**

#### **ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

##### **5.1 Termination Payment**

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

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

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

## 5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
  
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

### **5.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

### **5.4 Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

### **5.5 Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### **5.6 Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

### **5.7 No Recourse to Members of Purchaser or Seller**

Purchaser and Seller are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. Purchaser and Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation. Purchaser will have no rights and will not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller's or Seller constituent members, in connection with this Confirmation

## **5.8 Other WSPP Agreement Changes**

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

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
  - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
  - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
  - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 of the WSPP Agreement is amended by:
  - In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
  - (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
  - (e) In Section 22.3(f), delete the entire provision and replace with the following:
    - “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
  - (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend

for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF

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 WSP 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 WSP 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.]*



## APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

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

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

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

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day

of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, less any reductions to Contract Quantity for such day specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

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

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

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

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

“Swap Confirmation” means that certain WSPP Agreement Confirmation between MBCP and SVCE dated concurrently herewith, in which MBCP is the buyer of .14 MW generic local Sierra RA with no flex attributes for the months of April, November and December 2020.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

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

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.<sup>3</sup>

“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.

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<sup>3</sup> Note to draft: Seller to revise as appropriate.

**APPENDIX B  
PRODUCT AND UNIT INFORMATION**

**Product:**

RAR                       Local RAR                       Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: System

MCC Bucket: 4

CPUC Local Area (if applicable): **NCNB**

Flexible Capacity Category (if applicable):N/A

**Delivery period: Generic Local: April 1, 2020 through April 30, 2020 and November 1, 2020 through December 31, 2020, inclusive.**

**Contract Quantity and Contract Price:**

Showing Month and Year	LAR Contract Quantity (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)

**Unit 1 –(Generic Local No Flex)**

<b>Unit Specific Information</b>	
<b>Resource Name</b>	Calistoga Power Plant
Physical Location	Middletown, CA
CAISO Resource ID	SANTFG_7_UNITS
SCID of Resource	CALJ
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	1_Phys_Res
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	North
Prorated Percentage of Unit Factor	Varies by Month
Prorated Percentage of Unit Flexible Factor	Varies by Month
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	NCNB
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
N/A	N/A	N/A	N/A	N/A

## WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Monterey Bay Community Power Authority**, a California joint powers authority (“Purchaser”) and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”), and each individually a “Party” and together the “Parties”, dated as of **February 3rd, 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, and C are incorporated into this Confirmation.

**Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**ARTICLE 2**  
**DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Sale and Delivery of Product**

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.
- (b) Seller will deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Contract Quantity.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel or be a nuclear generating facility.<sup>1</sup> A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

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<sup>1</sup> Note to draft: Seller to revise as appropriate.

its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.<sup>2</sup>

## **2.2 Adjustments to Contract Quantity**

(a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller's Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller's obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the "Swap Reduction Option"). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

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<sup>2</sup> For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

### **2.3 Seller's Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser's Compliance Showings related to such Showing Month; and
- (b) the designation of any Replacement Unit by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

### **2.4 Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

### **2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity**

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the

CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser's right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

## **2.6 Purchaser's Re-Sale of Product**

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, Seller and the Unit's Scheduling Coordinator shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

### **ARTICLE 3** **PAYMENTS**

#### **3.1 Payment**

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

#### **3.2 Allocation of Other Payments and Costs**

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Shown Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify

Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

#### **ARTICLE 4** **OTHER PURCHASER AND SELLER COVENANTS**

##### **4.1 CAISO Requirements**

Seller must schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

##### **4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

##### **4.3 Seller's Representations and Warranties**

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

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

- (b) the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

#### **4.4 Market Based Rate Authority**

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

### **ARTICLE 5**

#### **ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

##### **5.1 Termination Payment**

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

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

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

## **5.2 Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
  
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

### **5.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

### **5.4 Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

### **5.5 Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### **5.6 Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

### **5.7 No Recourse to Members of Purchaser or Seller**

Purchaser and Seller are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. Purchaser and Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation. Purchaser will have no rights and will not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller’s or Seller constituent members, in connection with this Confirmation.

## **5.8 Other WSPP Agreement Changes**

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

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

- (c) Section 22.3 of the WSPP Agreement is amended by:

In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

- (e) In Section 22.3(f), delete the entire provision and replace with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend

for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF

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:**

**MONTEREY BAY COMMUNITY  
POWER AUTHORITY, A  
CALIFORNIA JOINT POWERS  
AUTHORITY**

DocuSigned by:  
*Tom Habashi*  
By: \_\_\_\_\_  
Name: TomHabashi  
Title: Chief Executive Officer

**SILICON VALLEY CLEAN ENERGY  
AUTHORITY, A CALIFORNIA JOINT  
POWERS AUTHORITY**

DocuSigned by:  
*Girish Balachandran*  
By: \_\_\_\_\_  
Name: Girish Balachandran  
Title: Chief Executive Officer

**APPROVED AS TO FORM**

**Monterey Bay Community Power Authority**

DocuSigned by:  
*Robert M Shaw*  
By: \_\_\_\_\_  
Robert M. Shaw  
General Counsel

## **APPENDIX A DEFINED TERMS**

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO.

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

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

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

“Contingent Firm RA Product” has the meaning set forth in Article I herein.

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

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day

of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, less any reductions to Contract Quantity for such day specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

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

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

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

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

“Swap Confirmation” means that certain WSPP Agreement Confirmation between MBCP and SVCE dated concurrently herewith, in which SVCE is the buyer of .14 MW generic local North Coast/North Bay (NCNB) RA with no flex attributes for the months of April, November and December 2020.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

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

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.<sup>3</sup>

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NOC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

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<sup>3</sup> Note to draft: Seller to revise as appropriate.

**APPENDIX B  
PRODUCT AND UNIT INFORMATION**

**Product:**

RAR                       Local RAR                       Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: System

MCC Bucket: 4

CPUC Local Area (if applicable): Sierra

Flexible Capacity Category (if applicable): N/A

**Delivery period: Generic Local: April 1, 2020 through April 30, 2020 and November 1, 2020 through December 31, 2020, inclusive.**

**Contract Quantity and Contract Price:**

Showing Month and Year	LAR (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)

**Unit 1 (Generic Local No Flex)**

<b>Unit Specific Information</b>	
<b>Resource Name</b>	Colgate Powerhouse Unit 1
Physical Location	Yuba County
CAISO Resource ID	COLGAT_7_UNIT 1
SCID of Resource	YCWA
Unit NQC by month (e.g., Jan=50, Feb=65):	Varies by Month
Unit EFC by month (e.g., Jan=30, Feb=50)	Varies by Month
Resource Type (e.g., gas, hydro, solar, etc.)	Hydro
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	Varies by Month
Prorated Percentage of Unit Flexible Factor	Varies by Month
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Sierra
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

**APPENDIX C  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
N/A	N/A	N/A	N/A	N/A

## WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority (“Purchaser” or “SVCE”) and East Bay Community Energy Authority, a California joint powers authority (“Seller” or “EBCE”), and each individually a “Party” and together the “Parties”, dated as of February 7th, 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, and C are incorporated into this Confirmation.

#### Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

#### Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any adjustment of the Contract Quantity of any Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**ARTICLE 2**  
**DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Sale and Deliven 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 Unii(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.<sup>1</sup> A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

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<sup>1</sup> Note to draft: Seller to revise as appropriate.

its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.2

## **2.2 Adjustments to Contract Quantity**

(a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller's Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller's obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the "Swap Reduction Option"). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

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<sup>2</sup> For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

### **2.3 Seller's Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser's Compliance Showings related to such Showing Month; and
- (b) the designation of any Replacement Unit by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

### **2.4 Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

### **2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity**

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the

CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser's right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

## **2.6 Purchaser's Re-Sale of Product**

- (a)** Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b)** Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c)** If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, Seller and the Unit's Scheduling Coordinator shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

### **ARTICLE 3** **PAYMENTS**

#### **3.1 Payment**

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) is not a Business Day the next following Business Day. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 at the time of the CAISO filing for such Showing Month.

#### **3.2 Allocation of Other Payments and Costs**

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Shown Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify

Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

#### **ARTICLE 4**

#### **OTHER PURCHASER AND SELLER COVENANTS**

#### **4.1 CAISO Requirements**

Seller must schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

#### **4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

#### **4.3 Seller's Representations and Warranties**

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

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

- (b) the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

#### **4.4 Market Based Rate Authority**

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

### **ARTICLE 5**

#### **ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS**

##### **5.1 Termination Payment**

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

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

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

## **5.2 Confidentiality**

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a)
  - (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations;
  - (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans;
  - (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
  - (iv) Purchaser may disclose information to any Subsequent Purchaser.
  
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

### **5.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

### **5.4 Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

### **5.5 Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### **5.6 Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

### **5.7 No Recourse to Members of Purchaser or Seller**

The Parties are each organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party’s constituent members, in connection with this Confirmation.

### **5.8 Other WSPP Agreement Changes**

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

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
  - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
  - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
  - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2, “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 of the WSPP Agreement is amended by:
  - In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace with the following:
  - “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND

EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

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

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

## **5.9 Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic,

facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**5.10 Entire Agreement; No Oral Agreements or Modifications**

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

*[Signatures appear on the following page.]*

**AGREED AS OF THE EFFECTIVE DATE:**

**SILICON VALLEY CLEAN ENERGY,  
A CALIFORNIA JOINT POWERS  
AUTHORITY**

**EAST BAY COMMUNITY ENERGY  
AUTHORITY, A CALIFORNIA JOINT  
POWERS AUTHORITY**

DocuSigned by:  
*Eirisb & Ucbm./rMA.*  
By: TIGRISH BaTachandran  
Name: TIGRISH BaTachandran  
Title: CEO

By: *Marilyn J. Fox*  
Name: Marilyn M. Fox  
Title: Director, Power Resources

## **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 Showing” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

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

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product for such day

of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such day of such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, less any reductions to Contract Quantity for such day specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

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

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

“Firm RA Product” has the meaning set forth in Article 1 herein.

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

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

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

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

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

“Swap Confirmation” means that certain WSPP Agreement Confirmation between SVCE and EBCE dated concurrently herewith, in which EBCE is the buyer of the following: 12MW - CAISO Local LCR with Flexible attributes.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

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

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NOC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B  
PRODUCT AND UNIT INFORMATION**

**Product:**

El RAR                       Local RAR                       Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone:

MCC Bucket: 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A

**Delivery period:** [REDACTED]

**Contract Quantity and Contract Price:**

**RAR and Local RAR with Flexible Capacity as applicable**

Showing Month and Year	RAR Contract Quantity (MW)	FCR Quantity, if any (MW)	Contract Price :\$/kW-mo
[REDACTED]			

**Unit 1 (2020 System Generic)**

<b>Unit Specific Information</b>	
<b>Resource Name</b>	Metcalf Energy Center
Physical Location	San Jose, CA
CAISO Resource ID	METEC_2-PL1X3
SCID of Resource	CALJ
Unit NQC by month (e.g., Jan=50, Feb=65);	Varies by month
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Nat gas
Minimum Qualified Flexible Capacity	N/A
Category (Flex 1, 2 or 3)	
TAC Area (e.g., PG&E, SCE)	N/A
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	<b>4</b>

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

## WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **Silicon Valley Clean Energy**, a California joint powers authority (“**Seller**” or “**SVCE**”) and **East Bay Community Energy Authority**, a California joint powers authority (“**Purchaser**” or “**EBCE**”), and each individually a “**Tarty**” and together the “**Parties**”, dated as of **February 7th, 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, and C are incorporated into this Confirmation.

#### **Firm RA Product:**

Sella: 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.

#### **SI 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 Deliven 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.<sup>1</sup> A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller will identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit by CAISO. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in

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<sup>1</sup> Note to draft: Seller to revise as appropriate.

its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.2

## **2.2 Adjustments to Contract Quantity**

(a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month for the applicable days of such Planned Outages; provided, (i) Seller notifies Purchaser at least twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

(b) Seller's Swap Reduction Option: Seller obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Counterparty fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation; provided, Seller's obligation to deliver the Contract Quantity of Product as set forth in this Section 2.2(b) may be reduced only by the amount of contract quantity of product that Counterparty failed to deliver under the Swap Confirmation (such option, the "Swap Reduction Option"). Notwithstanding Section 2.1(c), if Seller exercises its Swap Reduction Option, Seller shall have the right to modify the Expected Contract Quantity Notice by submitting written notice to Counterparty of such modification no later than five (5) Business Days before the initial Compliance Showing deadline for such Showing Month.

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<sup>2</sup> For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

### **2.3 Seller/s Option To Provide Alternate Capacity**

If Seller is unable to provide the MI Contract Quantity for any Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Purchaser from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Purchaser of its intent to provide replacement Product and identify Replacement Units meeting all of the requirements of this Confirmation at least twenty (20) Business Days before the relevant deadlines for Purchaser's Compliance Showings related to such Showing Month; and
- (b) the designation of any Replacement Unit by Seller shall be subject to Purchaser's prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser's approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

### **2.4 Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages during the Delivery Period as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser a schedule of proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after its receipt of a schedule of proposed changes, Purchaser shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

### **2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity**

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the

CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Purchaser's right to the Expected Contract Quantity purchased hereunder for each day of the Delivery Period. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

## **2.6 Purchaser's Re-Sale of Product**

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's Scheduling Coordinator to offer, bid, or otherwise submit the applicable Expected Contract Quantity of Product for each day during the Delivery Period provided to Purchaser pursuant to this Confirmation for re-sale in such market, Seller and the Unit's Scheduling Coordinator shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

### **ARTICLE 3** **PAYMENTS**

#### **3.1 Payment**

After Seller has delivered the Expected Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) 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 Reuiirements**

Seller must schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

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

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and in the case of Seller causing each Shown Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations under Applicable Laws, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

**4.3 Seller's Representations and Warranties**

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

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

- (b) the Shown Unit qualifies under the Tariff for the Product, and the Shown Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

#### **4.4 Market Based Rate Authority**

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

### **ARTICLE 5**

#### **ADDITIONAL WSPP AGREEMENT AMENDMENTS: GENERAL PROVISIONS**

##### **5.1 Termination Payment**

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

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

with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

## 5.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

- (a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.
  
- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

### **5.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

### **5.4 Change in Law**

If any action by the CPUC, CAISO or any governmental body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date (a “Change in Law”) results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder in order to maintain the original intent.

### **5.5 Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

### **5.6 Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

### **5.7 No Recourse to Members of Purchaser or Seller**

The Parties are each organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from their constituent members. The Parties shall be will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each party warrants and represents that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other party or the other party’s constituent members, in connection with this Confirmation.

### **5.8 Other WSPP Agreement Changes**

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

- (a) Section 22.1 of the WSPP Agreement is modified by inserting the following new text at the end thereof:
  - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
  - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or
  - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
- (b) Section 22.2(b) of the WSPP Agreement is amended by inserting in Section 22.2; “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.
- (c) Section 22.3 of the WSPP Agreement is amended by:
  - In Section 22.3(c), deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
- (d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”
- (e) In Section 22.3(f), delete the entire provision and replace with the following:
  - “If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”
- (f) Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

- (g) Section 30.1 of the WSPP Agreement is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (h) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (i) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.
- (j) The following shall be inserted as a new Section 34.5;

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND

EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (k) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (l) Section 41 “Witness” of the WSPP Agreement shall become Section 42 and the following “Standard of Review” Section substituted in its place:

“The Parties agree as follows:

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

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. SierraPacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

## **5.9 Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic,

facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**5.10 Entire Agreement; No Oral Agreements or Modifications**

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

*[Signatures appear on the following page.]*

**AGREED AS OF THE EFFECTIVE DATE:**

**SILICON VALLEY CLEAN ENERGY,  
A CALIFORNIA JOINT POWERS  
AUTHORITY**

DocuSigned by:  
*Iris B. Balachandran*  
By: *Iris B. Balachandran*  
Name: *Iris B. Balachandran*  
Title: *CEO*

**EAST BAY COMMUNITY ENERGY  
AUTHORITY, A CALIFORNIA JOINT  
POWERS AUTHORITY**

By: *Mary Y. Fontenot*  
Name: *Mary Y. Fontenot*  
Title: *SV. Director, Power Resources*

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

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

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

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

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

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 2.3.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

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

“Shown Unit” means the Unit, or any other unit meeting the requirements of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

“Swap Confirmation” means that certain WSPP Agreement Confirmation between SVCE and EBCE dated concurrently herewith, in which EBCE is the seller of the following: 12MW - CAISO System Generic RAR.

“Swap Reduction Option” has the meaning specified in Section 2.2(b).

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

“Unit” means the generation unit described in Appendix B and any Shown Unit. A Unit or Shown Unit may not be a nuclear or coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NOC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B  
PRODUCT AND UNIT INFORMATION**

**Product:**

RAR                       Local RAR                       Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone:

MCC Bucket: 4

CPUC Local Area (if applicable): Fresno

Flexible Capacity Category (if applicable): 1\_\_\_\_\_

**Delivery period:** [REDACTED]

**Contract Quantity and Contract Price:**

**RAR and Local RAR with Flexible Capacity as applicable**

Showing Month and Year	RAR Contract Quantity (MW)	FCR Quantity, if any (MW)	Contract Price (\$/kW-mo)
[REDACTED]			

**Unit 1 (2020 Local Flex)**

<b>Unit Specific Information</b>	
<b>Resource Name</b>	Wellhead Power Panoche
Physical Location	Fresno, CA
CAISO Resource ID	PNOCHE-1-PL1X2
SCID of Resource	WPX1
Unit NQC by month (e.g., Jan=50, Feb=65):	49.97
Unit EFC by month (e.g., Jan=30, Feb=50)	49.97
Resource Type (e.g., gas, hydro, solar, etc.)	Nat gas
Minimum Qualified Flexible Capacity	1
Category (Flex 1, 2 or 3)	
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Fresno
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

**MASTER POWER PURCHASE AND SALE AGREEMENT  
RESOURCE ADEQUACY CONFIRMATION LETTER  
BETWEEN**

**SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority  
("PARTY A")**

**AND**

**Pacific Gas and Electric Company, a California corporation, limited for all purposes  
hereunder to its Electric Procurement and Electric Fuels Functions ("PARTY B")**

This confirmation letter ("Confirmation") confirms the Transaction between Party A and Party B, which becomes effective on the date fully executed by both Parties (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the "Master Agreement"). The Master Agreement and this Confirmation are collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1  
TRANSACTION TERMS**

**Buyer:** Party B

**Seller:** Party A

**Product:** The Product is the Capacity Attributes of the Unit(s) as defined in Appendix B; provided that if Buyer does not specify the Local Capacity Area in Appendix B, when applicable, then Seller may provide Local RAR from any Local Capacity Area in the Seller's local areas. The Product does not include any right to the energy or ancillary services of the Unit(s).

**Delivery Period:** [REDACTED]

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

**ARTICLE 2  
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

**2.1 Firm RA Product**

Seller's obligation to deliver the Contract Quantity of Product for each day included in the Delivery Period is firm and will not be excused for any reason.

## **2.2 Seller To Identify Shown Unit**

- (a) Seller shall identify the Shown Unit(s) that meet the Product characteristics and Contract Quantity specified in Appendix B by providing Buyer with the specific Unit information no later than:
  - (i) Fifteen (15) calendar days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month, if the Confirmation Effective Date is at least fifteen (15) calendar days before such Compliance Showing deadline; or
  - (ii) One (1) business day from the Confirmation Effective Date if the Confirmation Effective Date is less than fifteen (15) calendar days from the Compliance Showing. Section 2.3 of this Confirmation does not apply when the Confirmation Effective Date is within fifteen (15) calendar days of the Compliance Showing.
- (b) The Shown Unit should not have characteristics that would trigger the need for Buyer or Seller to file an Advice Letter to the CPUC.
- (c) Seller's notice under this Section 2.2 shall be deemed acceptable to and approved by Buyer upon receipt, unless Buyer, within three (3) Business Days of receipt of Seller's notice and in writing, notifies Seller of any objections Buyer has to the proposed Shown Unit. If Buyer timely objects, Seller must identify another Shown Unit within five (5) Business Days. Provided such Shown Unit meets the requirements of this Confirmation, this second Shown Unit shall be deemed acceptable to and approved by Buyer upon receipt. This section does not apply if the Confirmation Effective Date is within fifteen (15) calendar days of the relevant Compliance Showing deadline.
- (d) Once the Shown Unit designated by Seller is approved or deemed approved in accordance with Section 2.2(c), then any such Shown Unit will be automatically deemed the Unit from which the Product is delivered for purposes of this Confirmation for the affected Showing Month.

## **2.3 Seller To Provide Alternate Capacity**

- (a) If Seller desires to provide the Contract Quantity for any Showing Month during the Delivery Period from a different Unit other than the Shown Unit as designated in Section 2.2, then Seller may, at no additional cost to Buyer, provide Buyer with Product from one (1) or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units for the Showing Month during the Delivery Period is equal to the Contract Quantity for the Delivery Period.
- (b) If Seller desires to provide Product from an Alternate Unit under Section 2.3(a), Seller must notify Buyer of its intent to provide Product from an Alternate Unit and identify the proposed Alternate Unit meeting the Product characteristics specified

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

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

#### **2.4 Delivery of Product**

- (a) Seller shall provide Buyer with the Contract Quantity of Product for each day during the Delivery Period consistent with the following:
  - (i) Seller shall, on a timely basis with respect to each applicable Showing Month, submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans in accordance with the Tariff to identify and confirm the Product provided to Buyer for each day of such Showing Month that is included in the Delivery Period so that the total amount of Product identified and confirmed for each such day of such Showing Month equals the Contract Quantity for such day of such Showing Month.
  - (ii) Seller will be deemed to have delivered the Product on each day to the extent that Buyer receives credit from CAISO for such day for Product identified and confirmed in the Supply Plan submitted for the Unit.
  - (iii) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article 7 as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (b) In accordance with Sections 2.2 and 2.3 and subject to Article 7, Seller shall to the extent required by CAISO or the CPUC rules cause the information listed in Appendix B to be included in all applicable Supply Plans and shall cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the Tariff. In addition, if during the Delivery Period, there are changes to the information included in Appendix B, the Parties agree to communicate such changes to each other promptly.

## **2.5 Damages for Failure to Provide Capacity**

If Seller fails to deliver to Buyer the Contract Quantity of Product for any day during the Delivery Period in accordance with Section 2.4 then with respect to each Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement, and provided that Buyer has prepaid for the Contract of Quantity in accordance with Section 3.1, Seller shall pay to Buyer the following:

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

## **2.6 Indemnities for Failure to Deliver Contract Quantity**

- (a) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or CAISO resulting from any of the following:
  - (i) Seller's failure to deliver any portion of the Contract Quantity of Product for any portion of the Delivery Period and such failure results in the imposition of penalties, fines or costs assessed against Buyer; or
  - (ii) A Unit's Scheduling Coordinator's failure to timely or accurately submit Supply Plans in accordance with the applicable Tariff that identify Buyer's right to the Contract Quantity purchased hereunder for each day of the Delivery Period.
- (b) With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines, and costs.

## **2.7 Buyer's Re-Sale of Product**

- (a) Buyer may re-sell all or a portion of the Product purchased under this Confirmation ("Resold Product"); provided that such re-sell right does not include the ability to offer any portion of Product into the CSP. If Buyer re-sells Product, Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability

to any subsequent purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Confirmation, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product, including without limitation, pursuant to Sections 2.5 and 2.6.

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

### **ARTICLE 3** **PAYMENT**

#### **3.1 Monthly Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment (a "Monthly Payment") to Seller, for the applicable Showing Month, as follows:

$$\text{Monthly Payment} = Q \times P \times CF$$

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.

- (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**

**Pacific Gas and Electric Company, a California corporation, limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions**

By:	<u>DocuSigned by: Don Eckert</u>	By:	<u>Avery Arjo</u>
Name:	<u>Don Eckert</u>	Name:	<u>Avery Arjo</u>
Title:	<u>Director of Finance and Administration</u>	Title:	<u>Portfolio Management Analyst, Exp.</u>
Date:	<u>2/18/2020</u>	Date:	<u>2/19/2020</u>

**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.

Showing Month and Year	Path (North, South)	RAR Quantity (MW)	Capacity Area*	FCR Quantity, if any (MW)	Flexible Capacity Category (1,2,3)	Contract Price (\$/kW-Month)	SCID of Benefiting LSE

\* Please specify: Bay Area, Humboldt, Sierra, Stockton, Fresno, Kern, North Coast/North Bay, LA Basin, Big Creek/Ventura

**APPENDIX C**  
**SUBSEQUENT SALE INFORMATION**

<b>Contract Key ID:</b>	
<b>Benefitting LSE SCID:</b>	
<b>Generic Volume (in MW):</b>	
<b>Local Volume (in MW and by local area):</b>	
<b>Flexible Volume (in MW):</b>	
<b>Term:</b>	

**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](mailto:monica.padilla@svcleanenergy.org)  
Phone: (408) 721-5301 x1009

**Invoices and Payments:**  
Attn: SVCE Power Settlements  
  
(email): [powersettlements@svcleanenergy.org](mailto:powersettlements@svcleanenergy.org)  
Phone: (408) 721-5301

**Scheduling:**  
Attn: Eric Vaa  
(email): [eric@zglobai.biz](mailto:eric@zglobai.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](mailto:powersettlements@svcleanenergy.org)  
Phone: (408) 721-5301

**Contract Management**  
Attn: SVCE Power Settlements  
(email): [powersettlements@svcleanenergy.org](mailto: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](mailto: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](mailto:candice.chan@pge.com))  
Director, Contract Mgmt & Settlements  
Phone: (415) 973-7780

**Invoices and Payments:**  
Attn: Fuel Settlements  
([egssettlements@pge.com](mailto:egssettlements@pge.com))  
Manager, Fuel Settlements  
Phone: (415) 973-0795

**Outages:**  
Attn: Outage Coordinator  
([ESMOutageCoordinator@pge.com](mailto:ESMOutageCoordinator@pge.com);  
[RATransactionNotificationList@pge.com](mailto:RATransactionNotificationList@pge.com))  
Phone: (415) 973-1721

**Wire Transfer:**  
BNK: The Bank of NY Mellon  
ACC Title: PG&E  
ABA: [REDACTED]  
ACCT: [REDACTED]  
DUNS: 556650034  
Federal Tax ID Number: [REDACTED]

**Credit and Collections:**  
Attn: Credit Risk Management  
([PGERiskCredit@pge.com](mailto:PGERiskCredit@pge.com))  
Phone: (415) 972-5188

**Contract Management**  
Attn: Elizabeth Motley  
([elizabeth.motley@pge.com](mailto: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](mailto:ted.yura@pge.com))  
Senior Manager, Contract Management  
Phone: (415) 973-8660

**Supply Plan and Hold-Back Request:**  
[EPP-RAFilingsMailbox@pge.com](mailto:EPP-RAFilingsMailbox@pge.com)

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER  
BETWEEN  
CALPINE ENERGY SERVICES, L.P.  
AND  
SILICON VALLEY CLEAN ENERGY AUTHORITY  
FOR UNIT-SPECIFIC IMPORT RESOURCE ADEQUACY PRODUCT**

This confirmation letter ("Confirmation") confirms the Transaction between **Calpine Energy Services, L.P.**, a Delaware limited partnership ("Seller"), and **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of February 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 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 capacity from a Resource Adequacy Resource (as defined in the Tariff) which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5 and that can be applied by Buyer to satisfy its RAR and/or FCR, as applicable.
- 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 specified 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 "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

- 1.12** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW) set forth in the 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 CPUC Decisions 04-10-035, 05-10-042, 06-07-031, 19-10-021, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC.
- 1.14** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15** "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16** "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product 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 as provided in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.18** "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.
- 1.19** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.20** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.21** "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.
- 1.22** "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.
- 1.23** "GADS" means the Generating Availability Data System or its successor.
- 1.24** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes which does not include FCR Attributes.
- 1.25** "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, including without limitation the CPUC, the CAISO and other Balancing Authorities and Regional Entities (as those terms are defined in the Tariff).

- 1.26 "Good Utility Practice" has the meaning set forth in the Tariff.
- 1.27 "Import Capability" means that portion of the Maximum Import Capability necessary to support the importation of the Contract Quantity and allocated by the CAISO as a Pre-RA Commitment for deliveries of the Unit into the CAISO Markets.
- 1.28 "Import RA Capacity" means the qualified and deliverable capacity from a System Resource that can be counted toward Buyer's RAR, and to the extent provided in Section 3.2, Buyer's FCR, each as provided in the CPUC Decisions and in accordance with the Tariff.
- 1.29 "LRA" has the meaning set forth in the Tariff.
- 1.30 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.31 "Master Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.32 "Maximum Import Capability" has the meaning set forth in the Tariff.
- 1.33 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.34 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.35 "NERC" means the North American Electric Reliability Council, or its successor.
- 1.36 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.
- 1.37 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.38 "Non-Availability Charges" has the meaning set forth in the Tariff.
- 1.39 "Notification Deadline" means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings and/or FCR Showings for the applicable Showing Month.
- 1.40 "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).
- 1.41 "Planned Outage" means, subject to and as further described in the CPUC Decisions and the Tariff (a Planned Outage is referred to as an "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.
- 1.42 "Pre-RA Commitment" means the incremental Maximum Import Capability identified by the CAISO as associated with the 2005 FERC-approved settlement between the Western Area Power Administration and Calpine Construction Finance Company, L.P. (ER05-912).
- 1.43 "Product" has the meaning specified in Article 3 hereof.
- 1.44 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR 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 and, if Flexible RA Product is specified in Section 3.2, FCR Attributes, of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

- 1.45 "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.46 "RAR" means the resource adequacy requirements, exclusive of FCR or any local area reliability requirements, established for LSEs by the CPUC pursuant to the CPUC Decisions or by another Governmental Body authorized to make such determination under Applicable Laws, excluding any resource adequacy requirements related to location, local areas, flexible response, ramping or flexible capacity.
- 1.47 "RAR Attributes" means, with respect to the Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff or the CPUC Decisions that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit. RAR Attributes do not include any FCR or other attributes related to location, local areas, flexible response, ramping or other local or flexible capacity attributes.
- 1.48 "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 and the CPUC Decisions.
- 1.49 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.50 "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.
- 1.51 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.52 "ROFO" has the meaning specified in Article 6 hereof.
- 1.53 "ROFO Notice" has the meaning specified in Article 6 hereof.
- 1.54 "Scheduling Coordinator" has the same meaning as 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 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 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO (or any successor Governmental Body) in order for that RA Capacity to count for its RAR Attributes and/or FCR Attributes.
- 1.58 "System Resource" has the meaning set forth in the Tariff.
- 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 "Transferred Import Capability" has the meaning specified in Section 3.1.
- 1.61 "Transaction" has the meaning specified in the introductory paragraph hereof.

- 1.62** "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
- 1.63** "Unit EFC" means the Effective Flexible Capacity set by the CAISO for the Unit. If the CAISO adjusts the Effective Flexible Capacity of the 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 Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2. To the extent the Unit is providing FCR Attributes and the CAISO creates new categories of flexible capacity during the term of this Transaction and the Unit can provide and count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of the Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of the 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.
- 1.64** "Unit NQC" means the Net Qualifying Capacity set by the CPUC for the applicable Unit. If the CPUC 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 CPUC-adjusted Net Qualifying Capacity.

**2.  
UNIT INFORMATION**

**Name:** Sutter Energy Center

**Location:** Yuba City, California

**Resource Specific CAISO Resource ID:** TBD

**Intertie Resource ID:** TBD

**Product Type (Flexible/Generic):** Generic

**If Generic:** Unit NQC (as of the Confirmation Effective Date): 540

**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****3.1 Product**

During the Delivery Period, and subject to Seller's rights under Sections 4.4 and 4.5, Seller shall (x) provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of Import RA Capacity, including its RAR Attributes and, if Flexible RA Product is specified in Section 3.2, its FCR Attributes, in accordance with the terms and conditions of this Agreement, subject to the availability of the Unit as hereinafter provided and (y) transfer or cause to be transferred to Buyer annually Import Capability of not less than the Contract Quantity shown in Section 4.3 (the "Transferred Import Capability" and, together with the Import RA Capacity, the "Product"). However, if (i) the Unit is not available to provide the full amount of the Contract Quantity due to Force Majeure, Planned Outage, loss or reduction of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or reduction of the RA Capacity of the Unit, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then Seller may either reduce the Contract Quantity or provide Buyer with Alternate Capacity from one or more Replacement Units pursuant to Section 4.5. If Seller fails to provide Buyer with any portion of the Designated RA Capacity for (x) a reason other than a Force Majeure, Planned Outage, loss or reduction of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or reduction of the RA Capacity of the Unit, and (y) Seller fails 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. For purposes of this Confirmation, Seller may apportion the effects of a loss or reduction of Import Capability among Buyer and Seller's other customers purchasing substantially the same product from the Unit on a pro rata basis or such other basis as Seller reasonably determines to be equitable. The Product does not confer to Buyer any right to the electrical output from the Unit, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings and FCR Showings, as applicable. Specifically, no energy or ancillary services associated with the Unit are 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 the Unit that is in excess of the Contract Quantity and any RAR Attributes, FCR Attributes or other capacity attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.2  Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity. Seller shall only be obligated to provide FCR Attributes under this Confirmation to the extent they are available from the Unit. Seller shall not be obligated to make any modifications to the Unit or to its operation or dispatch procedures in order to make any FCR Attributes available, but may do so in its discretion. The Contract Price shall not be affected by whether or not FCR Attributes are delivered.

**3.3 Unit Specific Import RA Capacity Product**

Seller and Buyer acknowledge and agree that the Product qualifies as "Import RA Capacity" within the meaning of the CPUC Decisions because (1) the Product is supported by operating reserves, (2) the Product cannot be curtailed for economic reasons, and (3) this Agreement specifies a firm Delivery Point within the CAISO.

Seller and Buyer acknowledge and agree that, pursuant to the CPUC Decisions, the Product qualifies as a "Resource Specific" or "Unit Specific" Import RA Capacity resource because the Unit is pseudo-tied into the CAISO Markets. The Parties agree that, throughout the Delivery Term, they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR consistent with the Tariff, as further described in Section 7 below.

Seller and Buyer acknowledge and agree that in Decision 19-11-016, the CPUC (i) required that LSEs procure certain amounts of additional RA capacity beyond a baseline of resources assumed to be procured, (ii) required that no more than 20 percent of such additional RA procurement be from import resources located outside the CAISO, but (iii) specified that “the Sutter Power Plant is not included in the baseline and is also not considered an import, for purposes of [the RA procurement required by] this decision.” D.19-11-016, mimeo at 32; Ordering Paragraphs 3, 6.

**3.4 CAISO Revenues**

Seller shall retain any and all revenues received from the CAISO with respect to the Transaction contemplated by this Confirmation or with respect to any other capacity, energy, ancillary services or other products provided by or from the Unit.

**4.**

**DELIVERY AND PAYMENT**

**4.1 Delivery Period**

The Delivery Period shall be [REDACTED]. 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 the Unit shall be TESLA230 which maps to the CAISO Branch Group TRACY230\_BG or such other point or points at which Import Capability has been allocated by CAISO for the Unit and designated by written notice from Seller to Buyer, so long as the Product delivered at that Delivery Point can be applied by Buyer to satisfy its RAR.

**4.3 Contract Quantity**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

**Contract Quantity (MW)**

Contract Year	Contract Quantity (MW)
[REDACTED]	[REDACTED]

**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 applicable to that month as a result of such Planned Outage. For purposes of this Confirmation, Seller may apportion the effects of a Planned Outage among Buyer and Seller's other customers purchasing substantially the same product from the Unit on a pro rata basis or such other basis as Seller reasonably determines to be equitable.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of the Unit, Seller has the option, but not the obligation, to provide Alternate Capacity 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 Alternate Capacity from Replacement Units and the 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: 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) the 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: To the extent the Product includes Flexible RA Product as provided in Section 3.2, 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) the 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 the Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then from and after such replacement Seller will convey the equivalent amount of qualifying capacity of the Unit on a pro rata basis (i.e. following such replacement, Seller's delivery obligation will be obtained by calculating the product of (i) the Contract Quantity divided by the Unit NQC, multiplied by (ii) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring the Unit's qualifying capacity).
- (e) Force Majeure: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced at Seller's option if the Unit or transmission to the Delivery Point is affected by Force Majeure. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide Alternate Capacity for such Showing Month from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section

4.5. For purposes of this Confirmation, Seller may apportion the effects of a Force Majeure among Buyer and Seller's other customers purchasing substantially the same product from the Unit on a pro rata basis or such other basis as Seller reasonably determines to be equitable.

#### **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 and Alternate Capacity provided to Buyer from the Unit and the Replacement Units, respectively, not to exceed an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline; and provided further that Buyer's provision of such Alternate Capacity shall not violate the requirements of D.19-11-016. Replacement Units shall be capable of delivering Alternate Capacity that can be applied by Buyer to satisfy its RAR. 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) If Seller does not provide Alternate Capacity in an amount that, together with Product provided by the Unit, is equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if the failure to deliver the full Contract Quantity is due to Force Majeure, loss of Import Capability for any reason other than Seller's negligence or failure to perform its obligations hereunder, or a Planned Outage and, in the case of a Planned Outage, Seller notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity for the Product that cannot be provided from the Unit for that Showing Month.

#### **4.6 Delivery of Product**

Subject to Seller's rights under Sections 4.4 and 4.5, Seller shall provide Buyer with the Contract Quantity 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 Contract Quantity, 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 Contract Quantity for such Showing Month.

- (c) Seller shall give, or shall cause the Unit's Scheduling Coordinator to give, Buyer written notice of whether or not Import Capability has been allocated to the Unit and, if so, whether or not the allocated Import Capability is sufficient to enable Seller to transfer to Buyer Transferred Import Capability sufficient to enable Buyer to apply the Import RA Capacity to satisfy its RAR. Such notice shall be given annually on or before the Notification Deadline for the annual Supply Plans to be filed by Buyer with respect to each calendar year in the Delivery Period.

#### **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 is not excused from providing the Designated RA Capacity as provided herein, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller. 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**

Subject to Seller's rights under Sections 4.4 and 4.5, to the extent Seller is required to, and fails, to provide the Designated RA Capacity hereunder, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;
- (c) The Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) The 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. The 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 or replaced pursuant to Sections 4.4 and 4.5. 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**

Contract Year	RA Capacity Price (\$/kW-month)
[Redacted Table Content]	

**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, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC required to be made hereunder. 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. 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.

**5.  
CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent the Unit is in an Outage or is affected (or its transmission path is affected) by an event of Force Majeure or loss of Import Capability that results in a partial or full Outage of the Unit, or as otherwise provided in Section 4.4, 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, 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 the 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. CONDITIONS PRECEDENT

This Confirmation shall be effective and as of the Confirmation Effective Date only to the extent necessary to give effect to the following provisions (i) Article 6 (except as provided below) and Article 8 and the related definitions in Article 1 of this Confirmation and (ii) Sections 10.6, 10.7 and 10.11 of the Master Agreement. None of the Parties' other obligations under this Confirmation, including without limitation any obligation by Seller to sell, deliver or provide any Product from the Unit shall become effective or binding on the Parties unless and until the conditions precedent set forth below (the "Conditions Precedent") have been achieved (or waived in writing by Seller in its sole discretion) on or before August 1, 2020 (or such later date as may be mutually agreed by the Parties) the "Conditions Precedent Deadline":

- (a) CAISO shall have transferred Import Capability of not less than 270 MW for use by the Unit pursuant to the process set forth in Exhibit A-3 (Import Capability Posting and Submittal Dates) of the CAISO's Business Practice Manual for Reliability Requirements, Revision 46 (last revised January 10, 2020);
- (b) CAISO shall have obtained final and non-appealable approval from the Federal Energy Regulatory Commission to enter into the Pseudo-Tie Participating Generator Agreement with the Unit; and
- (c) execution by all required parties of such other agreements, including transmission service agreements, Pseudo-Tie Participating Generator Agreement, and Inter-Balancing Area Authority Dynamic Transfer Agreements that are necessary, in Seller's good faith opinion, to enable Seller to transfer a portion of the Import Capability to Buyer and to deliver the Product to Buyer as provided herein.

Seller shall take commercially reasonable actions within its control to timely satisfy each of the Conditions Precedent. For each month from the Confirmation Effective Date through the Conditions Precedent Deadline, Seller shall provide Buyer with monthly progress reports regarding the completion of each of the Conditions Precedent.

If the Conditions Precedent have not been satisfied (or waived by Seller) by the Conditions Precedent Deadline, then either Party may terminate this Confirmation by providing written notice to the other Party; provided that this Confirmation shall terminate automatically with no further action by the Parties if, by no later than 30 days after the Conditions Precedent Deadline, Seller has not confirmed that the Conditions Precedent have been satisfied or waived.

If Seller terminates this Confirmation pursuant to this Article 6 or the Confirmation terminates automatically as provided in the preceding sentence, for sixty (60) days after Buyer's receipt of Seller's termination notice, Buyer shall have a Right of First Offer ("ROFO") with respect to the Contract Quantity of the Product. Prior to marketing all or any portion of the Contract Quantity to any third party, Seller shall provide written notice to Buyer of (i) its intent to market the Contract Quantity to third parties and (ii) the terms and conditions thereof (for the avoidance of doubt, such terms, including but not limited to pricing, may be different than the terms of this Confirmation) ("ROFO Notice"). Buyer shall have five (5) business days from its receipt of the ROFO Notice to respond indicating its interest in purchasing the Contract Quantity pursuant to the terms and conditions set forth in the ROFO Notice. If Buyer indicates an interest in purchasing such Contract Quantity, Buyer shall have ten (10) additional business days to enter into a definitive contract for the purchase and sale of the Contract Quantity, which period of time shall begin upon Seller's delivery to Buyer of a confirmation letter pursuant to the Master Agreement incorporating the terms and conditions set forth

in the ROFO Notice. Seller shall have the right to market and sell any and all of the Contract Quantity from the Unit to any third party upon the earlier of the following events (a) the end of the 60-day ROFO period, (b) Buyer's failure to timely respond to the ROFO Notice, or (c) the Parties' failure to timely enter into a definitive contract for purchase and sale of the Contract Quantity. Notwithstanding the foregoing, Seller shall have no further obligation to pursue satisfaction of any of the Conditions Precedent after it has sent Buyer a notice of termination pursuant to this Article 6.

## 7.

### OTHER COVENANTS AND REPRESENTATIONS

#### 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 RAR and/or FCR, consistent with the Tariff and the CPUC Decisions. Such commercially reasonable actions may include:

- (a) Meeting requirements established by the Tariff and the CPUC Decisions, including (i) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (ii) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to "deliverability" standards established by the CPUC or another Governmental Body responsible for administration of RAR and/or FCR, and (iii) causing Seller's Scheduling Coordinator to provide a Supply Plan to the CAISO and sufficient information to Buyer to allow Buyer's Scheduling Coordinator to submit the required RAR Showing and/or FCR Showing with respect to the Unit;
- (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 or another Governmental Body responsible for administration of RAR and/or FCR in order to maintain the intent of the Parties and the benefit of the bargain struck by the Parties on the Confirmation Effective Date; and
- (c) At all times using Good Utility Practice.

#### 7.2 Certain Representations

Seller represents to and covenants with Buyer that, throughout the Delivery Period:

- (a) Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity Product from the Unit toward Buyer's RAR and/or FCR, as applicable;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, FCR or other analogous capacity obligations in CAISO markets;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, FCR or other analogous capacity obligations in any non-CAISO market; and
- (d) Seller will comply with all applicable provisions of the Tariff and the CPUC Decisions, and all applicable rules and requirements established by FERC, with respect to Import RA Capacity.

**8.****CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to the CPUC, the CAISO or another Governmental Body, having jurisdiction in order to support its RAR Showings, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Unit's SC in order for such SC to timely submit accurate Supply Plans.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Buyer may be required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call and letter sent via electronic mail, and/or by overnight carrier. Such notice shall provide a copy of the request and describe the specific information that has been requested. 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. If Buyer discloses any such confidential information pursuant to the Act, Buyer will promptly provide notice of such disclosure (and the contents thereof) to Seller, and from and after such disclosure, such disclosed confidential information shall no longer be treated as confidential pursuant to the Master Agreement or this Confirmation. Notwithstanding the foregoing, Buyer may release confidential information without advance notice to or over the objection of Seller if Buyer's legal counsel delivers a written legal opinion to Buyer that Buyer is required by law to release such confidential information, and Buyer delivers such legal opinion to Seller.

**9.****BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder; provided that Seller's liability hereunder for breach of or failure to comply with this Confirmation shall not exceed the amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product. Buyer will notify Seller in writing of any resale of Product and the purchaser thereof no later than two (2) Business Days before the Notification Deadline for the Showing Month.

**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.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.

Silicon Valley Clean Energy Authority



DocuSigned by:  
*Girish Balachandran*  
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By: \_\_\_\_\_

By: \_\_\_\_\_  
Girish Balachandran

Name: Andrew Novotny

Name: \_\_\_\_\_

Title: Vice President

Title: \_\_\_\_\_  
CEO