Silicon Valley Clean Energy Authority  
Board of Directors Special Meeting  
Wednesday, April 08, 2020  
7:00 pm  
Teleconference Meeting  
Webinar: https://zoom.us/j/726783767  
Telephone (Audio Only):  
US: +1 669 900 9128  
Webinar ID: 726 783 767  

This meeting will be conducted in accordance with State of California Executive Order N-29-20, dated March 17, 2020, in consideration of the Coronavirus (COVID-19). All members of the Silicon Valley Clean Energy Board of Directors and staff will participate in this meeting by teleconference.  

Members of the public may observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be read within the allotted three minutes for the public comment period or the applicable agenda item. The public will also have an opportunity to provide comments during the meeting.  

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act (“ADA”) please contact Board Clerk Andrea Pizano at andrea.pizano@svcleanenergy.org prior to the meeting for assistance.  

AGENDA  

Call to Order  

Roll Call  

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

Convene to Closed Session  
Conference with Legal Counsel—Anticipated Litigation
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)
Number of potential cases: Three

Report from Closed Session

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 March 11, 2020, Board of Directors Meeting
1b) Approve Minutes of the March 11, 2020, Board of Directors Special Meeting
1c) Receive January 2020 Treasurer Report
1d) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Position of Director of Regulatory and Legislative Policy to the List of Designated Positions for Filing
1e) Authorize the Chief Executive Officer to Execute a 3-year Agreement with Enervee Corporation for an Appliance Marketplace for the Customer Resource Center for an Amount of $471,500
1f) Authorize the Chief Executive Officer to Execute a 3-year Agreement with CLEAResult Consulting Inc. for Program Administration Services for the Electric Vehicle Infrastructure Technical Assistance Program for an Amount not to exceed $500,000
1g) Approve Amendment to Fitness Reimbursement Policy
1h) Executive Committee Report
1i) Finance and Administration Committee Report
1j) Audit Committee Report
1k) Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee Report

Regular Calendar

2) CEO Report (Discussion)
3) Adopt Resolution Delegating Authority to the Chief Executive Officer to Award Certain Contracts, Execute Agreements and Set Customer Rates
Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Clerk for the Authority at (408) 721-5301 x1005. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.105 ADA Title II).

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
City of Gilroy

Neysa Fligor
City of Los Altos

George Tyson
Town of Los Altos Hills

Rob Rennie
Town of Los Gatos

Carmen Montano
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Susan Ellenberg
County of Santa Clara

svcleanenergy.org
333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

on Behalf of Silicon Valley Clean Energy for the Next Ninety Days When Board Meetings are Cancelled or No Quorum Can Be Reached Due to a Public Health State of Emergency Relating to the COVID-19 Virus (Action)

4) Adopt Resolution to Implement SVCE Generation Rate Changes Effective May 1, 2020 (Action)

5) Authorize the Chief Executive Officer to Execute a Confirmation Agreement with PG&E to Receive Carbon-free Allocation for 2020 Deliveries (Action)

6) Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with Rabbitbrush Solar, LLC for Renewable Solar PV Supply (PCC1) and Energy Storage in Substantial Form and Including Any Necessary Ancillary Agreements and Documents (Action)

Board Member Announcements and Direction on Future Agenda Items

Adjourn
Call to Order
Chair Miller called the meeting to order at 7:03 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
Alternate Director Elaine Marshall, 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
Director Susan Ellenberg, County of Santa Clara
Alternate Director Anthony Eulo, City of Morgan Hill
Director Neysa Fligor, City of Los Altos

Absent:
Director Fred Tovar, City of Gilroy

Public Comment on Matters Not Listed on the Agenda
Bruce Karney, resident of Mountain View, commented on a project that would enable cities that have a utility user tax to have a different tax rate for natural gas than for electricity. A handout provided by Karney was distributed to the Board of Directors.

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

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

The motion carried unanimously with Director Tovar absent.

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 Organization 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)

CEO Girish Balachandran provided a CEO report which included an introduction of Eric Kim, Power Resources Planner, who provided brief comments. Director of Account Services and Community Relations Don Bray provided introductory information on rates; staff responded to board member questions.

Director Ellahie suggested that while exploring the effects of the coronavirus, legal counsel review SVCE’s current agreements for clauses related to emergency situations, and if there is nothing present, consider including a clause for future agreements.

Director Sinks provided comments on CalCCA’s Lobby Day on March 10, 2020; Manager of Regulatory and Legislative Affairs Hilary Staver provided a Regulatory and Legislative update.

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

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

Director of Power Resources Monica Padilla introduced the item and presented a PowerPoint presentation; staff responded to board member questions.

Director Sinks requested SVCE take leadership in providing an alternative to the idea that fossil fuels need to be used to work through resiliency affects; CEO Balachandran noted recommendations can be included in the Integrated Resource Plan (IRP).

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

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)

Director of Power Resources Padilla introduced the item, presented a PowerPoint presentation, and responded to board member questions.

Chair Miller opened public comment.
No speakers.
Chair Miller closed public comment.
MOTION: Director Sinks moved and Vice Chair Smith seconded the motion to adopt Resolution 2020-10 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 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.

The motion carried unanimously with Director Tovar absent.

5) Executive Committee Report (Discussion)
Chair Miller reported the Executive Committee met February 24, 2020 and provided feedback on the development of a desk reference for current and future board members, received an update on built environment programs, and received information on an appliance marketplace contract for the Customer Resource Center.

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

6) Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee Report (Discussion)
Director Sinks reported the Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee met March 4, 2020 and discussed the 2020 legislative landscape, discussed the two bills CalCCA is sponsoring this year along with other bills of interest, and prepared for the CalCCA lobby day in Sacramento on March 10th. The meeting opened with SVCE lobbyists Steve Baker and Jennifer Tannehill providing an update on the current Sacramento context. The two CalCCA-sponsored bills, AB 2689 and AB 3014, are CalCCA’s first bill sponsorships and are designed to address issues of data transparency and reform to the state’s grid reliability efforts respectively. Finally, the Committee moved to delay election of the Chair and Vice Chair.

Director Sinks displayed an example of new CalCCA materials, and provided the website to view the materials.

Director Ellenberg left the meeting during Item 6.

Board Member Announcements and Direction on Future Agenda Items
Director Fligo thanked staff for their time in meeting with her and Director Tyson as new directors of the board.

Adjourn
Chair Miller adjourned the meeting at 8:22 p.m.

Attachment
1. Document Submitted by Bruce Karney regarding Public Comment
Status quo: PG&E’s billing software does not allow city to have a different Utility User Tax (UUT) rate for natural gas than for electricity. 35% of Bay Area cities have a UUT, and the tax rate ranges from 2% to 10%. In SVCE territory five cities have a UUT, and they range from 2% in Sunnyvale to 5% in Gilroy. In 2017 PG&E informed the City of Albany that the cost to make the software change would be $500,000 to $800,000.

Proposal: Natural gas is a potent greenhouse gas. We should tax it at a higher rate than electricity, but to do that some entity or consortium must fund the required PG&E billing system changes. SVCE should demonstrate leadership by pledging $50,000 or more to a multi-jurisdictional fund that will be used to reimburse PG&E for updating its billing software so that the tax rate on natural gas can be different than the rate on electricity.

Anticipated results:
1) SVCE’s leadership will inspire other CCAs as well as cities and counties to pledge enough money to this effort to completely fund it.
2) PG&E will update its software within a year of the funding having been secured.
3) Once PG&E has updated its software, many cities will increase their gas tax rates. A few will lower their electricity tax rates. I anticipate that most of the tax increases will occur in the 65% of Bay Area Cities that currently have no UUT on energy (See Appendix 1). I also anticipate that even though most of these communities will structure their gas tax as a General Tax (so that it can be adopted by a majority vote), most will also propose to direct the bulk of the funding to environmental sustainability purposes.
4) A modest reduction in natural gas use will occur in those cities that raise their gas tax rates. The amount of reduction will depend on the size of the tax increase.
5) Some cities will dedicate the additional tax revenue to GHG-reducing projects such as weatherization, heat pump rebates, and so on, further enhancing the GHG reductions that this project makes possible.

Fail-safe structure: To make sure that SVCE isn’t left “holding the bag” if other jurisdictions don’t chip in, I recommend the resolution be structured like this: “SVCE pledges $50,000 to the Differential Tax Rate Fund subject to the condition that the fund raise at least $800,000 in pledges no later than Sept. 30, 2021.”

Council actions: The cities of Albany, Berkeley and Oakland voted in 2015-17 to call on PG&E to update its billing system to allow different tax rates on natural gas and electricity.

Interesting Historical Note: In November, 2012, voters in Arcata imposed a 4.5% tax on residential electricity consumption that exceeded 600% of baseline. The purpose was to drive marijuana grow houses out of the City. The tax increase had the desired effect and the number of grow houses fell dramatically within 2 years of implementation. To implement the tax change, Arcata had to pay PG&E $626,700, which was a very significant sum for a city of 17,000 residents.
Appendix 1. Utility User Taxes (UUTs) in the 9 Bay Area Counties

65 out of 100 cities have no UUT. In the 35 cities that have a UUT the tax rate ranges from 2% in Sunnyvale and Fairfield to 10% in Richmond. Cities had populations exceeding 100,000 in 2018.

**Alameda County (14 cities)**

- No UUT in 5 cities (36% of jurisdictions): Dublin, Livermore, Pleasanton, Union City
- 3.25%: Newark
- 5.5%: Emeryville
- 6.0%: San Leandro
- 6.5%:
- 7.0%: Albany
- 7.5%: Alameda, , , Piedmont

**Contra Costa County (19 cities)**

- No UUT in 14 cities (74% of jurisdictions): Brentwood, Clayton, Danville, Lafayette, Martinez, Moraga, Oakley, Orinda, Pittsburg, Pleasant Hill, San Ramon, Walnut Creek
- 4.0%: San Pablo
- 8.0%: El Cerrito, Hercules, Pinole
- 10.0%:

**Marin County (10 cities)**

- No UUT in 9 cities (90% of jurisdictions): Corte Madera, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, Tiburon
- 4.0%: Fairfax

**Napa County (5 cities)**

- No UUT in 5 cities (100% of jurisdictions): American Canyon, Calistoga, Napa, Saint Helena, Yountville
San Mateo County (20 cities)

No UUT in 14 cities (70% of jurisdictions): Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Millbrae, San Bruno, San Carlos, South San Francisco, Woodside

3.5%: Menlo Park
4.5%: Portola Valley
5.0%: East Palo Alto, Redwood City
6.5%: Pacifica

Santa Clara County (25 cities)

No UUT in 8 cities (53% of jurisdictions): Campbell, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Saratoga

2.0%:
2.4%: Cupertino
3.0%: Mountain View
3.5%: Los Altos
5.0%: Gilroy, Palo Alto,

Solano County (7 cities)

No UUT in 4 cities (57% of jurisdictions): Dixon, Rio Vista, Suisun City, Vacaville

2.0%:
4.0%: Benicia
7.5%:

Sonoma County (9 cities)

No UUT in 6 cities (67% of jurisdictions): Cotati, Healdsburg, Petaluma, Rohnert Park, Sonoma, Windsor

3.0%: Cloverdale
3.75%: Sebastopol
5.0%:
Silicon Valley Clean Energy Authority
Board of Directors Special Meeting
Wednesday, March 11, 2020
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Immediately following the adjournment of the regularly scheduled board meeting, Chair Miller called the Special Meeting to order.

Call to Order

Chair Miller called the meeting to order at 8:22 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
Alternate Director Elaine Marshall, 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
Director Susan Ellenberg, County of Santa Clara (arrived at 8:36 p.m.)
Alternate Director Anthony Eulo, City of Morgan Hill
Director Neysa Fligor, City of Los Altos

Absent:
Director Fred Tovar, City of Gilroy

Board Clerk Andrea Pizano noted Director Ellenberg was not currently in the chambers, but was present.

Public Comment on Matters Not Listed on the Agenda

Public comment was not heard.

Regular Calendar

1) Adopt Resolution Authorizing the Chief Executive Officer to Grant 30-days Paid-Time-Off to Employees Affected by the Covid-19 Virus (Action)

CEO Girish Balachandran introduced the item, presented a PowerPoint presentation, and responded to board member questions.
Chair Miller opened public comment.  
No speakers.  
Chair Miller closed public comment.  

Following discussion on the flexibility of the proposed resolution, Chair Miller called a five-minute recess at 8:34 p.m. to allow general counsel and staff an opportunity to meet and propose amended resolution language.  

Director Ellenberg arrived at 8:36 p.m. during recess.  

The board reconvened from recess at 8:41 p.m.  

General Counsel Greg Stepanicich stated the proposed amended language to Section 1 to read, “In response to the potential impact to the Authority and its employees from contracting the COVID-19 disease, the Board hereby authorizes the Chief Executive Officer for the next ninety (90) days to grant up to twenty (20) days of additional Paid-Time-Off to employees for reasons related to COVID-19.”  

MOTION: Director Abe-Koga moved and Director Sinks seconded the motion to adopt Resolution 2020-11 as amended by general counsel.  

Staff confirmed the next ninety days was in reference to calendar days, and the twenty days of additional paid-time-off were in reference to working days.  

The motion carried unanimously with Director Tovar absent.  

Board Member Announcements and Direction on Future Agenda Items  
Alternate Director Eulo requested staff explore the suggestion made by Bruce Karney during the public comment period of the regular meeting regarding utility user tax.  

Adjourn  

Chair Miller adjourned the meeting at 8:45 p.m.
TREASURER REPORT

Fiscal Year to Date
As of January 31, 2020

(Preliminary & Unaudited)

Issue Date: April 8, 2020

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>2-3</td>
</tr>
<tr>
<td>Statement of Net Position</td>
<td>4</td>
</tr>
<tr>
<td>Statement of Revenues, Expenses &amp; Changes in Net Position</td>
<td>5</td>
</tr>
<tr>
<td>Statement of Cash Flows</td>
<td>6-7</td>
</tr>
<tr>
<td>Actuals to Budget Report</td>
<td>8-10</td>
</tr>
<tr>
<td>Monthly Change in Net Position</td>
<td>11</td>
</tr>
<tr>
<td>Personnel Report</td>
<td>12</td>
</tr>
<tr>
<td>Investments Report</td>
<td>13</td>
</tr>
<tr>
<td>Customer Accounts</td>
<td>14</td>
</tr>
<tr>
<td>Weather Statistics</td>
<td>15</td>
</tr>
<tr>
<td>Accounts Receivable Aging Report</td>
<td>16</td>
</tr>
</tbody>
</table>
# Financial Statement Highlights (in 000’s)

## Financial Highlights for the month of January 2020:

*Note: SVCE enters the heating season in stable financial condition. Operational and Financial plans are being updated due to COVID-19 shut-down.*

- **SVCE operations resulted in a positive change in net position for the month of $2.1 million and year-to-date change in net position of $26.4 million.**
  - January revenue of $22.6 million accounted for 334 GWh in net retail consumption.
  - Year-to-date operating margin is $30.9 million or 32% mostly due to power supply costs being below budget.
  - SVCE ends the quarter near targeted cash reserves and is financially stable.
- **Retail GWh sales for the month were close to target.**
  - Year-to-date retail load is 3 GWh’s or <1% below budget.
  - January weather was normal.
- **Power Supply costs are 17% below budget year-to-date.**
  - The primary driver for the favorable variance is timing. Most of the RECs budgeted through January have not been invoiced yet.
  - Market prices have been stable and near budget.
  - SVCE will be bringing to the Board for approval in the near-term several long-term PPAs.
- **Decarbonization and Grid Innovations**
  - The Programs Roadmap was recently updated by the Board.
  - Programs continue to ramp up.
- **Other**
  - The Board approved a new facility lease to allow agency expansion. Move-in date expected summer 2020.
  - SVCE is investing 30% of available funds generating year-to-date investment income of $0.8 million.

## Change in Net Position

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual</td>
<td>14,432</td>
<td>5,732</td>
<td>4,153</td>
<td>2,047</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26,370</td>
<td>50,910</td>
</tr>
</tbody>
</table>

## Power Supply Costs

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy &amp; REC's</td>
<td>12,861</td>
<td>13,068</td>
<td>13,253</td>
<td>15,681</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>55,155</td>
<td></td>
</tr>
<tr>
<td>Wholesale Sales</td>
<td>(807)</td>
<td>(3)</td>
<td>(10)</td>
<td>(121)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(847)</td>
<td></td>
</tr>
<tr>
<td>Capacity</td>
<td>2,385</td>
<td>1,581</td>
<td>1,757</td>
<td>1,673</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7,197</td>
<td></td>
</tr>
<tr>
<td>CAISO Charges</td>
<td>451</td>
<td>400</td>
<td>763</td>
<td>678</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,291</td>
<td></td>
</tr>
<tr>
<td>NEM Expense</td>
<td>155</td>
<td>(43)</td>
<td>(223)</td>
<td>(275)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(387)</td>
<td></td>
</tr>
<tr>
<td>Charge/ Credit ISTI/ Net Rev</td>
<td>452</td>
<td>254</td>
<td>(224)</td>
<td>1,736</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,243</td>
<td></td>
</tr>
<tr>
<td>Net Power Costs</td>
<td>15,347</td>
<td>15,251</td>
<td>15,888</td>
<td>19,473</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>88,689</td>
<td>245,340</td>
</tr>
</tbody>
</table>

## Other

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Expenditures</td>
<td>-</td>
<td>6</td>
<td>6</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>14</td>
<td>400</td>
</tr>
<tr>
<td>Energy Programs</td>
<td>51</td>
<td>101</td>
<td>127</td>
<td>145</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>424</td>
<td>5,360</td>
</tr>
</tbody>
</table>

## Load Statistics - GWh

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Sales Actual</td>
<td>325</td>
<td>314</td>
<td>332</td>
<td>334</td>
<td>311</td>
<td>316</td>
<td>308</td>
<td>307</td>
<td>321</td>
<td>360</td>
<td>348</td>
<td>339</td>
<td>1,305</td>
<td></td>
</tr>
<tr>
<td>Retail Sales Budget</td>
<td>325</td>
<td>318</td>
<td>335</td>
<td>329</td>
<td>311</td>
<td>316</td>
<td>308</td>
<td>307</td>
<td>321</td>
<td>360</td>
<td>348</td>
<td>339</td>
<td>3,916</td>
<td>3,916</td>
</tr>
</tbody>
</table>
### Other Statistics and Ratios

<table>
<thead>
<tr>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working Capital</td>
<td>$168,994,508</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>6.1</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>32%</td>
</tr>
<tr>
<td>Expense Coverage Days</td>
<td>199</td>
</tr>
<tr>
<td>Expense Coverage Days with LOC</td>
<td>243</td>
</tr>
<tr>
<td>Long-Term Debt</td>
<td>$0</td>
</tr>
<tr>
<td>Total Accounts</td>
<td>271,470</td>
</tr>
<tr>
<td>Opt-Out Accounts (Month)</td>
<td>71</td>
</tr>
<tr>
<td>Opt-Out Accounts (YTD)</td>
<td>236</td>
</tr>
<tr>
<td>Opt-Up Accounts (Month)</td>
<td>14</td>
</tr>
<tr>
<td>Opt-Up Accounts (YTD)</td>
<td>53</td>
</tr>
</tbody>
</table>

### Retail Sales - Month

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Budget</th>
<th>FY16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>22.6</td>
<td>21.9</td>
<td>19.4</td>
</tr>
</tbody>
</table>

### Retail Sales - YTD

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Budget</th>
<th>FY16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>96.6</td>
<td>95.9</td>
<td>84.5</td>
</tr>
</tbody>
</table>

### O&M - Month

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Budget</th>
<th>FY16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>20.7</td>
<td>21.7</td>
<td>24.3</td>
</tr>
</tbody>
</table>

### O&M - YTD

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Budget</th>
<th>FY16/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>70.8</td>
<td>87.2</td>
<td>78.5</td>
</tr>
</tbody>
</table>
# SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF NET POSITION**  
As of January 31, 2020

## ASSETS

### Current Assets

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>$158,851,631</td>
</tr>
<tr>
<td>Accounts Receivable, net of allowance</td>
<td>20,575,595</td>
</tr>
<tr>
<td>Accrued Revenue</td>
<td>12,729,423</td>
</tr>
<tr>
<td>Other Receivables</td>
<td>142,065</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>3,141,114</td>
</tr>
<tr>
<td>Deposits</td>
<td>1,468,361</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>5,000,000</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>201,908,189</strong></td>
</tr>
</tbody>
</table>

### Noncurrent assets

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital assets, net of depreciation</td>
<td>144,267</td>
</tr>
<tr>
<td>Deposits</td>
<td>146,130</td>
</tr>
<tr>
<td><strong>Total Noncurrent Assets</strong></td>
<td><strong>290,397</strong></td>
</tr>
</tbody>
</table>

| **Total Assets**                                          | **202,198,586** |

## LIABILITIES

### Current Liabilities

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>1,438,697</td>
</tr>
<tr>
<td>Accrued Cost of Electricity</td>
<td>30,187,086</td>
</tr>
<tr>
<td>Accrued Payroll &amp; Benefits</td>
<td>359,999</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>135,000</td>
</tr>
<tr>
<td>User Taxes and Energy Surcharges due to other gov'ts</td>
<td>764,579</td>
</tr>
<tr>
<td>Supplier Security Deposits</td>
<td>28,320</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>32,913,681</strong></td>
</tr>
</tbody>
</table>

## NET POSITION

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net investment in capital assets</td>
<td>144,267</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>5,000,000</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>164,140,638</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>$169,284,905</strong></td>
</tr>
</tbody>
</table>
## OPERATING REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$95,997,784</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>448,045</td>
</tr>
<tr>
<td>Other Income</td>
<td>122,956</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>96,568,785</strong></td>
</tr>
</tbody>
</table>

## OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>65,659,112</td>
</tr>
<tr>
<td>Contract services</td>
<td>3,067,744</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>1,482,937</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>656,875</td>
</tr>
<tr>
<td>Depreciation</td>
<td>17,922</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>70,884,590</strong></td>
</tr>
<tr>
<td><strong>OPERATING INCOME(LOSS)</strong></td>
<td><strong>25,684,195</strong></td>
</tr>
</tbody>
</table>

## NONOPERATING REVENUES (EXPENSES)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>768,803</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(163,050)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING EXPENSES</strong></td>
<td><strong>605,753</strong></td>
</tr>
</tbody>
</table>

## CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>142,994,957</td>
</tr>
<tr>
<td><strong>Net Position at end of period</strong></td>
<td><strong>$169,284,905</strong></td>
</tr>
</tbody>
</table>
CASH FLOWS FROM OPERATING ACTIVITIES
Receipts from customers $ 114,930,101
Other operating receipts 1,111,760
Payments to suppliers for electricity (69,781,156)
Payments for other goods and services (3,199,104)
Payments for staff compensation and benefits (1,472,352)
Tax and surcharge payments to other governments (2,414,788)
Net cash provided (used) by operating activities 39,174,461

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES
Finance costs paid (125,787)
Net cash provided (used) by non-capital financing activities (125,787)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Acquisition of capital assets (14,152)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Interest income received 768,803

Net change in cash and cash equivalents 39,803,325
Cash and cash equivalents at beginning of year 124,048,306
Cash and cash equivalents at end of period $ 163,851,631
RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

Operating Income (loss) $ 25,684,195

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

Depreciation expense 17,922
Revenue reduced for uncollectible accounts 387,334
(Increase) decrease in net accounts receivable 9,313,886
(Increase) decrease in energy settlements receivable 166,657
(Increase) decrease in other receivables (124,165)
(Increase) decrease in accrued revenue 6,842,677
(Increase) decrease in prepaid expenses (1,844,462)
(Increase) decrease in current deposits 775,125
Increase (decrease) in accounts payable 492,650
Increase (decrease) in accrued payroll & benefits 4,807
Increase (decrease) in energy settlements payable 392,274
Increase (decrease) in accrued cost of electricity (2,337,497)
Increase (decrease) in accrued liabilities (122,530)
Increase (decrease) in taxes and surcharges due to other governments (474,412)

Net cash provided (used) by operating activities $ 39,174,461
## SILICON VALLEY CLEAN ENERGY
### BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through January 31, 2020

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>FYTD Actual</th>
<th>FYTD Budget</th>
<th>Variance</th>
<th>%</th>
<th>FY 2019-20 Budget</th>
<th>FY 2019-20 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Sales</td>
<td>$95,997,784</td>
<td>$95,551,695</td>
<td>$446,089</td>
<td>0%</td>
<td>$317,230,000</td>
<td>$221,223,216</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>448,045</td>
<td>313,815</td>
<td>134,230</td>
<td>43%</td>
<td>940,000</td>
<td>491,955</td>
</tr>
<tr>
<td>Other Income</td>
<td>122,956</td>
<td>16,667</td>
<td>106,289</td>
<td>638%</td>
<td>50,000</td>
<td>(72,956)</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>96,568,785</strong></td>
<td><strong>95,882,177</strong></td>
<td><strong>686,608</strong></td>
<td>1%</td>
<td><strong>318,220,000</strong></td>
<td><strong>221,651,215</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
<td>65,659,112</td>
<td>79,568,210</td>
<td>(13,909,098)</td>
<td>-17%</td>
<td>245,340,000</td>
<td>179,680,888</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>30,909,673</td>
<td>16,313,967</td>
<td>14,595,706</td>
<td>89%</td>
<td>72,880,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
<td>1,133,709</td>
<td>1,175,170</td>
<td>(41,461)</td>
<td>-4%</td>
<td>3,530,000</td>
<td>2,396,291</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td>382,829</td>
<td>448,701</td>
<td>(65,872)</td>
<td>-15%</td>
<td>1,350,000</td>
<td>967,171</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>1,482,937</td>
<td>1,381,119</td>
<td>(341,818)</td>
<td>-19%</td>
<td>5,490,000</td>
<td>4,007,063</td>
</tr>
<tr>
<td>Professional Services</td>
<td>1,139,996</td>
<td>1,315,143</td>
<td>(175,147)</td>
<td>-13%</td>
<td>3,710,000</td>
<td>2,570,004</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>201,143</td>
<td>341,364</td>
<td>(140,221)</td>
<td>-41%</td>
<td>960,000</td>
<td>758,857</td>
</tr>
<tr>
<td>Notifications</td>
<td>27,810</td>
<td>30,500</td>
<td>(2,690)</td>
<td>-9%</td>
<td>160,000</td>
<td>132,190</td>
</tr>
<tr>
<td>Lease</td>
<td>109,729</td>
<td>200,000</td>
<td>(90,271)</td>
<td>-45%</td>
<td>600,000</td>
<td>490,271</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>305,113</td>
<td>360,000</td>
<td>(54,887)</td>
<td>-15%</td>
<td>1,150,000</td>
<td>844,887</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>4,783,266</strong></td>
<td><strong>5,701,997</strong></td>
<td><strong>(918,731)</strong></td>
<td>-16%</td>
<td><strong>16,950,000</strong></td>
<td><strong>12,166,734</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING INCOME/(LOSS)</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26,126,407</td>
<td>10,611,970</td>
<td>15,514,437</td>
<td>146%</td>
<td>55,930,000</td>
<td>29,803,593</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING REVENUES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment Income</td>
<td>768,803</td>
<td>489,833</td>
<td>278,970</td>
<td>57%</td>
<td>1,470,000</td>
<td>701,197</td>
</tr>
<tr>
<td>Grant Income</td>
<td>-</td>
<td>54,167</td>
<td>(54,167)</td>
<td>-100%</td>
<td>160,000</td>
<td>160,000</td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING REVENUES</strong></td>
<td><strong>768,803</strong></td>
<td><strong>544,000</strong></td>
<td><strong>224,803</strong></td>
<td>41%</td>
<td><strong>1,630,000</strong></td>
<td><strong>861,197</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING EXPENSES</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
<td>163,050</td>
<td>118,430</td>
<td>44,620</td>
<td>38%</td>
<td>180,000</td>
<td>16,950</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>14,151</td>
<td>100,000</td>
<td>(85,849)</td>
<td>-86%</td>
<td>400,000</td>
<td>385,849</td>
</tr>
<tr>
<td>Refund of Bond (Cash Inflow)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0%</td>
<td>(100,000)</td>
<td>(100,000)</td>
</tr>
<tr>
<td>Financial Security Requirement</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0%</td>
<td>147,000</td>
<td>147,000</td>
</tr>
<tr>
<td>Transfer to Program Fund</td>
<td>6,360,000</td>
<td>6,360,000</td>
<td>-</td>
<td>0%</td>
<td>6,360,000</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
<td><strong>6,374,151</strong></td>
<td><strong>6,460,000</strong></td>
<td><strong>(85,849)</strong></td>
<td><strong>-1%</strong></td>
<td><strong>6,807,000</strong></td>
<td><strong>432,849</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$20,358,009</td>
<td>$4,577,540</td>
<td>$15,780,469</td>
<td>345%</td>
<td><strong>$50,573,000</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SILICON VALLEY CLEAN ENERGY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2019 through January 31, 2020

<table>
<thead>
<tr>
<th></th>
<th>BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>BUDGET</th>
<th>ACTUAL/</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>REVENUE &amp; OTHER SOURCES:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tranfer from Operating Fund</td>
<td>$6,360,000</td>
<td>$6,360,000</td>
<td>$0</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td><strong>EXPENDITURES &amp; OTHER USES:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program expenditures</td>
<td>6,360,000</td>
<td>424,290</td>
<td>5,935,710</td>
<td>6.7%</td>
<td></td>
</tr>
</tbody>
</table>

**Net increase (decrease) in fund balance**

|                          |        |        |           |        |         |
| Fund balance at beginning of period |          |   $0   |  $5,935,710  |        |         |
| Fund balance at end of period         |          |  $5,935,710 |         |        |         |
SILICON VALLEY CLEAN ENERGY AUTHORITY

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

Net Increase (decrease) in available fund balance per budgetary comparison schedule $ 20,358,009

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

Subtract depreciation expense (17,922)
Subtract program expense not in operating budget (424,290)
Add back transfer to Program fund 6,360,000
Add back capital asset acquisition 14,151

Change in Net Position 26,289,948
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2019 through January 31, 2020

**OPERATING REVENUES**

<table>
<thead>
<tr>
<th>Item</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$30,729,014</td>
<td>$21,850,841</td>
<td>$20,977,174</td>
<td>$22,440,755</td>
<td>$21,850,841</td>
<td>$20,977,174</td>
<td>$22,440,755</td>
<td>$21,850,841</td>
<td>$20,977,174</td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>117,448</td>
<td>97,649</td>
<td>111,859</td>
<td>121,089</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other income</td>
<td>40,200</td>
<td>53,094</td>
<td>-</td>
<td>29,662</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$30,886,662</td>
<td>$22,001,584</td>
<td>$21,089,033</td>
<td>$22,591,506</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**OPERATING EXPENSES**

<table>
<thead>
<tr>
<th>Item</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>15,346,608</td>
<td>15,251,256</td>
<td>15,587,871</td>
<td>19,473,377</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>358,403</td>
<td>325,710</td>
<td>427,518</td>
<td>371,306</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Data manager</td>
<td>291,256</td>
<td>290,953</td>
<td>291,025</td>
<td>260,475</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>96,070</td>
<td>95,877</td>
<td>95,882</td>
<td>95,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>249,638</td>
<td>266,760</td>
<td>499,433</td>
<td>353,118</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>General and administration</td>
<td>153,979</td>
<td>210,400</td>
<td>211,420</td>
<td>183,108</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Depreciation</td>
<td>4,375</td>
<td>4,375</td>
<td>4,560</td>
<td>4,612</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>16,500,329</td>
<td>16,445,331</td>
<td>17,117,709</td>
<td>20,740,996</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**NONOPERATING REVENUES (EXPENSES)**

<table>
<thead>
<tr>
<th>Item</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>180,933</td>
<td>184,966</td>
<td>196,888</td>
<td>206,014</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(135,103)</td>
<td>(9,316)</td>
<td>(9,315)</td>
<td>(9,316)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>45,830</td>
<td>175,652</td>
<td>187,573</td>
<td>196,698</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

**CHANGE IN NET POSITION**

<table>
<thead>
<tr>
<th>Item</th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>$14,432,163</td>
<td>$5,751,905</td>
<td>$4,158,897</td>
<td>$2,047,208</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

---

Treasurer Report - January 2020
# PERSONNEL REPORT FOR JANUARY 2020

<table>
<thead>
<tr>
<th>Position</th>
<th>Budget</th>
<th>Actual</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director of Account Services and Community Relations</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Account Services Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Sr. Energy Consultant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Energy Consultant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Associate Energy Consultant</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Communications Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Community Outreach Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Communications Specialist</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Board Clerk/Executive Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Finance and Administration</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Services Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Rates Manager</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Management Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Power Resources</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Manager</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Power Resources Planner</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Power Settlements &amp; Compliance Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Manager of Regulatory and Legislative Affairs</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Director of Decarbonization and Grid Innovation</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Associate Data Analyst</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Analyst</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>27</strong></td>
<td><strong>23</strong></td>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>
**Return on Investments**

<table>
<thead>
<tr>
<th>Money Market</th>
<th>YTD Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>Nov</td>
</tr>
<tr>
<td>$180,933</td>
<td>$184,968</td>
</tr>
</tbody>
</table>

**Portfolio Invested**

<p>| | | | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average daily portfolio available to invest*</td>
<td>114,832,942</td>
<td>124,956,925</td>
<td>140,310,822</td>
<td>148,981,775</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average daily portfolio invested</td>
<td>102,127,452</td>
<td>120,538,388</td>
<td>130,715,414</td>
<td>137,957,394</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| | | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>% of average daily portfolio invested</td>
<td>88.9%</td>
<td>96.5%</td>
<td>93.2%</td>
<td>92.6%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Detail of Portfolio**

<table>
<thead>
<tr>
<th>Money Market - River City Bank</th>
<th>Opening Rate</th>
<th>January Rate</th>
<th>Carrying Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.26%</td>
<td>1.13%</td>
<td>$139,510,153</td>
</tr>
</tbody>
</table>

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

RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>243.2</td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td>243.3</td>
<td></td>
</tr>
<tr>
<td>Dec</td>
<td>243.3</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>243.5</td>
<td></td>
</tr>
</tbody>
</table>

NON-RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Dec</td>
<td>28.0</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>27.9</td>
<td></td>
</tr>
</tbody>
</table>
WEATHER STATISTICS

COOLING DEGREE DAYS

HEATING DEGREE DAYS

[Graphs showing cooling and heating degree days for October to September, with actual and 15-year average lines.]

Treasurer Report - January 2020

Item 1c
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### ACCOUNTS RECEIVABLE AGING REPORT

<table>
<thead>
<tr>
<th>Days</th>
<th>0-30</th>
<th>31-60</th>
<th>61-90</th>
<th>90-120*</th>
<th>Over 120*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$19,031,278</td>
<td>$1,145,119</td>
<td>$530,960</td>
<td>$355,394</td>
<td>$1,400,176</td>
</tr>
<tr>
<td>Accounts Receivable</td>
<td>$22,462,928</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Period %</td>
<td>100%</td>
<td>84.7%</td>
<td>5.1%</td>
<td>2.4%</td>
<td>1.6%</td>
</tr>
</tbody>
</table>

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

**Item 1d:** Adopt Resolution Amending SVCE Conflict of Interest Code to Add Position of Director of Regulatory and Legislative Policy to the List of Designated Positions for Filing

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/8/2020

**RECOMMENDATION**
Adopt Resolution 2020-12 amending the SVCEA conflict of interest code to add Director of Regulatory and Legislative Policy as a designated position for filing.

**BACKGROUND**
Shortly after the formation of SVCEA, the Board of Directors adopted a conflict of interest code as required by the Political Reform Act, commencing at Government Code Section 81000. The code lists the positions within the Authority that are required to file statements of economic interests (Form 700). As a joint powers authority with members located entirely within Santa Clara County, the County Board of Supervisors is the conflict code reviewing body that is required to approve all changes to the conflict of interest code. County Counsel has advised that when positions are added or removed from the conflict code, a new resolution must be adopted approving a new conflict of interest code with the added or removed position(s).

At the March 11, 2020 meeting, the Board of Directors approved the Director of Regulatory and Legislative Policy positions and Resolution 2020-12 amending the positions chart, job classifications, and salary schedule to include this position.

**ANALYSIS & DISCUSSION**
SVCE’s Director of Finance and Administration has identified the added position as needing to report financial interests based on the decisions he/she will be making.

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

**STRATEGIC PLAN**
Not applicable.

**ALTERNATIVES**
None.

**FISCAL IMPACT**
There is no fiscal impact as a result of the addition of the position.
ATTACHMENT
1. Resolution 2020-12 Amending the Authority’s Conflict of Interest Code to Add Director of Regulatory and Legislative Policy Position
RESOLUTION NO. 2020-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY’S CONFLICT OF INTEREST CODE TO ADD DIRECTOR OF REGULATORY AND LEGISLATIVE POLICY POSITION

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

WHEREAS, the Political Reform Act, Government Code Section 81000, et seq., (the “Political Reform Act”) requires each public agency in California, including the Authority, to adopt and promulgate a conflict of interest code; and

WHEREAS, Government Code Section 87306 requires each public agency in California to amend its conflict of interest code when change is necessitated by a change in circumstances, including the creation of new positions and relevant changes to the duties assigned to existing positions; and

WHEREAS, the Board of Directors of the Authority has adopted a conflict of interest code, and has amended this code as appropriate due to changed circumstances, with the most recent code adopted by Resolution 2019-19; and

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

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2019-19 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

BE IT FURTHER RESOLVED that The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years following notice and instructions from the County of Santa Clara as the code-reviewing body for the Authority, in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code are required, the Authority shall submit a response as indicated in the instructions provided by the County of Santa Clara no later than October 1st of the same year, stating that amendments to the Authority’s Conflict of Interest Code are not required.
ADOPTED AND APPROVED this 8th day of April 2020, by the following vote:

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

Chair

ATTEST:

Clerk
SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code § 81000, *et seq.*, hereinafter referred to as the Act) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (“FPPC”) has adopted a regulation (2 California Code of Regulations § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the Act. Therefore, the terms of 2 California Code of Regulations § 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the text here designating positions and establishing disclosure categories shall constitute the conflict of interest code of the Silicon Valley Clean Energy Authority (“Authority”).


 Individuals holding a designated position shall file their Statements of Economic Interests with the Authority’s Filing Official, which will make the Statements available for public inspection and reproduction subject to Government Code section 81008. If Statements are received in signed paper format, the Authority’s Filing Official shall make and retain a copy and forward the original Statements to the Filing Officer, the County of Santa Clara Clerk of the Board of Supervisors. If Statements are electronically filed using the County of Santa Clara’s Form 700 e-filing system, both the Authority’s Filing Official and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed Statements simultaneously.
### DESIGNATED POSITIONS

<table>
<thead>
<tr>
<th>Designated Position</th>
<th>Assigned Disclosure Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member of Board of Directors</td>
<td>1</td>
</tr>
<tr>
<td>Alternate Member of Board of Directors</td>
<td>1</td>
</tr>
<tr>
<td>Chief Executive Officer</td>
<td>1</td>
</tr>
<tr>
<td>Finance and Administration Committee Member</td>
<td>2</td>
</tr>
<tr>
<td>General Counsel</td>
<td>1</td>
</tr>
<tr>
<td>Account Services Manager</td>
<td>2</td>
</tr>
<tr>
<td>Administrative Services Manager</td>
<td>2</td>
</tr>
<tr>
<td>Communications Manager</td>
<td>2</td>
</tr>
<tr>
<td>Director of Account Services &amp; Community Relations</td>
<td>2</td>
</tr>
<tr>
<td>Director of Decarbonization &amp; Grid Innovation Programs</td>
<td>2</td>
</tr>
<tr>
<td>Director of Finance &amp; Administration</td>
<td>1</td>
</tr>
<tr>
<td>Director of Power Resources</td>
<td>1</td>
</tr>
<tr>
<td><strong>Director of Regulatory &amp; Legislative Policy</strong></td>
<td><strong>2</strong></td>
</tr>
<tr>
<td>Management Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Manager of Decarbonization &amp; Grid Innovation Programs</td>
<td>2</td>
</tr>
<tr>
<td>Manager of Regulatory &amp; Legislative Affairs</td>
<td>2</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
<td>2</td>
</tr>
<tr>
<td>Power Resources Manager</td>
<td>1</td>
</tr>
<tr>
<td>Power Resources Planner</td>
<td>1</td>
</tr>
<tr>
<td>Power Settlements &amp; Compliance Analyst</td>
<td>1</td>
</tr>
</tbody>
</table>
Rates Manager          2
Senior Rates Analyst  2
Consultant            3
Newly Created Position  *

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority’s conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer’s determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

As soon as the Authority has a newly created position that must file Statements of Economic Interests, the Authority’s Filing Official shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County’s electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk’s office shall enter the actual position title of the newly created position into eDisclosure and the Authority’s Filing Official shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file Statements of Economic Interests, the Authority shall update this conflict-of-interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Section 87306.)
SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE

APPENDIX "B"

DISCLOSURE CATEGORIES

Designated positions must report financial interests in accordance with the assigned disclosure categories.

**Category 1:** Persons in this category shall disclose:

(a) investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority; and

(b) all interests in real property located: in whole or in part within the jurisdiction of the Silicon Valley Clean Energy Authority, or within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

**Category 2:** Persons in this category shall disclose investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority.

**Category 3:** Each Consultant, as defined for purposes of the Political Reform Act, shall disclose pursuant to the broadest disclosure category in the Authority’s conflict of interest code subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer’s written determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.
Item 1e: 

**Authorize the Chief Executive Officer to Execute a 3-year Agreement with Enervee Corporation for an Appliance Marketplace for the Customer Resource Center for an Amount of $471,500**

To: 
Silicon Valley Clean Energy Board of Directors

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

Date: 
4/8/2020

**RECOMMENDATION**

Staff recommends that the Board authorize the Chief Executive Officer to execute a 3-year agreement with Enervee Corporation for an Appliance Marketplace for the SVCE Online Customer Resource Center for an amount of $471,500.

**BACKGROUND**

In 2018, the Customer Program Advisory Group (CPAG) advocated for development of an online platform to engage and educate residential customers about their energy use and enable action to electrify their homes and vehicles. To meet this objective, the Customer Resource Center (CRC) program was recommended and approved by the SVCE Board in December 2018 as part of the Decarbonization Programs Roadmap.

SVCE released an RFI in May 2019 to gather energy-related information and services available to deploy an online Customer Resource Center. Eight organizations responded, providing the information to scope an RFP.

Staff issued an RFP in October 2019, for proposals to provide various online tools to help customers increase their energy literacy and enable actions such as evaluating home appliances, electric vehicles, solar and storage options, and shopping for clean energy products. SVCE received 14 responses to the RFP. These proposals were evaluated and ranked using the following criteria: Organizational Credentials, Business Model, Proposed Solution, Acceptance of Contract Terms and Inclusion of Non-Participating Agencies.

In November 2019, staff presented an overview of the CRC design and necessary online tools to the Board. Staff discussed specific Board questions and concerns related to responsibility for product curation, and clearly distinguishing as such tools, information and services that are provided by third parties.

Staff discussed that implementation would involve establishment four new vendor relationships and contracts over the next several months. These would be for web design services, an online solar+storage concierge service, an online electric vehicle buyers guide service, and an online appliance marketplace. Staff discussed that the estimated total cost would be approximately $350k for start-up and initial operation through the balance of FY2019/20, and approximately $250k for annual license fees in subsequent fiscal years.

Since that time, new contracts have been approved for the web design, solar concierge, and EV buyer’s guide services. Collectively these represent approximately $175k in start-up fees, and $40k in annual license fees.

This staff report addresses the fourth and final vendor contract needed for the CRC, to provide the online appliance marketplace solution.
Staff interviewed teams from the three top-ranked appliance marketplace tool vendors, and additional meetings were held with the top two marketplace vendors. Ultimately, Enervee was selected as the preferred marketplace solution provider for SVCE due to its clear market-leveraging ‘choice engine’ approach, a rich and growing third-party product catalog, level of industry and partner experience, track record and future vision.

In February of 2020, staff presented the Enervee appliance marketplace tool and contract details to the SVCE Executive Committee for review and discussion. The Executive Committee was comfortable with moving forward with the contract.

**ANALYSIS & DISCUSSION**
The objective of the CRC is to help inspire, educate and enable customers to take effective personal action with respect to electrification and decarbonization, in mobility and the built environment. Significant education is needed to help familiarize customers with electrification, and the benefits of technologies such as induction cooking, heat pump water heating, heat pump heating and cooling, electric vehicles, solar and storage, and connected devices.

Three vendor solutions will be integrated into the online CRC – an appliance marketplace platform, a solar and storage buying platform, and an electric vehicle catalog platform. This staff report addresses establishment of a contract for the appliance marketplace platform, to be provided by Enervee.

The Enervee platform will provide customers with online educational resources to support an understanding of home appliance energy consumption, energy savings and electrification - including product comparison, energy efficiency and customer reviews. The platform also provides the customer with the opportunity to act through a home appliance ‘choice engine’ with several important features:

- **Pricing:** Compares available online offers across multiple third-party retailers and presents today’s best price to the user
- **Personalized savings calculations:** If desired, customer may input usage patterns and energy costs - tool calculates savings expected with more efficient purchase.
- **Reviews:** Aggregates user ratings across all participating retailers into a single 5-star score
- **Efficiency:** Score distills energy efficiency data into single 0-100 score
- **Product information updated daily:** Includes available rebates, and the ability to set price drop alerts
- **HomeAdvisor tool:** Pre-screens local service contractors to install appliances and charging stations
- **Data-driven traffic generation solution:** Complements and strengthens SVCE marketing efforts
- **Purchase:** Customers can purchase some products directly from Platform or through third-party retailers

To provide customers with this functionality, SVCE plans to integrate four Enervee solution modules into the SVCE website: Appliances Choice Engine, Checkout, Contractor Services, and Engage Marketing.

The Appliances Choice Engine provides home appliance education and online shopping capabilities, and the Contractor Solution offers customers access to pre-screened local service providers, through HomeAdvisor. The Checkout feature builds a direct retail experience into the Appliances Choice Engine for certain products that can be more easily warehoused, enabling SVCE to provide real-time discounts or incentives at time of purchase for products such as smart thermostats. The Engage Marketing solution enhances and extends existing SVCE marketing through various digital strategies, tools and tactics across social media, search marketing, web analytics and others.

**STRATEGIC PLAN**
There are several goals in the SVCE Board-adopted Strategic Plan that the Customer Resource Center will help to support, including:
• Goal 3: Promote customer awareness
  o Strategy 3.1 – Build awareness and trust through continuous interaction with the SVCE community
• Goal 4: Maintain customer service satisfaction
  o Strategy 4.2 – Create a customer-centric culture
• Goal 5: Work with the community to achieve energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030
  o Strategy 5.2 – Execute and maintain SVCE’s Decarbonization Strategy & Program Roadmap

**ALTERNATIVE**
SVCE could forgo inclusion of an appliance marketplace in the CRC. This would remove detailed product content from the site and eliminate the ability of a site user to learn about and evaluate competing products for home electrification.

Another alternative would be to consider a different marketplace product. The RFP conducted in 2019 evaluated the leading solutions, and Enervee was identified as the best fit for SVCE. A new RFP could be conducted to potentially identify additional online marketplace solution proposals – though different results would not be likely. Or a vendor deemed less of a fit could be selected from the 2019 RFP. Either way, it would likely require another 4-6 months to determine if another vendor would be satisfactory, and to establish a contract.

**FISCAL IMPACT**
$350,000 was allocated in the program budget for FY2018 through FY2019 to build the CRC. Additional funding for marketing the platform and significantly updating the SVCE website has been allocated in the FY19-20 marketing budget. In addition, Resolution 2020-06 established a $250,000 annual budget allocation for the ongoing operation of the CRC in FY2021 and FY2022.

The set-up and annual licensing fees for the Enervee MarketPlace Platform contract, including the Appliances Choice Engine, Checkout, Contractor Services, and Engage Marketing solutions total $417,500 for three years, through April 2023. In addition, fees totaling $54,000 will cover ongoing marketplace-related customer service, including phone, voice mail and email support. The total three-year contract value is $471,500.

**ATTACHMENTS**
1. Enervee Customer Resource Center Appliance Marketplace contract
This agreement is entered into between Enervee Corporation ("Enervee") and Silicon Valley Clean Energy Authority, an independent public agency ("Partner") as of the date this Agreement is executed by both Parties (the "Effective Date") and incorporates (i) the attached Terms and Conditions, which sets forth the general terms and conditions governing the relationship of the Parties, (ii) each Order Form executed pursuant to the Terms and Conditions, each of which describes the specific services to be provided by Enervee to Partner, and (iii) all other exhibits and attachments expressly incorporated herein (collectively, and as amended from time to time, the "Agreement"). Each of Enervee and Partner may be referred to as a “Party” and together as the “Parties.”
1. DEFINITIONS.

Certain terms used in this Agreement, not otherwise defined on the cover page, shall have the meanings set forth below.

1.1. “Administrative User” means an employee or contractor of Partner to whom Partner has assigned a unique identification number for access to the Web-based portion(s) of the Services for Partner’s own use as specified in an Order Form.

1.2. “Aggregated Data” means aggregated and statistical data derived from the operation of the Service, including, without limitation, information, improvements, updates, enhancements, business practices, trends, analyses, metadata, performance results or other information or data which Enervee may develop in the course of providing the Services. For the avoidance of doubt, Aggregated Data shall not include any Personal Information and must be anonymized.

1.3. “Brand” means any trademarks, service marks, trade names, domain names, logos, business names, product names and slogans, and all registrations and applications for registration thereof owned by or licensed to a Party or to which the Party has rights.

1.4. “Partner Data” means any data or information supplied by Partner to Enervee under this Agreement or any Customer Information. Partner Data excludes Enervee Intellectual Property and Third Party Data.

1.5. “Personal Information Laws” mean California Consumer Privacy Act of 2018, Cal. Civil Code § 1798.100 et seq. and its implementing regulations (the “CCPA”) and similar state data privacy laws.

1.6. “Confidential Information” means, whether written or oral, (i) know-how, business methods, intellectual property, trade secrets, financial data and any other non-public, confidential or proprietary information of a Party and (ii) information that, by the nature of the information or the circumstances surrounding disclosure, ought reasonably to be treated as confidential. For purposes of this Agreement, Enervee Intellectual Property and Third Party Data shall be the Confidential Information of Enervee and Partner Data shall be the Confidential Information of Partner.

1.7. “Customer” means any current or former Partner customer.

1.8. “Customer Information” means a Customer’s name, address, telephone number, and any other Personal Information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

1.9. “Documentation” means Enervee’s electronic descriptions of the functionality and operation of Service identified in the Order Form.

1.10. “Enervee Content” means (i) all content, including any text, copy, images, graphics, designs, photos, video, sound, derivative works or works of authorship, data, statistics, analyses, compilation, aggregation, forecasts and any similar information that is either owned, developed or licensed by Enervee; (ii) any information, improvements, updates, enhancements, business practices, or other information which Enervee may develop in the course of providing the Services; (iii) the Documentation; and (iv) Aggregated Data. For the avoidance of doubt, Enervee Content shall not include any Partner Data or Personal Information.

1.11. “Enervee Intellectual Property” means: (i) any proprietary work or system that is owned, licensed or developed by Enervee; (ii) any data independently developed or created by Enervee; and (iii) any other Enervee Content.

1.12. “Initial Term” is the initial term of the agreement, as set forth in the initial order.

1.13. “Personal Information” means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular person or household. Personal Information includes, but is not limited to, the data elements listed in section 140(a)(1)(A)-(K) of the CCPA, if any such data element identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household.

1.14. “Third Party Data” means all content received by Enervee from a third party (other than Partner) or made available by a third party (other than Partner) through the Services, including any text, images, graphics, designs, photos, video, sound, works of authorship, data, statistics, analyses and similar information. Third Party Data does not include Customer Information.

1.15. “Term” means the initial term plus all renewed terms.

1.16. “Renewal Term” means a period following the initial term for which the agreement has been renewed.

2. ORDER FORM; ACCESS AND USE

2.1. Order Form. The Services to be provided by Enervee under this Agreement shall be set forth in one or more Order Forms, each of which is incorporated into this Agreement by reference. The initial Order Form issued under this Agreement shall be attached to this Agreement. Additional Order Forms may be entered into after the date hereof and shall be effective upon execution by both Parties. Modifications to the Services described in an Order Form shall be set forth in an additional Order Form or a Change Order executed by both Parties.

2.2. Access to Services. Subject to the terms and conditions of this Agreement, Enervee hereby grants to Partner a non-exclusive, non-transferable, non-sublicensable right to permit access to the Services for the term specified in the applicable Order Form.

2.3. Access to Partner Data. Subject to the terms and conditions of this Agreement, Partner hereby grants Enervee a worldwide, fully-paid, non-exclusive, non-transferable (subject to Section 6), non-sublicensable, royalty-free license to (i) use, reproduce, adapt, modify, translate and distribute the Partner Data as set forth in this Agreement, including in order to perform the Services; and (ii) use the Aggregated Data for purposes of operating Enervee’s business, including in marketing and promoting the Services.

2.4. Brand Licenses. The Parties shall cooperate with each other to develop a mutually agreeable strategy for branding the Services, as described in an Order Form. Upon approval by Partner (i) Enervee may use the Partner Brand as described in an Order Form in order to provide the Services; (ii) Enervee may identify Partner as an Enervee customer and may further publicly disclose generalized details regarding the Services provided to Partner for marketing purposes; and (iii) Enervee may include reference to the Enervee Brand in the Services, including a statement such as “runs on Enervee” and reasonable indicia of Enervee’s copyrights and other intellectual property rights therein. Except as expressly permitted above, each Party shall have a written right of approval over the use of its Brand by the other Party, not to be unreasonably withheld.

Enervee Master Service Agreement January 2019
NYACTIVE-18510279.1
2.5. **Usage Restrictions.** Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Partner will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties to use any Enervee Content, other than Customers; (b) use any Enervee Content to provide services to third parties, other than Customers (e.g., as a service bureau); (c) circumvent or disable any security or other technological features or measures of any Services; (d) create improvements, modifications or derivative works of, or reverse engineer or otherwise attempt to discover any source code of or trade secrets embodied in, the Enervee Content (including, without limitation, any Services or any software or technology used to provide the Services); (e) use the Services in a manner not authorized under the Documentation or in violation of any applicable law, rule or regulation, including any export/import laws; (f) knowingly interfere with or disrupt the integrity or performance of the Services or the data contained therein, or unreasonably burdens the infrastructure utilized to deliver the Services; and (g) attempting to gain unauthorized access to the Services or its related systems or networks.

2.6. **Retained Rights; Ownership.**

(i) Subject to the rights granted in this Agreement, Partner retains all right, title and interest in and to the Partner Brand and Partner Data, and Enervee acknowledges that it neither owns nor acquires and hereby disclaims any rights in and to the Program Result Reports, provided that Enervee (a) retains ownership in the design, look and feel of such reports and any other intellectual property therein and (b) may use such reports for its internal business purposes.

(ii) Subject to the rights granted in this Agreement, Enervee retains all right, title and interest in and to the Services and Documentation, including all Enervee Intellectual Property and further including all improvements and modifications to the Services and Documentation that arise out of Enervee’s performance of the Services. Partner acknowledges that it neither owns nor acquires and hereby disclaims any rights in and to the foregoing not expressly granted herein.

3. **ENERVEE OBLIGATIONS.**

3.1. **Performance of Services.** Enervee shall perform the Services in accordance with the terms and conditions of this Agreement (including each applicable Order Form) and the Documentation.

3.2. **Data Protection and Disaster Recovery.** Enervee shall use commercially reasonable efforts to maintain appropriate managerial, operational, and technical safeguards designed to preserve the integrity and security of the Partner Data while in its possession and control hereunder. Such safeguards shall be at least as stringent as those set forth in Exhibit B (Data Protection and Disaster Recovery). Enervee shall notify Partner within twenty-four (24) hours if it knows of any breach of this Section 3.2.

3.3. **Subcontractors.** Enervee is permitted to enter into an arrangement with one or more subcontractors to fulfill any of Enervee’s obligations hereunder, provided Enervee gives prior Partner notice of such arrangement, provided, however, that the limitations set forth in this Section 3.3 shall not apply to the purchase of standard commercial supplies or raw materials or services purchased for the provision of services by Enervee to all of its customers generally, including without limitation general back-end and digital marketing services, so long as such subcontractors have no access to Partner Data. Enervee shall be responsible for any breach of this Agreement that is caused by a subcontractor.

3.4. **Communication with Customers.** As part of the provision of the Services, Enervee may need to communicate with Customers from time-to-time. Partner hereby grants Enervee the limited right to communicate with Customers as may be reasonably necessary or beneficial to provide or improve the Services, except that any communications initiated by Enervee related to marketing activities shall be subject to Partner’s approval.

3.5. **Litigation Hold.** In the event Partner gives Enervee written notice of a “litigation hold”, then as to all data identified in such notice, Enervee shall, at no additional cost to Partner, preserve all such data pending receipt of further direction from the Partner.

3.6. **Advertising.** Enervee shall not refer to Partner directly or indirectly in any advertisement, news release, or publication, or use any Partner logo, seal or mark, without prior written approval from Partner.

3.7. **General Indemnification.** Enervee agrees to indemnify, defend, and hold harmless Partner and its elected officials, officers, directors, agents, attorneys and employees (each, an “Indemnitee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim,” and collectively, the “Claims”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Enervee, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Enervee; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of Partner Data (collectively, “cyber theft”); or, (e) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.

3.8. **Insurance.** Unless otherwise approved in writing by Partner’s risk manager, Enervee shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Enervee, pursuant to this Agreement: commercial general liability ($1,000,000 per occurrence, $2,000,000 aggregate); excess liability ($2,000,000 per occurrence, $2,000,000 aggregate); workers’ compensation (statutory limits) and employers’ liability ($500,000 per accident); cyber liability ($5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of Partner Data; (ii) data breach including theft, destruction, and/or unauthorized use of Partner Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of Partner Data; and professional liability ($1,000,000 per occurrence, $1,000,000 aggregate). The Indemnities shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses. Enervee shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Enervee waives all rights of subrogation with respect to said policies. Such policies shall require that Partner be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Partner shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Enervee’s exposure to Partner increases. Enervee shall provide Partner with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Partner with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

Enervee Master Service Agreement January 2019
NYACTIVE-18510279.1
4. **PARTNER OBLIGATIONS.**

4.1. **Partner Data.** Partner shall provide the Partner Data to Enervee in the format and at the times specified in the Order Form. Partner shall be responsible for, and Enervee shall not be liable for, (i) ensuring that all consents have been obtained and all notices have been given, to the extent that any such consent or notice is required under applicable law, rules, regulations, agreement or Partner policies to authorize Enervee to communicate with its Customers and use Partner Data as contemplated by this Agreement and (ii) any breach of this Agreement resulting from the Partner Data, including the delivery, accuracy, completeness and consistency thereof. Partner shall make available in a timely manner at no charge to Enervee all content, graphic files, Partner Brand information and other information and resources of Partner reasonably required by Enervee for the performance of its obligations under this Agreement.

4.2. **Accounts.** Partner shall be responsible for the security of its Administrative Users’ accounts and passwords, and shall promptly notify Enervee of any unauthorized use of any password or account or any other known or suspected breach of security. Partner shall be responsible for the acts or omissions of its Administrative Users in connection with the use of, and access to, the Services.

4.3. **Feedback.** Partner shall provide Enervee with prompt written notification of any comments or complaints about the Services that are made to Partner by Customers, and of any problems with the Services or their use that Partner becomes aware of during the Term. Accordingly, Enervee shall provide Partner with any feedback received by Customers and of any problems with the Services that Enervee becomes aware of during the Term.

4.4. **Assistance to Enervee.** Partner shall provide reasonable assistance and access to Enervee to the limited extent necessary to enable Enervee to perform its obligations under this Agreement, including any obligations with respect to an Order Form.

5. **FEES AND EXPENSES; PAYMENTS.**

5.1. **Fees.** Partner shall pay to Enervee, without offset or deduction, all fees required by each Order Form and payment schedule. Enervee shall submit invoices to Partner according to the relevant payment schedules indicated on the applicable Order Form, and each invoiced amount will be due and payable within 30 days of the invoice date. Enervee shall not suspend any part of the Services where Partner is reasonably disputing any amount due to Enervee. Any terms and conditions included in a Enervee invoice shall be deemed to be solely for the convenience of the Enervee, and no such term or condition shall be binding upon the Partner. Late payments more than 30 days past due will accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.2. **Taxes.** Partner shall be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Enervee’s income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Partner shall make all required payments to Enervee free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Enervee shall be Partner’s sole responsibility, and Partner shall, upon Enervee’s request, provide Enervee with official receipts issued by the appropriate taxing authorities, or such other evidence as Enervee may reasonably request, to establish that such taxes have been paid.

5.3. **Audit.** Enervee shall maintain accurate records of all fees billable to, and payments made by, Partner in a format that will permit audit by Partner for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Enervee shall survive the termination of this Agreement.

5.4. **Invoice Disputes.** If Partner disputes in good faith any portion of an invoice or any other amount due under this Agreement, Partner shall notify Enervee in writing within 30 days after receipt of the invoice with an explanation of the nature of the dispute. Unless a written notice of a dispute as to invoiced or due amounts is received by Enervee within such 30-day period, the invoice or amount due shall be deemed correct and payable in full by Partner.

6. **CONFIDENTIAL INFORMATION.**

6.1. **Ownership of Confidential Information.** As between the Parties, all Confidential Information is and shall remain proprietary to the disclosing Party.

6.2. **Mutual Confidentiality Obligations.** Each Party agrees (i) to use Confidential Information disclosed by the other Party only as described herein; (ii) to protect the other Party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care, (iii) not to disclose the other Party's Confidential Information without its prior written consent to any third party except as provided in Section 6.3.

6.3. **Permitted Disclosures.** Notwithstanding the above, a Party may disclose the Confidential Information of the other Party (i) to such personnel, agents, consultants, attorneys or professional advisors of the disclosing Party or its prospective or actual investors, financiers, successors or assigns, if any, who have a bona fide need to access such information and are bound by confidentiality obligations at least as protective as those set forth in this Article 6 and (ii) to the limited extent required to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall if permitted by applicable law first have given written notice to the other Party and made a reasonable effort to seek protective treatment of the Confidential Information to be disclosed. It is understood that Partner is subject to the California Public Records Act (Gov. Code § 6250 et seq.). If a request under the California Public Records Act is made to view Enervee’s Confidential Information, Partner shall notify Enervee of the request and the date that such records will be released to the requester unless Enervee obtains a court order enjoining that disclosure. If Enervee fails to obtain a court order enjoining that disclosure, Partner will release the requested information on the date specified.

6.4. **Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Article 6 shall not apply to Confidential Information that: (i) is or becomes publicly available or enters the public domain through no fault of the recipient; (ii) is communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iii) is communicated by the recipient to persons not bound by confidentiality obligations with respect thereto at the time of disclosure; or (iv) is independently developed by the recipient.

6.5. **Terms of Agreement.** Each Party shall be entitled to disclose to third parties the existence of this Agreement. Partner will cooperate to redact certain terms in the Statement of Work that Enervee may deem sensitive confidential information or trade secrets of Enervee, subject to Section 6.3 above.

6.6. **Equitable Relief.** In the event of a breach or threatened breach of this Article 6 by either Party, each Party agrees that remedies at law may not be adequate to protect the non-breaching Party and the non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief to enforce the provisions hereof and shall be entitled to recover from reasonable attorneys’ fees incurred in connection therewith. Notwithstanding the
foregoing, the remedies in this Section 6.6 shall not be the exclusive remedies for a breach of this Article 6.

7. REPRESENTATIONS AND WARRANTIES.

7.1. General Representations. Each Party represents and warrants that (i) it has the rights, power and authority necessary to enter into this Agreement; and (ii) this Agreement, when executed and delivered by the other Party, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms. Enervee represents and warrants that: (a) it is in the business of providing the Services; (b) the Services are fit for the ordinary purposes for which they will be used; (c) it acknowledges that Partner is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Partner; (d) it knows the particular purpose for which the Services are required by Partner; (e) it is the lawful licensee or owner of the Services (excluding any Partner Data therein) and has all the necessary rights in the Services to grant the use of the Services to Partner; (f) the Services and any other work performed by Enervee hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement; (g) it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement; (h) it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards; (i) it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation; (j) it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (k) it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and (l) there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

7.2. Service Warranty. Enervee represents and warrants that the Services will conform in all material respects to the requirements set forth in an Order Form, Exhibit C- Service Level Agreement, and the Documentation; provided, however, that Enervee does not warrant that the Services will be error free or will operate without interruption. Partner’s exclusive remedy for any breach of this Section 7.2 shall be the discounts set forth in Exhibit C, provided, however if Enervee fails to meet the Service Levels for three (3) consecutive months, Partner may opt to terminate this Agreement, including all Order Forms in accordance with Section 10.2

8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

8.1. Partner Data and Third Party Data. Enervee makes no representations or warranties regarding any Partner Data or Third Party Data made available in connection with the Services. Enervee is not responsible for the accuracy, reliability, legality or validity of any Partner Data or Third Party Data.

8.2. Disclaimer. Except as expressly represented or warranted in Article 7, the Third Party Data is provided “as is,” and Enervee disclaims any and all other promises, representations and warranties, whether express or implied.

8.3. Exclusions of Remedies; Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOSS OF USE, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE NATURE OF THE CLAIM; PROVIDED, HOWEVER, THAT ENERVEE WILL BE LIABLE FOR THE FOLLOWING COSTS AND EXPENSES INCURRED BY PARTNER IN CONNECTION WITH THIRD PARTY CLAIMS IN CONNECTION WITH A BREACH OF SECTION 3.2 OR EXHIBIT A, NOTWITHSTANDING THAT SUCH DAMAGES MAY BE CONSEQUENTIAL IN NATURE: (1) THE COST OF PREPARING AND DELIVERING NOTICES TO AFFECTED INDIVIDUALS; (2) THE COST OF PROVIDING CREDIT MONITORING SERVICES OR OTHER CREDITS OR BENEFITS EXTENDED TO AFFECTED DATA SUBJECTS; (3) REASONABLE ATTORNEYS’ FEES ASSOCIATED WITH INVESTIGATION, REMEDIATION AND RESPONSE; AND (4) LIABILITY TO THIRD PARTIES THAT PARTNER INCURS IN CONNECTION WITH THE BREACH (SUCH AS AMOUNTS PAID OR FOR WHICH PARTNER IS LIABLE TO THIRD PARTIES IN TORT OR ARISING OUT OF CONTRACTS. EXCEPT IN THE CASE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, OR INTELLECTUAL PROPERTY INFRINGEMENT, THE CUMULATIVE LIABILITY OF ENERVEE TO PARTNER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF EITHER (A) TWO TIMES (2X) THE FEES PAID TO ENERVEE BY PARTNER DURING THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR (B) THE MAXIMUM POLICY LIMITS OF THE INSURANCE COVERAGES PROVIDED IN SECTION 3.8 IF SUCH CLAIM IS COVERED BY SUCH INSURANCE COVERAGE. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. INTELLECTUAL PROPERTY INFRINGEMENT

9.1. Defense of Infringement Claims. Enervee will, at its expense, either defend Partner from or settle any claim, proceeding, or suit (“Claim”) brought by a third party against Partner alleging that Partner’s use of the Services infringes or misappropriates any United States patent, copyright, trade secret, or trademark during the Service Term if: Partner gives Enervee prompt written notice of the Claim; Partner grants Enervee full and complete control over the defense and settlement of the Claim; Partner provides assistance in connection with the defense and settlement of the Claim as Enervee may reasonably request; and Partner complies with any settlement or court order made in connection with the Claim (e.g., relating to the future use of any infringing Services). Partner will not defend or settle any Claim relating to the Services without Enervee’s prior written consent. Partner will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Enervee will have sole control over the defense and settlement of the Claim.

9.2. Indemnification of Infringement Claims. Enervee will indemnify Partner from and pay all damages, costs, and attorneys’ fees finally awarded against Partner in any Claim under Section 9.1; all out-of-pocket costs (including reasonable attorneys’ fees) reasonably incurred by Partner in connection with the defense of a Claim under Section 9.1 (other than attorneys’ fees and costs incurred without Enervee’s consent after Enervee has accepted defense of the Claim); and all amounts that Enervee agrees to pay to any third party to settle any Claim under Section 9.1.

9.3. Exclusions from Obligations. Enervee will have no obligation under this Article 9 for any infringement or misappropriation to the extent that it arises out of or is based upon use of the Services by Partner for purposes not intended or outside the scope of the limited right to use the Services granted to Partner; Partner’s failure to use
the Services in accordance with instructions provided by Enervee, if the infringement or misappropriation would not have occurred but for such failure; or any modification of the Services not made or authorized in writing by Enervee where such infringement or misappropriation would not have occurred absent such modification.

**9.4. Conditions to Infringement Indemnity.** Enervee’s infringement indemnity obligations under this Article 9 are conditioned on Partner’s agreement that if the applicable Service becomes, or in Enervee’s opinion is likely to become, the subject of a Claim covered by this Article 9, Partner shall permit Enervee, at Enervee’s option and expense, to either procure the right for Partner to continue using the affected Service or replace or modify the same with a non-infringing functional equivalent. If the foregoing alternatives are not available to Enervee on terms that, in its judgment, are reasonable, Enervee shall have the right to require Partner to cease using the affected Service in which case Enervee shall refund to Partner that portion of the fees paid for Services not yet provided.

**10. TERM AND TERMINATION.**

**10.1 Term.** The term of this Agreement (the “Term”) will commence on the Effective Date and will continue until the date on which all Services contemplated under all Order Forms have been completed, unless earlier terminated in accordance with this Article 10. Any termination of an Order Form shall not result in termination of any other Order Form(s) or this Agreement. However, any termination of this Agreement shall result in termination of all then-pending Order Form(s).

**10.2 Termination for Breach.** Either Party may terminate this Agreement in the event of a material breach by the other Party by providing written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party shall have a right to cure such breach within 30 days of receipt of such notice and this Agreement shall terminate in the event that such cure is not made within such 30-day period.

**10.3 Termination without Cause.** After one (1) year, Partner may terminate this Agreement and/or any Order Form(s) at any time and for any or no reason upon ninety (90) days’ written notice to Enervee. In the event of such termination, Enervee shall be entitled to 20% of the unpaid fees due for the remainder of the Term if the Agreement had not been terminated.

**10.4 Transition.** Enervee will provide to Partner and / or to the consultant selected by Partner (“Successor Consultant”) assistance reasonably requested by Partner to effect the orderly transition of the Services, in whole or in part, to Partner or to Successor Consultant (“Transition Services”) following the termination of this Agreement, in whole or in part. All applicable terms and conditions of this Agreement shall apply to the Transition Services. Unless otherwise instructed by Partner, upon expiration or termination of this Agreement and/or any Order Form(s), Enervee will do the following at no additional charge: (a) within ten (10) business days, meet and confer with Partner and discuss the manner and method Enervee will return all Partner Confidential Information and Partner Data to Partner, it being agreed that such material shall be provided to Partner in human readable format unless otherwise specifically approved in advance and in writing by Partner; (b) continue to provide the Services to Partner until the effective date of such expiration or termination provided Partner continues to pay for the Services through such date; (c) wind down the Services in a professional and cost-effective manner, and (d) within thirty (30) days, refund to Partner all pre-paid, unused fees. This Section shall survive the termination of this Agreement.

**10.5 Suspension of Access.** Enervee may suspend access to any or all of the Services in the event any amount due under this Agreement is not received by Enervee within 30 days after it was due and Enervee has provided Partner with written notice (in addition to the original invoice) of the past due amount.

**10.6 Termination Upon Bankruptcy or Insolvency.** Either Party may, at its option, terminate this Agreement upon written notice to the other Party, in the event: (i) the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.; or (iii) the other Party discontinues its business.

**10.7 Effect of Termination.** Upon any termination of this Agreement: (i) Partner shall immediately discontinue all use of the Services and any Enervee Confidential Information; (ii) Partner shall delete any Enervee Confidential Information from Partner’s computer storage or any other media including, but not limited to, paper files and online and offline libraries; (iii) Enervee shall, at Partner’s direction return or delete any Partner Confidential Information and Partner Data (to the extent allowable by law) from Enervee’s computer storage or any other media including, but not limited to, paper files and online and offline libraries; (iv) each Party shall discontinue use of the other Party’s Brand; and (v) Partner shall promptly pay to Enervee all amounts due and payable hereunder. This Section 10.5 shall only require each Party to delete Confidential Information from off-site physical back-up in the ordinary course of business, provided that such Confidential Information shall remain subject to the terms of Article 6.

**10.8 Survival.** The provisions of Articles 1, 2.3, 2.5, 2.6, 5, 6, 7, 8, 9, 10.4, 10.7, and 11 shall survive the termination of this Agreement.

**11. MISCELLANEOUS.**

**11.1 Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties and supersedes all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither Party shall be bound by any conditions, inducements or representations other than as expressly provided for herein. All terms of use, terms of service, end user license agreements, shrink-wrap, click-wrap and browse-wrap terms of any kind that may accompany the Service or be required to be clicked, accepted or acknowledged before a User may access or use the Service are specifically refused by Partner; accordingly, such terms are expressly excluded from and superseded by this Agreement.

**11.2 Independent Contractors.** In making and performing this Agreement, Partner and Enervee act and will act at all times as independent contractors, and nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

**11.3 Notices.** All notices relating to this Agreement shall be in writing and addressed as follows:

- Enervee Corporation
  10000 Washington Blvd, 6th Floor
  Culver City CA 90232
  Attention: General Counsel
  Email: legal@enervee.com

- Silicon Valley Clean Energy Authority
  333 W. El Camino Real, Suite 290
  Sunnyvale, CA 94087
  Attention: Chief Executive Officer
  Email: girish@svcleanenergy.org
  With CC to: don.bray@svcleanenergy.org
Notice will be deemed given upon: (i) personal delivery or delivery confirmed by an overnight courier, (ii) the second business day after mailing by certified U.S. mail or upon confirmation of delivery by the U.S. Postal Service or (iii) recipient’s acknowledgement of receipt if sent by email.

11.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

11.5 Assignment; Delegation. Neither party may assign its rights, duties, or obligations under this Agreement without the other party’s prior written consent, which consent will not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party’s consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of, or otherwise is bound by, the assigning party’s obligations under this Agreement.

11.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions of this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

11.8 Waiver. No waiver under this Agreement will be valid or binding unless confirmed in writing by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

11.9 Force Majeure. Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party’s reasonable control, including, by way of example, war, acts of terror, earthquake, riot, fires, labor disturbance, floods, epidemics, failure of public utilities or public transportation systems, Internet disturbance, denial of service attacks or acts of governmental bodies, such failure or delay will not be deemed to constitute a breach of this Agreement, provided that if such Party is prevented or delayed from performing for more than 90 days, the other Party may terminate this Agreement upon 30 days’ prior written notice. Without limiting the foregoing, Enervee shall not be liable for any delay in performing or failure to perform its obligations hereunder as a result of Partner’s delays, acts or omissions.

11.10 Governing Law; Dispute Resolution. This Agreement will be governed by and interpreted in accordance with the laws of the State of California with venue in Santa Clara County.

11.11 Conflict Of Interest. Enervee 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 violate any conflict of interest statutes of the State of California applicable to Enervee’s services under this Agreement, including the Political Reform Act (Gov. Code § 81000 et seq.) and Government Code Section 1090. Enervee shall incorporate a clause substantially similar to this section into any material subcontract that Enervee executes during the Term in connection with any subcontractors furnishing services primarily for the performance of this Agreement (and excluding any subcontractors or vendors that furnish services for Enervee and its customers in general). Enervee understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Enervee to make certain governmental decisions or serve in a staff capacity, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

11.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement. A copy of this Agreement delivered by email or other electronic means shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.13 Interpretation. The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement. The terms “include”, “includes” and “including” shall be deemed followed by the words “without limitation,” and the term “or” is not exclusive. The words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

11.14 Attorneys’ Fees and Costs. In any litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party’s costs and expenses, including but not limited to, reasonable attorneys’ fees.

11.15 Cooperation. Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each Party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each Party may properly accomplish its obligations and responsibilities hereunder. Enervee will cooperate with any Partner consultant performing services, and all parties supplying hardware, software, communication services, and other services and products to Partner.

11.16 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.

11.17 Cumulative Remedies. All rights and remedies of Partner herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Enervee for the enforcement of this Agreement, and temporary and permanent injunctive relief.

11.18 No Recourse against Constituent Members of Authority. Partner is organized as a Joint Powers Partner in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement, and is a public entity separate from its constituent members. Partner shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Enervee shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Partner’s constituent members in connection with this Agreement.

11.19 Non-Discrimination. In the performance of this Agreement, Enervee 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.

11.20 Final Payment Acceptance Constitutes Release. The acceptance by Enervee of the final payment made under this Agreement shall operate as and be a release of Partner from all claims and liabilities for compensation to Enervee for anything done, furnished or relating to Enervee’s work or services. Acceptance of payment shall be any negotiation of Partner’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 Partner shall not constitute, nor be deemed, a release of the responsibility and liability of Enervee, 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 Partner for any defect or error in the work prepared by Enervee, its employees, subcontractors and agents.

11.21 Partner’s Rights to Employ Other Consultants. Partner reserves the right to employ other consultants in connection with the subject matter of the Services.

11.22 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.

11.23 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

11.24 Inclusion of Non-Participating Agencies. Enervee agrees to extend the terms of this Agreement, inclusive of a non-profit discount on license fees, to other interested community choice energy programs, with such non-profit discounts subject to the scope of services (including but not limited to duration of contract, modules, marketing campaigns, etc.) requested by such non-profit entities. While this clause in no way commits these agencies to contract with Enervee, nor does it guarantee any additional orders will result, it may allow other agencies, at their discretion, to make use of Partner’s competitive process (provided said process satisfies their own procurement guidelines) and enter into a contract directly with Enervee. All contracts entered into by other agencies shall be understood to be transactions between that agency and Enervee; Partner shall not be responsible or liable in any manner for any such contracts.

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

<table>
<thead>
<tr>
<th>Recommended for Approval:</th>
<th>Recommended for Approval:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLIENT</td>
<td>CLIENT</td>
</tr>
<tr>
<td>Signature:_________________</td>
<td>Signature:_________________</td>
</tr>
<tr>
<td>Name: Don Bray</td>
<td>Name: Don Eckert</td>
</tr>
<tr>
<td>Title: Director of Account Services &amp; Community Relations</td>
<td>Title: Director of Finance &amp; Administration</td>
</tr>
<tr>
<td>Date:______________________</td>
<td>Date:______________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Approved</th>
<th>Approved</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENERVEE</td>
<td>AUTHORITY</td>
</tr>
<tr>
<td>Signature:_________________</td>
<td>Signature:_________________</td>
</tr>
<tr>
<td>Name: Luis I Castro</td>
<td>Name: Girish Balachandran</td>
</tr>
<tr>
<td>Title: Director of Growth</td>
<td>Title: Chief Executive Officer</td>
</tr>
<tr>
<td>Date:______________________</td>
<td>Date:______________________</td>
</tr>
</tbody>
</table>
EXHIBIT A

Data Protection and Disaster Recovery

This Exhibit A sets forth the safeguards that Enervee has in place in order to protect the confidentiality and integrity of Partner Data held by Enervee. Enervee shall maintain data protection and disaster recovery standards at least as stringent as this Exhibit A during the term of the Agreement.

A. DATA PROTECTION AND SECURITY:

Enervee shall have in place information security safeguards that are designed to conform to or exceed industry standard practices regarding the protection of the confidentiality, integrity and availability of Partner and customer information. These information security safeguards (the “Information Security Program”) shall be materially consistent with, or more stringent than, the safeguards described in this Exhibit.

Overview. Enervee uses a defense-in-depth strategy designed to secure Personal Information and usage and billing data received from Partner or its Customers (“Customer Data”). This is achieved by reference to the National Institute of Standards and Technology (NIST) Risk Management Framework (to include the recently released NISTIR 7628 Guidelines for Smart Grid Cyber Security) as the foundation of our from our Information Security Program. Enervee requires that all Customer Data containing Personal Information be stored at independently verified SSAE-16/SOC Type II certified Tier-III data centers. The data centers’ physical and environmental security includes industry-leading network hardening and active monitoring, digital security video surveillance, 24/365 on-site security staff, and biometric access control.

Compliance with Personal Information Laws. Enervee shall process Personal Information disclosed by Partner to Enervee in connection with the Services ("Partner Personal Information") in compliance with Personal Information Laws and shall not (1) sell, as that term has been defined in the CCPA, Partner Personal Information, or (2) retain, use or disclose Partner Personal Information (i) for any purpose other than for the specific purpose of performing the Services, or (ii) outside of the direct business relationship between Enervee and Partner, Enervee hereby certifies that Enervee understands the restrictions set out in this Exhibit A regarding Partner Personal Information and will comply with them.

Data Storage. Customer data is stored at independently verified SSAE-16/SOC Type II certified Tier-III data centers. The data centers’ physical and environmental security includes industry-leading network hardening and active monitoring, digital security video surveillance, 24/365 on-site security staff, and biometric access control.

Role-Based Logical Access Control. Enervee employs role-based access controls to servers containing Customer Data. Authorized employees must use individual account and authentication credentials to gain access to Customer Data. Enervee controls access to back end servers through authentication handled with key-encrypted SSH sessions. Authorization is done on a least privilege model.

Information Classification and Handling. Enervee classifies information assets using specific sensitivity labels and handling procedures so that appropriate security controls are applied to Customer Data.

Secure Data Transfer. Enervee requires that all Customer Data containing Personal Information be transmitted over the Enervee information system use approved secure transfer processes such as Enervee’s secure file transfer protocol (SFTP) and Enervee’s Data Transfer Specification. Data traversing the SFTP connection is authenticated and encrypted during transmission.

Secure Web Communications. Enervee’s Website Portal and Customer Service Application utilize HTTPS for securing web server to web browser communications using a Transport Layer Security (TLS) encrypted 256-bit certificate signed by an approved Certificate Authority. This establishes the encryption of the session, designed to protect the transmitted data between the end-user and the application.

Network and Security Monitoring. Enervee’s infrastructure incorporates firewalls, intrusion detection systems, intrusion prevention systems, vulnerability management tools and other technologies designed to monitor for network security events.

Vulnerability Assessments. Enervee performs periodic internal and external web application and network vulnerability assessments that include the use of independent third-party assessors as part of its continuous monitoring program to assess the application and operation of its security controls. The scope of these audits includes assessment of compliance with Open Web Application Security Project (OWASP) Top 10 Web Vulnerabilities (www.owasp.org). Enervee will use commercially reasonable efforts to promptly install applicable security patches and updates.

Website Portal Security Controls and Procedures:

User Authentication. Access to the Enervee Website Portal and Customer Service Application requires a valid unique user ID and password combination, along with 2 factor authentication, which are encrypted via TLS while in transmission.

Security Controls. The Enervee Website Portal and Customer Service Application include the following security controls:

- Unique user IDs so that activities can be attributed to the responsible individual.
- User lock-out controls after consecutive failed login attempts.
- Controls to terminate a User session after a period of inactivity.
- Password complexity requirements.

Security Procedures, Policies and Logging. The Enervee Website Portal and Customer Service Application are operated in accordance with the following procedures to enhance security:

- User access log entries will be logged
- Logging will be kept for a minimum of 90 days.
- Logging will be kept in a secure area to prevent tampering.
- Passwords are reset to a random value (which must be changed on first use) and delivered automatically via a secure delivery method to the requesting user.

Viruses: The Enervee Platform has been designed to detect and quarantine viruses on both employee computers and servers. All email attachments are scanned for viruses. Employee computers are scanned daily for viruses. All Linux servers are scanned weekly for viruses.

Incident Response. In the event of a security breach, Enervee’s System Administration Team and Security Team will perform a risk-based assessment of the situation and develop appropriate mitigating strategies in accordance with Enervee incident response procedures, which include contacting the Partner.

Security Plan Changes. Enervee shall maintain data protection and disaster recovery standards at least as stringent as this Exhibit A during the term of the Agreement.

Hosted Services. The Enervee Platform utilizes industry-leading hosted storage and application services, such as Amazon Web Services, that...
employ security practices that meet or exceed the practices described in this exhibit. For more information on Amazon Web Services security practices, see http://aws.amazon.com/security/security-resources.

B. DISASTER RECOVERY:

Production Site Recovery Methodology:

Overview: Enervee’s Primary data centers provide production services for the Enervee Platform and geographically separate disaster recovery (“DR”) data center(s) provide(s) recovery services if needed as a result of a disaster. All data received from Partner or Customers for purposes of the Enervee Platform is maintained in both the primary data centers and the DR data center(s).

Hardware: All data centers utilize carrier-grade components designed to support high level of availability and performance. Extensive use of high availability servers and network technologies, combined with multicarrier and carrier-neutral network strategy, mitigate the risk of single points of failure and provide a highly resilient environment.

Data Replication / Backups: Enervee performs remote data replication of all production data to a geographically remote DR site.

Specifically, nightly backups are performed at all the production data centers and backups are made at Enervee’s remote DR data center as follows:

- Disk Backup Schedule- Weekly Full/Nightly Incremental
- Site to Site Backup Schedule – Nightly

Should there be a catastrophic failure at a primary data center or another type of disaster affecting that facility, Enervee would initiate its disaster recovery process. Recovery would be performed at Enervee’s primary data centers if the recovery could be completed within Enervee’s recovery time objective (“RTO”) and recovery point objective (“RPO”). If recovery could not be completed at Enervee’s primary data center within the RTO and RPO, recovery would be performed at Enervee’s remote DR data center(s).

Data Center Recovery Planning Progress:

As a part of developing a viable disaster recovery plan and program for the production environment and platforms, Enervee conducts periodic disaster recovery exercises.

The scope of the disaster recovery exercise is to validate the ability to recover production data from a primary data center to the DR data center utilizing developed operational and disaster recovery procedures and documentation. Key elements of proof currently include:

- Network access
- Hardware and / or server component accessibility.
- Application accessibility
- Data currency (RPO)
- Plan elements are reviewed and updated
- Task, script and procedures remain current

Data Center Facilities:

Enervee services run from enterprise-grade data centers. Cameras provide interior and exterior surveillance, monitored by onsite security guards around the clock. Various combinations of Card-key access, PIN-based & bio-metric system restrict access to and within the data center. Electrical power, telecommunications, and environmental systems (cooling, fire suppression, etc.) are redundant with uninterruptible power supply units, generators, and water supplies available for emergency use. Heat, smoke, fire detection and suppression systems are strategically located throughout the facility. Building logic control systems monitor temperature, humidity, and other environmental conditions. Notification via email/paging mechanisms and onscreen dashboards display all critical functions and any alarm conditions.

Power:

Enervee’s solution is designed to offer an uninterrupted power supply while the load is being transitioned to emergency/generator power in the case of a utility outage. Both the primary and the DR data centers have power capacity to support the load for the entire facility for a minimum of 48 hours on emergency generator power with multiple vendors to supply fuel as required. In the event of a critical data center facility service impacting failure or disaster, Enervee has the ability to transition to a data replicated, geographically diverse DR data center.
EXHIBIT B:  
SERVICE LEVEL AGREEMENT  

Service Availability  
Enervee will maintain a Monthly Uptime Percentage of at least 99% during each month. Here "Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes in which the Enervee Platform was unavailable, not including any Enervee scheduled or emergency maintenance periods. In the event that Enervee does not meet this service level commitment, Partner will receive a discount for that billing cycle according to the rules below. These discounts will constitute Partner’s sole remedy, and Enervee’s sole liability for any failure to meet Enervee’s service level commitment.

Less than 99% but equal to or greater than 97.0% monthly uptime:

Less than 97.0% monthly uptime:

[Redacted]
EXHIBIT C:
SOW ENERVEE APPLIANCES CHOICE ENGINE

1. Appliances Choice Engine
The Appliances Choice Engine is a custom, fully automated appliance and product recommendation platform. Appliances brings together all the data Customers need to make an informed decision - pricing, features, efficiency, popularity and user reviews - into the single most comprehensive selection of products and information available online.

Appliances is designed to help Customers quickly and easily find the most efficient and therefore cost-saving appliances that meet their unique requirements. It drives continuous engagement and positions the Partner as a trusted advisor in the consumer’s appliance purchase decision. Appliances leverages the data pulled from the largest online retailers and manufacturers each day and compiles this information into a simple product card displaying the most important shopping information for consumers in a mobile friendly way.

Enervee will create, operate and manage a geo-targeted, Partner-branded version of the Choice Engine platform that has a fully responsive and mobile-first design. The Choice Engine will be hosted by Enervee’s hosting service (provided by Amazon Web Services) and will be available on the efficientchoice.com domain.

Consumer-facing information and services on the site will include:
- Products, in the selected categories by Partner, for sale through online retailers updated daily. During implementation SVCE can choose which categories to include from Enervee’s catalog.
- An “Enervee Score” rating the energy efficiency for every product derived according to Enervee’s scoring system.
  - Enervee commits to working with SVCE and other Enervee customers to incorporate additional environmental attributes into the Enervee Platform, including factoring in the carbon intensity of the appliance’s energy source (electricity or natural gas), and the ability of the appliance to be networked and utilize utility-provided information such as time of use rates, dynamic pricing, and demand response signals.
- Online sales offers, with pricing, and user reviews from Amazon.com, Best Buy, Home Depot, Sears, Lowe’s and many others.
- User reviews are aggregated across all participating retailer into a single 5-star score.
- “CLEARCOST” which adds estimated energy consumption costs to the lowest online listed purchase price for every product. Clear Cost is based on average Client residential rates as provided by Client.
- “YOUSAVE” which estimates the lifetime energy cost savings of a product compared to the baseline model of that size class.
- Leverage an SVCE-owned and provided URL at an extra cost. The included standard URL is partner.efficientchoice.com/org
- Leverage an SVCE-provided marketplace name
- Apply branding leveraging SVCE brand guidelines following the platform configuration options defined in the implementation workbook
- Manage an appliance and equipment catalog including a variety of large and small appliances; Enervee may offer additional product categories in the future that SVCE can decide to add to the Marketplace Application.
  - All product categories, including additions and deletions, to be approved by SVCE
  - New categories will be offered to SVCE as they become available, as optional categories to be included in the SVCE platform. These new categories will have an implementation fee that shall be agreed upon as the categories are requested by SVCE.
- Provide option for customers to received quotes from local installers through HomeAdvisor with Contractor add on
- Enable referral purchase capabilities for products and services, with communication of SVCE rebates and incentives available and how to redeem them. SVCE must provide rebate criteria in the implementation workbook. New rebate setup requests after launch incur fees.
- Coordinate with other SVCE vendors/partners to allow for integration between solutions and applications, as appropriate and mutually agreed to (e.g., embedding links to other websites, creating site content, sending customer communications, etc.). Some requests may require additional fees. In that case any fees will be identified and approved in writing by SVCE before the work is done.

<table>
<thead>
<tr>
<th>DELIVERABLES</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>Enervee will set up and customize a geo-targeted, Partner-branded version of Enervee Appliances.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENERVEE APPLIANCES PLATFORM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mobile First Design</td>
</tr>
<tr>
<td>Features and Functions</td>
</tr>
<tr>
<td>Enervee Score®</td>
</tr>
</tbody>
</table>
### CLEARCOST

CLEARCOST shows the projected total costs of owning an appliance over its useful lifetime based on purchase price, Partner energy rates and usage profile.

### Accessibility

Enervee builds its products in accordance with ADA requirements and shall maintain website in a manner accessible to persons with disabilities.

### New Categories

As new categories become available for the Appliances Choice Engine, Partner will be able to add those categories to their Appliances Choice Engine. Adding new categories generate additional costs to the original scope of the platform, which result in a **$15,000** (non-profit pricing) implementation fee and a **$10,000** (non-profit pricing) annual fee.

### SET UP AND CUSTOMIZATION

Standard branding and configuration options for Enervee Appliances are outlined through an Implementation Workbook (EXHIBIT G). High-level considerations are outlined below:

<table>
<thead>
<tr>
<th>Branding</th>
<th>Enervee incorporates branding elements throughout Homepage and other Enervee Appliances pages to ensure branding alignment including name, logos, color palette, images, default Enervee Appliances elements and copy. Partner provides brand guidelines.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical</td>
<td>Set up platform, platform data management and profile data management Quality testing before deployment</td>
</tr>
<tr>
<td>Hosting</td>
<td>Enervee hosts the Appliances site at a custom URL i.e. partnername.efficientchoice.com.</td>
</tr>
<tr>
<td>Tracking</td>
<td>Set up tracking of user activities on Enervee Appliances. Partner integrates re-marketing pixel.</td>
</tr>
</tbody>
</table>
EXHIBIT D:
SOW ENERVEE CHECKOUT

1. Checkout
Selling directly to customers can make sense when consumers want to make a quick decision, or the utility wants to supply the product. For these situations, there’s Enervee Checkout - an integrated direct-sales application. The Checkout API extension allows the fastest and most convenient way to purchase products with rebates instantly through the Appliances Choice Engine. The Checkout functionality allows active and validated customers to purchase Partner-approved products with an instant rebate discount applied at the time of purchase.

- Source, secure, and manage all participating product and service suppliers, manufacturers, and distributors
  - Identify, contract, price, and manage any order fulfillment logistics and related system functionalities as required
  - Enable inclusion of products sourced and fulfilled via SVCE as mutually agreed. New and non-existing categories requested to be sold via Checkout, might incur additional fees, depending on the type of category.
- Source, secure, and manage product fulfillment vendor(s) for direct-purchase products and services
  - Act as an affiliate referrer for certain products or services
  - Send all order confirmations via email to customers with branding as approved by SVCE
- Enable access to available manufacturer promotions as mutually agreed
- Track and monitor rebates issued to customers

<table>
<thead>
<tr>
<th>DELIVERABLES</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>Enervee will set up and customize a geo-targeted, Partner-branded version of Enervee Checkout</td>
</tr>
</tbody>
</table>

ENERVEE CHECKOUT
<table>
<thead>
<tr>
<th>Setup</th>
<th>Enervee will send a product list of energy-star certified products that will be available for purchase for approval. Any changes to the initial set up are defined as change requests and will be charged separately based on efforts. Changes only happen with SVCE’s approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee’s hourly rate for changes, requests or software development is $200/hr.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Categories</td>
<td>The initial set-up will include up to three categories with products available to purchase: Thermostats, Lightbulbs and Power strips. Other categories may be added at a later date by Enervee with SVCE’s approval. The lightbulbs category will consist of minimum 15 energy star light bulbs products available for purchase. The thermostats category will consist of minimum 8 energy star thermostats. The Power strips category will consist of a minimum of 2 energy star brands. This is all dependent on the utilities rebate requirements. Any changes to the initial set up like additional categories are defined as change requests and will be charged separately based on efforts. Changes only happen with SVCE’s approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee’s hourly rate for changes, requests or software development is $200/hr.</td>
</tr>
<tr>
<td>Products</td>
<td>Enervee maintains the product catalog including price updates. Adding products or taking products out are defined as change requests and will be charged separately based on efforts. SVCE is able to define the products to be included in the marketplace before the platform’s launch at no costs. Any other changes to product catalog shall be charged based on effort. Changes only happen with SVCE’s approval of scope and costs. Efforts are defined as the number of hours required to make any changes, new requests or additional software development. Enervee’s hourly rate for changes, requests or software development is $200/hr.</td>
</tr>
<tr>
<td>Shopping Experience</td>
<td>Through the Checkout API, items added to the cart from Enervee Appliances Choice Engine are transferred to a co-branded Checkout page hosted by one of our distributors. The entire shopping experience remains seamless and efficient.</td>
</tr>
<tr>
<td>Order Experience</td>
<td>Customers will add items to their cart on Enervee Appliances Choice Engine. The customer will then proceed to Checkout and must complete a verification to be eligible for the instant rebate. If eligible, they will receive the rebate instantly, if not, they can continue to purchase at full cost. Our distribution partner will receive and fulfill these orders from the Enervee Appliances Choice Engine via the API.</td>
</tr>
<tr>
<td>Handling of Returns</td>
<td>Customers will contact the order support phone number (at an extra cost) and/or email listed on the Checkout page, Support page, and/or order packing slip with any inquiries regarding their order. The customer is responsible for all costs associated with returning</td>
</tr>
</tbody>
</table>

MSA | SOW 1 | ENERVEE APPLIANCES | 17
orders not related to warehouse errors, damaged-in-shipment products, or defective items. These costs include restocking and/or shipping fees.

### Rebate Invoicing

Enervee will invoice Partner at the beginning of every month for all rebates paid via Checkout. Enervee’s invoice will come with an attached report of every transaction made through Checkout, with detailed information of which products were sold and to whom those products were sold to.

### SET UP AND CUSTOMIZATION

High-level considerations are outlined below:

<table>
<thead>
<tr>
<th>Technical</th>
<th>Set up platform, platform data management quality testing before deployment</th>
</tr>
</thead>
</table>
| Customer Validation | Enervee and Partner agree to kick-off Customer Validation via zip code matching.  
Enervee and Partner will work together to implement flat-file integration for customer validation. Enervee needs to have a database of previous claimed rebates to prevent double dipping. The claim validation process will also be agreed upon and defined jointly by Enervee and Partner to prevent duplicate rebate payments and enforce rebate business rules.  
Other Customer Validation forms may be agreed upon at a later date. |
| Hosting | Enervee hosts the Checkout functionality under a custom URL i.e. efficient.partnername.com |
| Tracking | Set up tracking of user activities during the Checkout process. |
| Region, Currency and Language | Partner Region, US English, US Dollar |
EXHIBIT E:
IMPLEMENTATION RESPONSIBILITIES

1. Implementation Responsibilities Enervee
During Enervee Appliances implementation, Enervee will:
   a) Provide Partner with Enervee team necessary to successfully implement Appliances platform as defined.
      • Develop a detailed project schedule along with SVCE staff and contractors
      • Hold or participate in weekly check in meetings on project progress
      • Develop scripts and provide data for user acceptance testing
      • Fix all reported bugs impacting site performance within five (5) working days or as quickly as possible
      • Perform testing with an automated and manual process, followed by a regression test that gets run prior to each release (using Rainforest QA)
      • Provide access to the Enervee Partner Portal and online dashboard
   b) Implement services defined for Partner
   c) Provide Choice Engine Implementation Workbook
   d) Discuss and finalize Partner’s design and implementation details
   e) Guide Partner through program branding and content considerations
   f) Set up Enervee’s Engage Program (if service is included)

The Enervee team roles and descriptions are listed here for reference. An individual may assume one or more roles.

Customer Success Manager
Primary point of contact for all pre-implementation activities and after Enervee Appliances Launch. Focused on ensuring our Partners achieve their desired outcomes. Responsible for day to day contact, marketing decisions, platform performance tracking and optimization, Enervee impact surveys and Enervee support for independent impact assessment and strategic planning. Also responsible for implementing Enervee Appliances scope, project scheduling, resource management, technical dependency management, engineering coordination and test coordination. After Program launch, the Customer Success Manager will deliver results reports, drive ongoing optimization efforts, and closely monitor key milestones.

Customer Service Manager
Primary point of contact for customer support functions

Engage Program Manager
Primary point to advise and manage Enervee Engage Program (if service is included)

2 Implementation Responsibilities Partner
During Enervee Appliances implementation, Utility partner will:
a) Provide Enervee with Partner team as described below
b) Provide Enervee with all necessary information
c) Make decisions regarding corporate branding and content strategies associated with Enervee solution

Partner is required to provide the resources to work on the implementation with the Enervee team. The responsibilities of these roles are defined in the table below. An individual may assume one or more roles. Partner must identify the individuals to assume these roles and communicate this information within 30 days of the execution of the SOWs.
d) Engage a third-party evaluation company prior to the launch of the Appliances site. The evaluator will quantify the efficient purchases influenced by the Appliances platform and the resulting gross and net energy savings resulting from those purchases, using a method consistent with regulatory requirements.
e) Conduct any regulator outreach that may be required to obtain regulatory approval to claim market-based savings post-pilot.

**Project Owner**
Primary point of contact for Enervee Appliances. Responsible for general communication, pilot/control selection, measurement and verification. Will have the authority to grant all approvals, assemble Partner’s implementation team, execute all documents and take all actions relating to the program on behalf of Partner.

**Marketing Manager**
Primary point of contact for Enervee Appliances with regard to marketing activities and needs. Responsible for making all content and branding decisions for the Partner.

**Technical Manager**
Primary point of contact for Enervee Appliances with regard to technical activities and needs. Responsible for technical decisions and actions required to integrate Enervee Appliances with Partner’s existing website.
EXHIBIT F:
IMPLEMENTATION TIMELINES

Implementation Timelines
Enervee is using a phased approach for developing Choice Engine platforms. Each phase will have clearly defined objectives and deliverables. To ensure that all participating stakeholders at Partner and Enervee are in synch with the work stream for each phase of the project, we will have status calls at least once per week during customization of the platform.

1. TIMELINE APPLIANCES

Week 1-2, following contract signing
KICK OFF
Define Goals & Timing
Provide Content & Branding Guidelines
Partner delivers all Configuration Workbook responses
MILESTONE I: Configuration Workbook

Week 3-6, following contract signing
CUSTOMIZATION PHASE
Customize Design and Branding
Integration of electric and gas rates
Set up Testing Environment
FAQs, Terms & Conditions, Privacy Policy
MILESTONE II: Completed development of Partner Choice Engine in test environment

Week 7-8, following contract signing
TESTING
Use Cases
Content & branding check
Fixing of any identified bugs
MILESTONE III: Sign off on launch

Week 9, following contract signing
MILESTONE IV: Go live

2. TIMELINE CHECKOUT

KICK OFF, Week 1-2, following contract signing
Define Goals & Timing
Partner delivers Customer Flat File list
Rebate invoicing scheduling
MILESTONE I: Deliverables sent to Enervee
CUSTOMIZATION PHASE
Set up Testing Environment
MILESTONE II: Completed development of Partner Choice Engine in test environment by **Week 3-6, following contract signing**

TESTING
Use Cases
Content & branding check
Fixing of any identified bugs
*MILESTONE III: Sign off on launch by Week 7-8, following contract signing*

*MILESTONE IV: Go live by Week 9, following contract signing*
### EXHIBIT G: OPERATIONS AND MAINTENANCE

<table>
<thead>
<tr>
<th>DELIVERABLES</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner Choice Engine</td>
<td>Enervee will operate and manage the customized version of the Enervee Appliances platform after its deployment. All model, brand and price information, data sources and the Enervee Score will be continuously updated.</td>
</tr>
<tr>
<td>Surveys</td>
<td>Enervee will conduct online surveys to Customers who have visited Enervee Appliances. The surveys will ask questions about the customer shopping journey and what impact Enervee Appliances had on his/her purchase decision. Survey results will be shared with Partner.</td>
</tr>
<tr>
<td>Data Management</td>
<td>Regular quality testing, updates to Enervee Score and updating of new appliance models</td>
</tr>
<tr>
<td>Technical Support</td>
<td>Regular performance checks; issues related to technical support and maintenance are defined in EXHIBIT A, Data Protection and Disaster Recovery</td>
</tr>
<tr>
<td>Hosting</td>
<td>Hosting of Enervee Appliances platform and Enervee Appliances data</td>
</tr>
<tr>
<td>Dashboard Reporting</td>
<td>Enervee provides access to an online reporting dashboard with a number of detailed performance data elements as part of the SaaS agreement. Key metrics are tracked around site traffic and engagement. Enervee’s Customer Success Manager will do quarterly business reviews (QBRs) with Partner to discuss progress and results of the platform and surveys.</td>
</tr>
<tr>
<td>Software Upgrades</td>
<td>Standard upgrades of the Choice Engine software (e.g. new functionality, etc) are included. Custom functionality may have additional costs.</td>
</tr>
<tr>
<td>Supported browser versions</td>
<td>For both desktop and mobile browsers, Enervee supports the latest two version of all major browsers (Chrome, Safari, Firefox &amp; Edge) and up to IE11 for Internet Explorer.</td>
</tr>
</tbody>
</table>

### 3. CUSTOMER SERVICE

For Enervee, providing excellent customer service means going the extra mile in making sure a customer is happy and satisfied with a company’s products or services. It also involves providing service to a customer in a timely, pleasant manner. Enervee’s agents are well trained, experienced, and sitting in the same office as the Choice Engine data team for having an effective exchange of product, rebate, and platform information.

- Provide service level agreement for customer care channels to be mutually agreed upon with SVCE
- Handle all customer inquiries, via email or phone, that relate to the operation of the Marketplace Platform, including website and webpage assistance, product and service inquiries, fulfillment, charges, and any other inquiries directly relating to the Marketplace Application
i. Redirect any non-Marketplace-Platform-related calls or emails to SVCE, or the appropriate party

ii. Manage all customer inquiries related to the Marketplace Platform redirected from SVCE to Enervee customer support service

- Operate call center for Marketplace Platform, including live chat and email support, from 9 am – 5 pm Pacific Standard Time, Monday through Friday
- Handle all customer inquiries relating to product installation or features and redirect to product manufacturer’s or other third-party affiliates on an as needed and as determined basis
- Handle all product returns and product return customer communications via Enervee’s fulfillment partner.
- Upon Client request, provide training to SVCE customer service staff or contractors so they are capable of addressing customer questions, including:
  - One (1) free training session that includes how to use the Marketplace Platform
  - One (1) free training session that includes customer service training to both promote the program and assist with common inquiries

3.1 PHONE SUPPORT SERVICE (OPTIONAL AT EXTRA COST)
Enervee offers optional live phone support center, which takes inbound calls for questions on products, assisting with rebate applications, or regarding the Choice Engine functionality.

3.2 LIVE PHONE SUPPORT & VOICEMAIL

  o Enervee guarantees live phone support for all business days in the year with an unlimited number of minutes per month.
  o Enervee will need thirty (30) days to set-up phone support, which includes training sessions for support agents, the set-up of the system with a dedicated number and the development/approval process for phone scripts and/or guides.
  o Customers can call the dedicated toll-free number from 9:00 AM to 5:00 PM Pacific Time (on request 9:00 AM to 5:00 PM Mountain Time or 12:00 PM to 8:00 PM Eastern Time), excluding major holidays, to speak directly to a rebate and Choice Engine support agent during business hours. Extended business hours can be set up on demand.
  o The toll-free number will include a voicemail line for customers to call and leave a message during non-business hours and major holidays. All voice messages from customers will be returned within 72 hours, excluding major holidays or weekends.
  o The Partner will need to notify Enervee of any changes to the phone support set-up, specifically if there is expected to be an increasing volume of phone support minutes, with twenty (20) business days advance notice.
Enervee will track monthly minutes from all incoming calls to the toll-free number and any outbound phone calls to customers. Enervee agents will use judgement case by case on when it is a better customer experience to call or email.

- Enervee stores MP3 recordings of the last six (6) months of call data.
- Enervee can provide the MP3 call recording(s) upon request by The Partner. If the Partner's request is for a specific call and not for a time frame, it requires a full 10-digit phone number to be supplied to Enervee which Enervee will use to search for a recorded phone call.
- While Enervee can search by the phone number provided by the customer on the claim itself, Enervee cannot guarantee we can find that recording as the customer may have called Enervee from an alternate phone number.

MP3 recordings are delivered to The Partner using Enervee’s SFTP server within fourteen (14) days. Enervee will delete the files from our SFTP server thirty (30) days after they have been uploaded. The Partner must request the recording(s) fourteen (14) days in advance.

### 3.1 EMAIL SUPPORT

Enervee guarantees email support on all business days in the year, excluding the major holidays. Customers can ask questions by using a dedicated support email address. Enervee has a target to respond to all personal communication with platform users within 24 hours but in some cases of high volume it may take up to 72 hours after initial contact.

### 3.2 MAJOR HOLIDAYS

- **New Years Day**
- **Martin Luther King Jr. Day**
- **Presidents Day**
- **Memorial Day**
- **Independence Day**
- **(Black Friday)**
- **Labor Day**
- **Veterans Day**
- **Thanksgiving Day**
- **Day After Thanksgiving Day**
- **Christmas**

### 4. REPORTING

#### 4.1 Standard Platform Reporting

Enervee provides Partner with Dashboard. Key metrics are tracked around site traffic and engagement. Additional metrics or views can be added at an additional cost through Professional Services.

Enervee commits to schedule meetings with SVCE:

- Meetings may include the following topics: marketing, customer engagement strategies, development of project scopes and timelines, reviews of reports, application change requests, and program schedules.
- Host quarterly or as mutually agreed meeting to review Enervee roadmap and discuss SVCE-requested Marketplace Platform enhancements.
4.2 Engage Acquisition Reporting

Enervee will provide a self-serve Partner reporting dashboard with these metrics:

- Total Ad Impressions (If applicable)
- Total Sessions
- Total Users
- Total Page Views
- Average Page per Session
- Active Session rate
- Total Active Users
- Active User Rate

4.3 Customer Service Reporting

Email Conversations

Enervee provides The Partner the number of conversation threads, the average thread size, and the approximate number of emails sent per quarter.

Customer Satisfaction/Customer Service Feedback Surveys (CSAT)

Enervee provides the Partner the average satisfaction rating (1-5), number of surveys sent, number of ratings received, and number of comments received of email conversations per quarter.

4.4 Checkout Reporting

<table>
<thead>
<tr>
<th>TYPE OF REPORT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Checkout Visitors</td>
<td>Number of visits that visit the checkout product categories and pages</td>
</tr>
<tr>
<td>Total Sold Products</td>
<td>Amount of product sold per category</td>
</tr>
<tr>
<td>Returns</td>
<td>Number of products returned per category</td>
</tr>
<tr>
<td>Net Revenue Report</td>
<td>The following fields are included: Order Number, Order Date, Order Status, Utility Name, Customer Name, Customer Email, Shipping Address, City, State, Postal Code, Product Category, Product Name, Product SKU, Product Choice Engine Price, Product Quantity, Gross Sales, Promotional Discounts, Total Rebate Amount, Shipping Cost Paid By Customer, Net Sales, Product Cost of Sal, Fulfillment Cost, Net Revenue, Utility Revenue Share</td>
</tr>
<tr>
<td>Incentives Claims Report</td>
<td>Enervee will provide Partner with a monthly CSV data feed for settled incentives, which will include the following data fields: email, status, category, claim date, claim id, first</td>
</tr>
</tbody>
</table>
• Provide monthly reports by the 15th of each month for activity for the prior month, related to:
  • Product purchases summary
  • Customer information
  • Product information
  • Rebates summary
  • Customer Satisfaction (CSAT)

Reports will be provided via secure SFTP.

• Provide additional reporting and measurements on KPIs upon request, as mutually agreed upon. Additional fees may incur for special non-standard reports.

• SVCE reserves the right to conduct CSAT studies on the solution, in addition to any reporting Enervee produces.

Performance Metrics

• In the case that CSAT is below a 4 (in a 1 – 5 scale) in a given month, work with SVCE to identify and resolve any issues in the customer experience, technical or otherwise, as soon as possible.

• Work with SVCE to identify other jointly beneficial metrics
EXHIBIT H:  
PROFESSIONAL SERVICES

Enervee offers Professional Services for Enervee Choice Engine customization based on Partner’s needs. All material requests that are not related to bug fixes on the Enervee product roadmap will be scoped and a proposal detailing hours, timeline and deliverables will be provided to Partner for review and approval.

Enervee releases new software product upgrades and new developments including change requests in six release days per year. Partner and Enervee are planning Professional Services and Change Requests efforts for the upcoming half year in a roadmap development meeting at the beginning of each quarter. This enables Enervee to secure resources and synchronize the new developments with the software releases, Engage Program and/or the Partner marketing activities.

Following list is a non-exhaustive sample of product request examples that would be considered "out of scope", and that would require Professional Services engagements:

- Requests for addition of non-standard products and/or categories
- Requests for integration with dealers/retailers that Enervee does not have already built
- Requests for additional features or functions
- Requests for customized event tracking or analytics
### EXHIBIT I:
**CHOICE ENGINE SERVICES PACKAGES**

<table>
<thead>
<tr>
<th>DELIVERABLES</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner Promotions</td>
<td>Product promotion possibilities on Enervee Choice Engine: up of a text and image native ad, separate ad for home page and for each category, tracking of clicks</td>
</tr>
<tr>
<td><strong>Optional</strong></td>
<td></td>
</tr>
<tr>
<td>Contractor Option</td>
<td>Includes an integrated Contractor module to connect Partner customers with pre-screened local service professionals. Leveraging HomeAdvisor’s proven vetting system and methodologies, customers answer a few simple questions and are contacted immediately with a quote for the services they need. These services include installation of home EV chargers (including Level 2 chargers), HVAC upgrades and other appliance installations.</td>
</tr>
<tr>
<td><strong>Included with no revenue share</strong></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT J:
PARTNER PROMOTION RESPONSIBILITIES

Partner confirms that it will endeavor to meet the requirements specified below for channels as applicable, making all necessary resources available.

<table>
<thead>
<tr>
<th>CHANNEL</th>
<th>FREQUENCY</th>
<th>REQUIREMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner Website</td>
<td>Ongoing</td>
<td>Featured on Partner Homepage as menu option. Promotion of Choice Engines and Checkout on Homepage main carousel. Appliances promoted on Partner energy efficiency related pages. All links go directly to the platforms.</td>
</tr>
<tr>
<td>Partner Website</td>
<td>Ongoing</td>
<td>Enervee provided remarketing pixel placed</td>
</tr>
<tr>
<td>Email</td>
<td>Monthly</td>
<td>Partner Choice Engines only emails sent to all residential customers</td>
</tr>
<tr>
<td>Facebook Posts</td>
<td>Weekly</td>
<td>Partner Choice Engines specific posts linking directly to platforms</td>
</tr>
</tbody>
</table>
EXHIBIT K:
ENGAGE PROGRAM

1. Enervee Engage Program
Enervee Engage provides a turnkey digital service solution that complements Partner’s existing marketing services. Our Engage Program leverages unique capabilities to enhance the effectiveness, efficiency and reach of Partner marketing efforts.

Enervee Engage Program recognizes the distinction between 1., bringing high quality visitors to Enervee Appliances Choice Engine and Checkout (Engage Acquisition) and then 2. engaging Customers with email services that drive continued engagement on Enervee Appliances/Checkout (Engage Activation).

Engage Program Objectives
Engage objectives are linked to the overall Partner strategy i.e. increase market-based savings, selling more products via Checkout. In each instance, Engage builds and constantly optimizes traffic to meet these strategic objectives. Based on Enervee Appliances strategy options, Engage objectives are agreed in the kick-off Engage Strategy Workshop.

1.1 Engage Acquisition Program
Engage Acquisition Program is Enervee’s powerful, data-driven marketing service that identifies and segments potential in-market electronic and appliance shoppers, and engages them continuously through a variety of channels, driving high quality traffic to Appliances. Enervee’s Data Engine uses efficiency data and product/model information to build out long-tail keywords, create dynamic advertisements, inform budgeting and bids and otherwise drive dynamic, data-driven engagement activities. Enervee has developed specific and unique capabilities to maximize return on investment through each program channel.

1.2 Deliverables Engage Acquisition
- Digital marketing program to capture shoppers in market
- Find Active Shoppers for Appliances in market; delivers visits per month
- Focus on search engines; optimize on Engage Program objectives
- Project management and quarterly reporting
- Online dashboard reporting

2. Engage Activation Program
Enervee email services provide the most cost-effective channel for large scale traffic and reach of Partner’s customers to drive awareness, actions, product sales and engagement to Enervee Choice Engines and Checkout. Engage Activation offers full-service promotional email and data management including email template design and coding, enterprise email list management, audience segmentation, campaign setup and sends, analysis and performance reporting.

2.1 Deliverables Engage Activation
- Email Development incl. creation, text
- Email List mgt, Email campaign set up, tracking and maintenance
- Project management and quarterly reporting
- Online dashboard reporting

<table>
<thead>
<tr>
<th>Part 1</th>
<th>Email Development</th>
<th>optional</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Development of all kinds HTML emails (promotional, editorial, reminder, etc.).</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Creation: Design and text</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Production /Coding</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Project Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 2</th>
<th>Email List Management</th>
<th>optional</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Import and segmentation of Partner provided customer email list</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Data maintenance of 1M customer email list included in monthly fee; additional subscribers can be implemented on demand</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Black and white listing of email accounts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Part 3</th>
<th>Email Campaign Setup &amp; Management</th>
<th>optional</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Design and setup of email marketing campaigns. Campaigns are email blasts to a select recipient list segment using structured templates.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Campaign design</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Campaign setup and implementation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Recipient list segmentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Campaigns scheduling &amp; send</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A/B testing of subject line, content and call-to-action buttons if Enervee has access to customer email data base and is sending out emails.</td>
<td></td>
</tr>
</tbody>
</table>

**Marketing Services**

- Draft, with SVCE staff input and approval, a marketing plan
- The marketing plan may include such details as marketing methods, responsible parties, timing, branding, and other details as needed.
  - SVCE shall review and approve the timing and content of all customer marketing and media buys.
- Uses real-time product data to build out long-tail keywords, create dynamic advertisements, inform budgeting and bids and otherwise drive dynamic, data-driven marketing activities to reach hard-to-reach audiences.
o Utilize channels including, but not limited to, search, Facebook and display ad networks.

o Generate and target specific audiences using first and third-party data, developing lookalike audiences for marketing, and adjusting Choice Engine display elements using the data.

o Develop enhanced customer targeting and personalization based on a growing understanding of behavior. Over time, as customers continually engage with the site, use this data, alongside third-party, cookie, and SVCE data sources, to create an ever-more-detailed understanding of the individual shopper, the characteristics of their household, and the programs that may be most applicable to their goals and needs. Used these insights to create precisely targeted marketing and create Audiences, where observed customer behavior allows Enervee to generate a particular set of characteristics that informs more sophisticated marketing approaches, algorithmically overlaying data from multiple sources.

o Ensure the customizable portions of any marketing aligns with SVCE brand and style guidelines.

o All digital advertising and email templates will be approved by SVCE in writing.

o Email and ad buy schedules will adhere to SVCE permissible mailing and display dates and times.
  - Enable email opt-out capabilities for emails sent from SVCE to comply with CAN-SPAM
  - Work with SVCE to identify existing and new customer touch points.
  - Utilize additional marketing methods including, but not limited to, paid advertisements, social media, public relations, and other online and offline marketing channels, if requested by SVCE

o Seek written approval from SVCE regarding the content, placement and schedule of such advertising prior to execution of any additional marketing activities
  - Use SVCE branding for the Marketplace Platform and related marketing materials

o Enable product or service promotions (discounts, sweepstakes, sales, giveaways) as mutually agreed

o Create, on occasion, promotional offers for a quantity, amount, expiration, and specific use restrictions defined by SVCE

o Enable a pop-up banner indicating to the customer the usage of cookies and their terms and conditions.
EXHIBIT L:
SaaS Subscription Order Form Appliances

This Order Form provides the type, quantity and payment terms for the use of SaaS Platforms and Services from Enervee.

**ORDER FORM I**

**Partner:** SILICON VALLEY CLEAN ENERGY  
**MSA #:**

<table>
<thead>
<tr>
<th><strong>Service Start:</strong></th>
<th><strong>Service End:</strong></th>
<th><strong>Subscription type:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Week 9, following contract signing</td>
<td>3 years following contract signing</td>
<td>new</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>QUANTITY</th>
<th>TYPE</th>
<th>DURATION</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appliances Choice Engine</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>$50,000/year</td>
</tr>
<tr>
<td>Engage Marketing Program</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>$50,000/year</td>
</tr>
<tr>
<td>Checkout - E Commerce</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>$5 per cart*</td>
</tr>
<tr>
<td>Contractor</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>Included</td>
</tr>
</tbody>
</table>

**PRODUCT SUBTOTAL**

$390,000

Any changes or additions to the agreed scope is defined as Professional Services and will result in additional costs at a rate of $200 per hour.

<table>
<thead>
<tr>
<th>ONE TIME SERVICES</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appliances Implementation</td>
<td>One time setup fee</td>
<td></td>
</tr>
<tr>
<td>Checkout - E Commerce</td>
<td>One time setup fee</td>
<td></td>
</tr>
<tr>
<td>Contractor Implementation Option</td>
<td>One time setup fee</td>
<td></td>
</tr>
<tr>
<td>Non-standard URL Option</td>
<td>One time setup fee</td>
<td></td>
</tr>
<tr>
<td>PARTNER</td>
<td>ENERVEE CORPORATION</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td>By:</td>
<td>By:</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Name Luis Castro</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Director of Growth</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Date:</td>
<td></td>
</tr>
</tbody>
</table>

The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.
EXHIBIT M:
SAAS SUBSCRIPTION ORDER FORM OPTIONAL SERVICES
This Order Form provides the type, quantity and payment terms for the use of SaaS Platforms and Services from Enervee.

**ORDER FORM IV**

**Partner:** Silicon Valley Clean Energy  
**MSA #:**

<table>
<thead>
<tr>
<th><strong>Service Start:</strong></th>
<th><strong>Service End:</strong></th>
<th><strong>Subscription type:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Week 9, following contract signing</td>
<td>3 years following contract signing</td>
<td>new</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>PRODUCT</strong></th>
<th><strong>QUANTITY</strong></th>
<th><strong>TYPE</strong></th>
<th><strong>DURATION</strong></th>
<th><strong>PRICE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Service: Phone, Voice Mail and Email Support</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>$18,000/year</td>
</tr>
<tr>
<td>Engage (Email) Activation Program PART 3 Email Campaign Setup &amp; Management</td>
<td>1</td>
<td>Non-Profit</td>
<td>36 months</td>
<td>$2,000 per email (which are to be deducted from the Engage Marketing Program by request. Not charged separately)</td>
</tr>
</tbody>
</table>

**PRODUCT SUBTOTAL** $54,000

Any changes or additions to the agreed scope is defined as Professional Services and will result in additional costs at a rate of $200 per hour.

<table>
<thead>
<tr>
<th><strong>ONE TIME SERVICES</strong></th>
<th><strong>DESCRIPTION</strong></th>
<th><strong>PRICE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Service</td>
<td>One time setup fee,</td>
<td></td>
</tr>
</tbody>
</table>

**ONE TIME SERVICES SUBTOTAL**

**ORDER FORM TOTAL** $54,000

**Quote Expires:**  
**Effective Date:**
The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.

<table>
<thead>
<tr>
<th>SILICON VALLEY CLEAN ENERGY</th>
<th>ENERVEE CORPORATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

**Payment Schedule:**

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Products</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract signature</td>
<td>One time setup fees</td>
<td></td>
</tr>
<tr>
<td>9 weeks following contract signature</td>
<td>All products listed above</td>
<td></td>
</tr>
<tr>
<td>One year following contract signature</td>
<td>All products listed above</td>
<td></td>
</tr>
<tr>
<td>Two years following contract signature</td>
<td>All products listed above</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT N:
CHANGE REQUEST ORDER FORM

Required changes (from Partner) in the scope of a SOW, including any and all modifications, required changes and/or additions to the System, will only be performed when authorized by a Change Form signed by both Parties.

<table>
<thead>
<tr>
<th>CHANGE REQUEST ORDER FORM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Partner:</strong> SILICON VALLEY CLEAN ENERGY</td>
</tr>
<tr>
<td><strong>Product/Service:</strong></td>
</tr>
<tr>
<td><strong>Date:</strong></td>
</tr>
<tr>
<td><strong>CHANGE CATEGORY</strong> - Mark all that apply</td>
</tr>
<tr>
<td>SCHEDULE</td>
</tr>
<tr>
<td><strong>DESCRIPTION CHANGE REQUEST</strong></td>
</tr>
<tr>
<td><strong>REASONS FOR CHANGE</strong></td>
</tr>
<tr>
<td>Recurring</td>
</tr>
<tr>
<td>Package Price</td>
</tr>
<tr>
<td><strong>Start Date:</strong></td>
</tr>
<tr>
<td><strong>HOURS</strong></td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td><strong>Billing Frequency:</strong> once</td>
</tr>
<tr>
<td><strong>Payment Terms:</strong> 30 days</td>
</tr>
<tr>
<td><strong>Quote Expires:</strong></td>
</tr>
</tbody>
</table>
The signatures below confirm acceptance of this order agreement and the Master Services Agreement, as of the effective date.

<table>
<thead>
<tr>
<th>PARTNER</th>
<th>ENERVEE CORPORATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

Name: __________________________
Title: __________________________
Date: __________________________
EXHIBIT O:
PRODUCT CATEGORIES AVAILABLE AT LAUNCH

Partner may select any or all of the Product Categories to be accessible to SVCE customers at time of launch or following launch. No additional cost to Partner for inclusion or deletion of any Product Category on this list at any time.

Product Category

- Air Conditioner
- Air Purifier
- Dehumidifier
- Dishwasher
- Dryer
- Electric Water Heater
- Freezer
- Light Bulb
- Monitor
- Pool Pump
- Projector
- Refrigerator
- Sound Bar
- Tablet
- Television
- Video Game Console
- Washer
- Connected Home
- Connected Home Application
- EV Charger
- Evaporative Cooler
- Lawn Mower
- Pool Heater
- Portable Power Station
- Power Strip
- Thermostat
Item 1f: Authorize the Chief Executive Officer to Execute a 3-year Agreement with CLEAResult Consulting Inc. for Program Administration Services for the Electric Vehicle Infrastructure Technical Assistance Program for an Amount not to exceed $500,000

To: Silicon Valley Clean Energy Board of Directors

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

Date: 4/8/2020

RECOMMENDATION
Staff recommends the Board authorize the CEO to execute an agreement with CLEAResult Consulting Inc. ("CLEAResult") for services necessary to administer the Multi-Unit Dwelling ("MUD") and Small/Medium Business ("SMB") Electric Vehicle Infrastructure Technical Assistance program through September 30, 2023 for an amount not to exceed $500,000.

BACKGROUND
In February 2019, the SVCE Board of Directors approved $8M in budget for Electric Vehicle Infrastructure ("EVI") programs for the four-year period of FY2020-FY2023. To supplement these funds, SVCE has partnered with the California Energy Commission ("CEC") through their California Electric Vehicle Infrastructure Project ("CALeVIP") program to bring an additional $6M in CEC funds to the SVCE service territory. The CALeVIP project will launch later this year and focus on locally deploying a combined $12M in incentives on a first-come first-served basis.

Of these local funds available through CALeVIP, half ($6M) will go towards Level 2 ("L2") chargers. This funding has the potential to site approximately 1,000 L2 chargers in SVCE’s service territory. To assist MUD property owners and SMBs in understanding, planning and pursuing these available L2 funds before they are claimed by other entities, SVCE’s Board approved two programs in the Electric Vehicle Infrastructure Joint Action Plan in September 2019. These programs were designed to help guide the CALeVIP dollars to market segments with greater need for support and will be paid out of the already approved budget for EVI programs. The MUD and SMB programs have been combined into one technical assistance program for easier administration and due to the similarity in needs. This combined program will primarily help these sectors secure the available CALeVIP L2 funds, but will also provide support for Level 1, load management and pursuit of other funding sources.

ANALYSIS & DISCUSSION
SVCE has selected CLEAResult as the consultant for this work based on a recent, similar competitive solicitation issued and completed by Peninsula Clean Energy ("PCE"). PCE released a solicitation in April 2019 and followed their competitive solicitation process to select CLEAResult as the consultant for their electric vehicle infrastructure technical assistance program focused on property types including MUDs and SMBs. In November 2019 they signed a contract and began work on implementation. Leveraging recent, similar solicitations
performed by comparable organizations is often referred to as “piggybacking” and is widely used by government agencies to avoid duplicating related solicitation efforts and use staff time most effectively. As the PCE contract is very similar in scope to what SVCE is seeking, and because staff reviewed the PCE solicitation process and confirmed that it met our procurement standards, piggybacking on PCE’s selection of CLEAResult is the most effective way to proceed and provides an added value of regional consistency.

CLEAResult is a national energy solutions provider that supports energy efficiency and other demand-side management strategies. On top of PCE’s forthcoming program, CLEAResult has already been supporting two other local EV charging programs: Pacific Gas and Electric’s ("PG&E") Electric Vehicle Charge Network and City of Palo Alto Utility’s (“CPAU’s”) Multifamily EVI Program. They have also supported two major energy efficiency programs in the area for PG&E and the Bay Area Regional Energy Network ("BayREN"). These experiences with local programs have allowed CLEAResult to develop relationships, contacts and a deep understanding of key issues in the local MUD and SMB markets that they will be able to leverage for their work with SVCE.

The CLEAResult contract includes support for the full suite of services that will be helpful in reaching MUDs and SMBs. The contract encompasses marketing materials, education, planning support, in-person visits and site walks, cost analysis, bid review support, installation tracking and other elements. After signing the contract, SVCE will continue to work with CLEAResult to finalize all program eligibility requirements and the final details of services that will be provided based on what will be relevant for our communities.

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

**ALTERNATIVE**
If the Board does not approve this contract, SVCE would have a few alternatives to consider. Staff could issue SVCE’s own solicitation and follow our process to select a vendor for this same scope of work. This option would require additional staff time dedicated to running the process and evaluating proposals, and would be duplicative of the work done by PCE. It would also push back when SVCE could begin offering technical assistance to these market sectors and may impact the number of MUDs and SMBs that are able to take advantage of the CALeVIP incentives before they run out. SVCE does not have the internal bandwidth or expertise to itself administer the full suite of assistance included in this contract, and would need to limit the offering and reprioritize other planned initiatives to be able to take this work in-house. SVCE could also choose not to offer dedicated, concierge support to the MUD and SMB market segments and rely instead on the more limited outreach and advising provided through the CALeVIP program – this would be a reversal from previous Board direction and policy. Based on existing EVI deployment trends and barriers in MUDs and SMBs, eliminating dedicated, concierge support would be expected to have a deleterious effect on the number of these properties that manage to take advantage of the CALeVIP funds before they are gone.

**FISCAL IMPACT**
Approval of the agreement with CLEAResult will have no additional fiscal impact, as it will be funded through the $8M that the Board approved in February 2019 for EVI programs over the FY2020-FY2023 period. Within this already-approved budget, the fiscal impact of the agreement shall not exceed the amount of $500,000. These funds will be paid out across the duration of the CLEAResult project on a time and materials basis, until such a point that all funds are spent and the program closes.
ATTACHMENTS

1. Agreement with CLEAResult Consulting Inc.
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
CLEARESULT CONSULTING INC.
FOR
ELECTRIC VEHICLE TECHNICAL ASSISTANCE

THIS AGREEMENT ("Agreement"), is entered into this 15th day of April, 2020, (the
"Effective Date") by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an
independent public agency, ("Authority"), and CLEAResult Consulting, Inc, a Texas corporation
whose address is 4301 Westbank Drive, Building A, Suite 300, Austin, TX 78746 (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 electric vehicle
technical assistance services, upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

The term of this Agreement shall commence on Effective Date, and shall terminate on
September 30, 2023, 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 Five Hundred Thousand Dollars ($500,000.00) based on the rates and
terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

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

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area 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 RECOUSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. 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**

A. **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 any acts, errors, omissions, negligence, or misconduct 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, without limitation, Liabilities
arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or
real property; (b) any material misrepresentation or breach of warranty of any representation or
warranty set forth in this Agreement; (c) any destruction, or unauthorized access, use, or theft of
Authority data (collectively, “cyber theft”); (d) any construction defects and/or product liability;
(e) any product or service allegedly or actually infringing or misappropriating any United States
or foreign patent, copyright, trade secret, trademark, or other proprietary right or, (f) any material
breach of any covenant set forth in this Agreement; provided, however, that the foregoing
indemnity shall not apply to Liabilities arising from the sole negligence or willful misconduct of
the Indemnitees as determined by court decision or by the agreement of the Parties.

B. **Indemnification Procedures.** Consultant shall defend the Indemnitees in any action
or actions filed in connection with any Liabilities, with counsel reasonably acceptable to
Indemnitees, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs
actually and reasonably incurred in connection with such defense. Promptly after receipt by
Authority of a threat, notice, or filing of any action or actions against an Indemnitee in connection
with any Liabilities, Authority shall give notice thereof to Consultant, provided that failure to give
or delay in giving such notice shall not relieve Consultant of any liability it may have to the
Indemnitee except to the extent that Consultant demonstrates that the defense of the action or
actions is prejudiced thereby. Consultant shall reimburse the Indemnitees for any and all
reasonable legal expenses and costs incurred by Indemnitees in connection therewith, except that
Consultant shall not reimburse the Indemnities for any costs relating to legal counsel that Indemnitees retain independently.

C. **Third-Party Beneficiaries.** Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.

D. 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. Consultant shall provide thirty (30) days’ advance written notice to Authority of any pending change in the limits of liability or of any cancellation or material modification of any insurance coverage. 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 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, upon reasonable notice, escorted 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. Joanne O’Neill (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 agrees to comply with the confidentiality provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

E. Authority covenants that all proprietary and confidential business information and trade secrets of Consultant (collectively “Confidential Information”) received by Authority in connection with this Agreement and marked as “Confidential” or “Proprietary” are deemed confidential and shall not be disclosed or released by Authority without prior written authorization by Consultant, except to the extent required by applicable law, including the California Public Records Act (Cal. Gov’t Code §§ 6250 et seq.). If Authority receives a request for Confidential Information pursuant to applicable law, including the California Public Records Act, then Authority will notify Consultant of such request in order to provide a reasonable opportunity for Consultant to object to such disclosure and, at Consultant’s expense, seek protection from a court of competent jurisdiction. If Consultant fails to seek and obtain protection from disclosure, and Authority determines that it is required to disclose such information pursuant to applicable law, Authority may disclose without breach of this Agreement the portion of the Confidential Information that was requested.

F. The parties’ 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
19. **TERMINATION**

In the event Consultant or Authority fail or refuse to perform any of the provisions hereof at the time and in the manner required hereunder, that party shall be deemed in default in the performance of this Agreement. If that party fails to cure the default within the time specified (which shall be not less than 20 days) and according to the requirements set forth in the other party’s written notice of default, and in addition to any other remedy available to the other party by law, the other party may terminate the Agreement by giving the defaulting party 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 thirty (30) 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 or by Consultant 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, pandemic, 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

____________________________________

CONSULTANT NAME
CLEAResult Consulting, Inc.

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

SILICON VALLEY CLEAN ENERGY AUTHORITY
A Joint Powers Authority

By: __________________________
Name: Girish Balachandran
Title: Chief Executive Officer
Date: __________________________
APPROVED AS TO FORM:

_______________________
Counsel for Authority

ATTEST:

_____________________
Authority Clerk
Exhibit A
Scope of Services

1. Administrative Tasks
Consultant shall provide the following:

1.1 Kickoff Meeting
Participate in a kickoff meeting with Authority to review objectives, budget, timeline, administrative processes and contract at a mutually determined time.

1.2 Monthly Progress Report and Call
Provide a short monthly progress report (ideally not more than 1 page, with tables of specific customer information as necessary) and associated call with the designated Authority contract administrator by the 5th of the following month. This report will outline key project elements defined during program strategy development, which may include individual project and overall program timelines, forecasted ports per client, specific list of clients, status of installations, progress (e.g., ‘progress to target’), and challenges encountered; a description of additional funding or resources secured; changes to maintained list of construction contractors and relevant customer feedback related to installation; a summary of project pipeline status from lead generation (marketing & outreach activities) to completed projects, and objectives for the following month. Major supplementary documentation developed in the course of work must be submitted with the Progress Report or its online repository as agreed with the Authority contract administrator. This supplementary documentation may include technical designs, permits, equipment specifications, photographs of installed equipment, and any materials developed for partner use as deemed necessary. Authority may request ad-hoc progress reports at any time to ensure accuracy in progress reporting for public comments or reporting to the Authority Board of Directors.

The progress report should also include a high-level budget status that covers any expense issues not clear on the monthly invoice. Total budget spent-to-date and total remaining budget should be included as well as any issues encountered or anticipated.

The progress report shall also provide an opportunity for immediate, continuous improvement of the program strategy. Consultant shall note any recommendations for addressing critical issues or opportunities that should not be left until the six-month checkpoint meetings.

1.3 Checkpoint Meeting
Participate at project review meetings with the designated Authority contract administrator anticipated to occur six months after the contract start and every six months thereafter, to review project progress (each, a “Checkpoint Meeting”). The Checkpoint Meeting will be
used to evaluate progress and the necessity of any course corrections. Consultant will include a short summary of lessons learned at each of these meetings, either as a written memo or a PowerPoint presentation. The summary should include the recommendations for course corrections, observed trends in the market and identification of common/critical barriers and solutions. Any mutually agreed upon course corrections will be incorporated into the Program Strategy Document, with particular attention to ensuring that actions incorporate lessons learned.

1.4 Final Report
Provide a final report (appropriate for public distribution) at the conclusion of the program or contract synthesizing the issued 6-month reports (plus any remaining period) as detailed in 1.3 into a final report. This report will clearly synthesize all learnings gleaned from engagement with all program entities (participants, applicants, vendors, etc.). The focus shall be on summarizing the common and major barriers for charger deployment and utilization, along with any approaches that were effective in resolving them. A draft report will be provided in advance to Authority for review.

Deliverables:
1. DRAFT Final Report
2. Final Report

2. Program Tasks for New and Existing Building Charging Technical Assistance
Consultant shall provide the following tasks for Level 1, Level 2, and L2 ‘powersharing’ configurations:

2.1 Develop Program Strategy
In collaboration with Authority, Consultant shall develop a strategy document for the first year (“Program Strategy”). The Program Strategy will summarize and prioritize key tactics as mutually determined including cost containment methods, site design approach, high level marketing approach, energy efficiency, leveraging non-Authority funding sources and other options which may be identified. The Program Strategy will emphasize a high-touch, concierge service to targeted customers, rather than a broad market appeal. The Program Strategy will incorporate a quarterly activity plan to spread funding out across the duration of the contract, along with processes and tracking to allow for closing the program early or adding new funding based on customer uptake and actual expenditures.

A core purpose of the Program Strategy is to finalize the definitions of the Authority’s target property types (“Target Sites”). This will dictate what kind of sites are targeted by the consultant for concierge support and which will receive more limited support when self-identifying. The Authority’s focus is on supporting market transformation in the small/medium workplaces and multi-unit dwellings (“MUDs”), while scaling up to reach as
many residents as possible.

The Program Strategy will include a description of the Target Sites, key considerations for each site type, geographic distribution of sites within the Authority’s territory, sociodemographic/language considerations, and the recommended outreach strategies for each site type (including variations by geography). The strategy should be aligned with the quarterly activity plan. The Program Strategy will also identify project targets by quarter and overall (e.g. number of Power Parking Assessments, outreach efforts performed, site hosts engaged) to allow for ongoing progress tracking and revisions.

**Deliverable:** Program Strategy Document

### 2.2 Prepare Program Outreach and Educational Campaign

Consultant shall prepare an outreach and educational campaign plan addressing each Target Site market segment(s) to solicit applications from a viable pool of potential Target Site participants. The campaign plan should be tailored as necessary to each market segment. The plan will detail the outreach channels for the outreach campaign including phone calls, email, direct mail, in-person communications, owned media, earned media, paid media, participation at conferences, workshops or stakeholder forums and other tactics as deemed appropriate.

The plan will be provided to the Authority team for review and comment before final refinement. The plan will focus on high-touch outreach and education to ensure information and services lead to action, not just improved knowledge. When major new activities are planned such as new media, the plan will be updated with detail on the new plans.

The messaging and materials will be designed in a format and level of detail appropriate for the selected audiences, with an overarching intent of providing a simple and clear path to successful installation of electric vehicle (EV) charging.

The educational component will consist of the following elements, as mutually determined by Authority and Consultant:

1. Introduction/ short overview of electric vehicles;
2. EV Charging Infrastructure (CI) benefits for Target Site managers, owners and tenants;
3. Current estimates and projected future demand timeline for EVs;
4. Charging levels (Levels 1 and 2, plus Direct Current Fast Charger (DCFC)), time to charge, energy fees (existing and upcoming tariffs);
5. Electrical infrastructure requirements;
6. Charging station business models (i.e. amenity versus revenue-generating, site-owned versus vendor-owned) and consultant/technology overview;
7. Potential for make-ready(s);
8. Parking facility considerations, including Americans with Disabilities Act (ADA) requirements;
9. Construction considerations;
10. Existing EV charging incentive programs (Authority’s, Pacific Gas & Electric’s, and other as-yet-to-be-identified programs), which Consultant shall track and summarize for use by participants and on Authority’s webpages;
11. EV charging user and owner guidance based on proposed charger type, count and location;
12. Assistance with property site policies, if needed;
13. Metering options, utility rates and demand charges, along with pricing policies to manage those three components;
14. Load shaping and demand response opportunities, benefits, and requirements; general information and details of Authority programs as they become available

In all messaging and materials, Consultant shall present the Authority as the program provider, including by complying with the following:

1. Consultant shall use Authority design guidelines and templates;
2. All materials will be reviewed and approved by Authority prior to use;
3. In all communications, the program will be represented as an Authority program, including through the use of the Authority’s approved logo. Consultant may also use its logo as the consulting partner of the Authority program. Authority, at its discretion, may provide a program name.
4. Initial outreach and broadcast, and template communications in any form, will be coordinated with Authority. Authority may, at its discretion, participate in any/all meetings as part of the program.

**Deliverables:**
1. Messaging and Marketing Plan DRAFT
2. Messaging and Marketing Plan FINAL
3. Messaging and Marketing Plan Update(s)
4. Website content
5. Customer Collateral (including Fact Sheets, Case Studies, etc.)

**2.3 Outreach, Education and Onboarding, Pre-Identified Sites**

1. Consultant shall:
   A. Determine and contact appropriate individuals (decision makers) from Authority pre-identified lists, such as the Authority’s Regional EV Leadership Recognition partners, and other lists consultant can make available to Authority by market segment(s) with a special emphasis on Target Sites.
   B. Educate decision makers regarding program and onboard sites via on-line forms and associated customer relationship management (CRM) platform
2. Outreach, Education, and Onboarding Operations

A. Consultant shall conduct outbound marketing call support to predesignated and preapproved Authority customers, utilizing the messaging as determined in the Messaging and Marketing Plan.

B. Consultant shall provide outbound call scripts for Authority review and approval prior to implementation.

C. Consultant shall participate in local events where Target Sites are likely to be represented, engaging their interest in program services through presentations and direct interaction

Deliverable: Ongoing outreach and education to pre-identified decision makers

2.4 Education and Onboarding, Self-Identified Sites

Consultant shall provide:

Through their own outreach to the program and Consultant or through referrals from Authority via its other related programs, educate self-identified potential sites regarding this program (or any other relevant programs), following the items outlined in 2.3. As directed by Authority, Consultant shall process these sites along to site screening and recommendation, Power Parking Assessment, or other tasks outlined in this Agreement. Level of assistance should be proportional to property owner scale, site location, clientele and as determined by the Program Strategy (2.1).

Deliverable: Ongoing outreach and education to target customers

2.5 Site Screening & Recommendations

Consultant shall provide:

1. Conduct coarse screening for potential participation in Authority and non-Authority programs, if available.

2. Invite Authority staff to initial decision maker meetings and other meetings

3. As appropriate, further educate the decision maker regarding non-Authority programs outlining the economic benefits with the objective of their participation in non-Authority incentive programs

4. Depending on the number of sites and associated complexity, schedule site walk(s) with the decision maker/designee and a Power Parking Assessment (Section 2.6 below). Should there be a large number of sites under single control, work with the decision maker to develop an appropriate Power-Parking Assessment plan that may / may not encompass all of the sites.

5. Keep Authority informed of activities with customers.

Deliverable: Ongoing screening and recommendations to target customers
2.6 Power Parking Assessment

Consultant shall provide a “Power Parking Assessment” with the objective of providing Target Sites with a simple and clear path to successful installation of EV charging infrastructure. Preparation of the Power Parking Assessment shall include the following steps:

1. Conduct site walk(s) with the decision maker or their designee.
2. Obtain site plans or photos noting the site’s parking lot location(s) and sizes and electrical room locations.
3. Evaluate the site’s potential spare electrical capacity, considering the maximum concurrent load and spare space for additional breakers (and their size) from each applicable panel and potentially recommend load study(s). Workforce/labor requirements for the load study(s) may be stipulated by Authority with reasonable notice.
4. Assess the potential for least expensive / optimized deployment for the site owner, manager and tenants for Level 2 and/or Level 1 with power-sharing options as appropriate. The assessment may also include alternatives to optimize site owner preferences (higher charging rates), planning for future growth (futureproofing), or other scenarios.
5. As applicable, identify, integrate and explain applicable American with Disabilities Act (ADA) requirements.
6. Incorporate local permitting and National Electrical Code (NEC) requirements into all assessments and installation scenarios (decision maker and their chosen installation contractor will be responsible for code compliance and permit management).
7. Based on the above, prepare a Power Parking Assessment document detailing:
   1. Recommendations for Level 1 and/or Level 2 EV Service Equipment (EVSE), plus any make-ready.
   2. The proposed parking/EVSE conceptual drawing, including any ADA impacts.
   3. Costs broken down by make-ready, EVSE and installation, networking fees, etc.
   4. Summary of estimated costs, integrating Authority and other incentives.
   5. Estimated maximum power demand based on cumulative maximum charger draw and expected weekend and weekday hourly load based on charger count and type.
   6. A summary of the impact of the EV commercial rate on the decision maker’s installation.
   7. Best practices and EVSE management policies, such as pricing, access controls, tenant or user management, charging management.
8. An illustration of potential revenue using one or more sample charger loads and pricing scenarios.

9. As appropriate, a recommendation for participation in the California Electric Vehicle Infrastructure Project (CALeVIP), Bay Area Air Quality Management District grants, and/or other programs as available.

8. Submit the draft to Authority for review and potential feedback. If Consultant does not receive feedback from Authority within 3 business days, Consultant may proceed.

9. Review the assessment with the property decision maker.

The Power Parking Assessment is **not** required to include:

1. Line drawings
2. Any construction
3. Permits
4. Equipment acquisition

**Deliverable:** Power Parking Assessment for decision makers that commit to participate

### 2.7 Installation Contractor & Bid Support

Consultant shall provide or support, as defined below, the following:

1. **Provide Contractor Referrals:**
   1. Create and manage a list of contractors who have experience with EVSE installation. Qualification for contractor list shall be done by Consultant, with qualifications for inclusion to be determined but including at least expectations on data sharing.
   2. Provide decision maker with the contractor list and recommended process for requesting and reviewing bids.
   3. Collect decision maker feedback on the installation process and data from contractors to identify common barriers and include in regular reporting to the Authority.
   4. Consultant shall act without bias towards any contractors and in the best interest of the decision maker.

2. **Project Bid Management:**
   1. Provide decision maker with reviews and technical assessment of bids and advising on bid selection.
   2. Provide decision makers advice on project change-order(s) for accuracy (additional site visits are not required).
   3. Provide documentation produced in Power Parking Assessment to decision maker in a form decision maker can readily provide to selected contractor for use in permit submission.
   4. Consultant shall act without bias towards any contractors and in the best interest of the decision maker.
3. Disclaimer:
   1. Consultant agrees to include a disclaimer of SVCE liability in communications with decision makers, as directed by SVCE. Such disclaimer shall be substantially similar to the following, subject to SVCE’s right to revise: “Silicon Valley Clean Energy provides this Program as a resource for customers. SVCE does not endorse or guarantee, and makes no warranties or representations regarding, any vendor, contractor, service, or product. SVCE shall not be liable for any loss or damage of any kind arising out of or connected to any vendor, contractor, service, or product associated with this Program. Any transactions that you enter into with a vendor, contractor, or other third party are solely between you and that vendor, contractor, or other third party.”

Deliverables:
1. List of installation contractors and ongoing qualification/management
2. Ongoing bid management consultation

2.8 Post-Recommendation Management

1. Consultant shall assist site host with preparation of a CALeVIP, or other identified charging infrastructure incentive program, project application. Upon project completion, Consultant shall facilitate document submission to verify project completion and incentive receipt. The consultant shall not be responsible for submitting the application on behalf of the site applicant.
2. Consultant will develop and utilize processes to track and record information on the EVSE installation progress, and include that information in reporting to Authority. The following information will be tracked and reported to the extent Consultant is able to obtain the information directly or from decision makers and contractors:
   1. Duration of installation activities.
   2. Common permitting challenges and length of permitting process.
3. In addition to tracking and reporting, on an as needed basis, Consultant will provide decision makers support with issues such as local permitting
4. Upon installation of EVSE hardware, the Consultant shall:
   1. Collect all relevant and necessary EVSE information (e.g., serial numbers) to enable station utilization data collection for such purposes as Low Carbon Fuel Standard credits, while avoiding to the extent possible duplication of data collected via the incentive program.
   2. Assist in engagement with Authority load shaping program, regardless if program is active or not; the consultant is in no way responsible for enrollment, participation management, or program delivery.

Deliverables:
1. Ongoing construction tracking
2. Documentation of permitting issues
3. Ongoing assistance with incentive applications
4. Post-installation EVSE data information
3. **Program Tasks For Fast Charge Systems**

Consultant shall provide the following services:

As requested by third-party DCFC providers and approved by Authority, provide DCFC providers with support/troubleshooting with DCFC issues, such as local property manager approvals, permitting, land use, utility interconnection, etc. Consultant support/troubleshooting will not include detailed technical analysis of any type (engineering power analysis, circuit requirements, etc.).

Engage with DCFC developers to identify hurdles to station deployment in Authority service territory, compile issues for Authority review, and assist DCFC developers, as directed by Authority.

**Deliverables:**
1. Ongoing DCFC facilitation
2. Issues list updated as issues are identified in the course of the DCFC facilitation

4. **Additional Support and Operational Integration**

Consultant shall provide the following services:

4.1 **EV Charging Incentive Programs**

Consultant will monitor available funding sources for EV charging projects that are potentially applicable to Authority decision makers and report those options to Authority. Consultant will monitor and share opportunities for Authority to pursue additional funding sources (e.g. Bay Area Air Quality Management District, California Energy Commission, California Air Resources Board) to add resources to Authority’s service territory. Authority may request technical assistance from Consultant in completing an application for a funding source so long as the effort reasonably aligns with existing Consultant tasks in this Agreement.

**Deliverables:**
1. Quarterly memo identifying incentive program availability for decision makers
2. Quarterly memo identifying existing and upcoming funding sources for Authority and Authority’s service territory.
3. Technical assistance with Authority funding applications, as requested by Authority.

4.2 **Data Integration**

Consultant will assist with the following:

1. Assist to develop requirements for Authority’s data tracking system(s) integration
2. Implement required integrations on the Consultant CRM
3. Execute tests in coordination with Authority to ensure data transfers operate successfully
4. Transfer all data from Consultant CRM to Authority system(s) on a continuous basis as mutually determined, but not less than weekly. Transfers shall include the following data:
   1. Decision makers approached, the outreach method, date of outreach, result of outreach;
   2. General site information (e.g., address, primary contacts, contact information);
   3. All information collected in the Power Parking Assessment;
   4. Post-recommendation management information (e.g., permit information, construction timeline, project issues encountered);
   5. Details on bids, project outcomes (including costs), and actual equipment deployed.

Deliverables:
1. Authority data tracking system(s) requirements
2. Software integration
3. Ongoing data transfer

4.3 Customer Service Operations

Consultant shall provide the following services related to customer service:

1. In-bound customer service call support during normal business hours, 9am – 5pm pacific time, Monday through Friday excluding federal holidays, for customer inquiries.

2. Calls will route to members of the Consultant program team, who shall be trained to respond to questions about the program including services offered, incentives available, processes for technical assistance and rebates.

3. At all times the program and its communications will be presented as an Authority program.

4. Consultant operations will be integrated with Authority customer service operations, to the degree feasible, to provide as seamless a customer experience as possible.

5. Calls unrelated to the EV charging program will be routed to appropriate contacts, to be mutually identified with the Authority.

Deliverables:
1. Customer service integration with Authority customer service operations
2. Ongoing customer service operations

4.4 Case Study Development
As requested by Authority, Consultant shall support the creation of case studies. These case studies may be based on existing EV charger deployment or new deployment supported by this program. Case studies will support the overall education and outreach efforts and are intended to be shared publicly.

These case studies will include relevant material on the technical aspects of projects, along with anecdotal, personal stories. Authority may request Consultant’s support in developing application documents that gather information of interest. Authority may also request Consultant’s support in following up on any necessary interviews or other data gathering to support the case studies. Authority and Consultant shall mutually agree on roles and responsibilities associated with developing case studies as a part of the Messaging and Marketing Plan created in 2.2.

Authority will support all outreach and will review and co-develop applications or interview questions. Authority anticipates no more than 10 case studies across various Target Site types. Case studies will be simple and easy to understand – likely no more than 2 pages in length.

**Deliverables:** Information collection and other support to Authority for development of case studies

### 4.5 Referrals and Support for Other Authority Programs

As requested by Authority, Consultant shall provide information, analysis and advice in support of other Authority programs targeting EV charger deployment or related issues. Authority will work with Consultant to determine the scope for each instance of support prior to commencing work.

In the course of performing the services in this Agreement, Consultant will be engaging with a variety of Authority customers. Consultant shall remain aware of Authority’s program portfolio and shall work with Authority to establish appropriate processes for Consultant to refer customers to these other programs when they may be a good fit.

**Deliverables:**
1. Materials to be determined in consultation with Authority
2. Ongoing referrals as necessary

### 4.6 Evaluation, Measurement and Verification Support

Consultant shall work with Authority and Authority’s Evaluation, Measurement and Verification (EM&V) consultant to prepare any reports or documentation necessary for this program’s EM&V plan. Consultant shall also incorporate into the Program Strategy any processes or elements identified by the Authority as critical to the success of the EM&V plan.
Deliverables:
1. Materials to be determined in consultation with Authority

5. Adjustments to/Additional Electric Vehicles Technical Assistance Services

Authority and Consultant may agree to adjust the tasks and services, or to add additional electric vehicle assistance services, as set forth in this Exhibit A. Such adjustments or additions shall be approved in writing (e-mail is acceptable) by the Authority Representative. Notwithstanding the above, any modifications or additions to the scope of services that require an increase in compensation shall require a written amendment to this Agreement.
## Exhibit B
### Schedule of Performance

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

<table>
<thead>
<tr>
<th>Task/Deliverable</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Kickoff</td>
<td>Within 1 month of Effective Date</td>
</tr>
<tr>
<td>1.2-1.3 Administrative Tasks</td>
<td>Ongoing as specified</td>
</tr>
<tr>
<td>1.4.1 Draft Final Report</td>
<td>4 months prior to end of contract or 1 month after customer support is ended due to lack of remaining funds</td>
</tr>
<tr>
<td>1.4.2 Final Report</td>
<td>2 months prior to end of contract with final invoice or 3 months after customer support is ended due to lack of remaining funds</td>
</tr>
<tr>
<td>2.1 Program Strategy</td>
<td>1 month after Effective Date</td>
</tr>
<tr>
<td>2.2.1-3 Messaging and Media Plan</td>
<td>Draft 1 month after Effective Date, Final 2 months after Effective Date, with updates at least 1 month before initiating significant media activity not already outlined</td>
</tr>
<tr>
<td>2.2.4 Website Content</td>
<td>3 months after Effective Date</td>
</tr>
<tr>
<td>2.2.5 Customer Collateral</td>
<td>Ongoing, as appropriate</td>
</tr>
<tr>
<td>2.3 Outreach, Education and Onboarding, Pre-Identified Sites</td>
<td>Initiate within 4 months of Effective Date</td>
</tr>
<tr>
<td>2.4 Education and Onboarding, Self-Identified Sites</td>
<td>Initiate within 4 months of Effective Date</td>
</tr>
<tr>
<td>2.5, 2.6, 2.8 Tasks</td>
<td>Ongoing</td>
</tr>
<tr>
<td>2.7 Installation Contractor &amp; Bid Support</td>
<td>Ongoing, with delivery of contractor list</td>
</tr>
<tr>
<td>3.1 DCFC Facilitation Support</td>
<td>Ongoing</td>
</tr>
<tr>
<td>4.1. Identification of Additional Funding</td>
<td>Ongoing as specified</td>
</tr>
<tr>
<td>4.2.1 Data Integration, CRM Requirements</td>
<td>Within 3 months of Effective Date</td>
</tr>
<tr>
<td>4.2.2 Data Integration, software Integration</td>
<td>Ready for integration with Authority CRM within 1 month of completion of requirements 4.2.1</td>
</tr>
<tr>
<td>4.2.4 Data Integration, ongoing data transfer</td>
<td>Ongoing after completion of Integration (4.2.3) and Authority implementation</td>
</tr>
<tr>
<td>4.3 Customer Service Operations</td>
<td>Integration of operations within 3 months of contract signature, with operations ongoing</td>
</tr>
</tbody>
</table>
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 five hundred thousand dollars ($500,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensations set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task Budgets

<table>
<thead>
<tr>
<th>Task</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Administrative Tasks</td>
<td>$50,000</td>
</tr>
<tr>
<td>2. Program Tasks for New and Existing Building Charging Technical</td>
<td>$370,000</td>
</tr>
<tr>
<td>Assistance</td>
<td></td>
</tr>
<tr>
<td>2.1. Develop Program Strategy</td>
<td>$10,000</td>
</tr>
<tr>
<td>2.2. Prepare Program Outreach and Educational Campaign</td>
<td>$60,000</td>
</tr>
<tr>
<td>2.3-4. Outreach, Education and Onboarding</td>
<td>$70,000</td>
</tr>
<tr>
<td>2.5-6. Site Screening &amp; Power Parking Assessments (60 sites)</td>
<td>$180,000</td>
</tr>
<tr>
<td>2.7-8. Installation Contractor, Bid Support, &amp; Post</td>
<td>$50,000</td>
</tr>
<tr>
<td>Recommendation Management</td>
<td></td>
</tr>
<tr>
<td>3. Program Tasks for Fast Charge Systems</td>
<td>$0</td>
</tr>
<tr>
<td>4. Additional Support and Operational Integration</td>
<td>$80,000</td>
</tr>
<tr>
<td>Total Not-to-Exceed</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

1. Payment Schedule

Consultant shall bill for Services on a time and materials basis at the rates shown below. Direct expenses will be billed at cost.

1. Rates

<table>
<thead>
<tr>
<th>Role</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Director</td>
<td>$206</td>
</tr>
<tr>
<td>Operations Manager</td>
<td>$120</td>
</tr>
<tr>
<td>Sr. Consultant</td>
<td>$139</td>
</tr>
<tr>
<td>Role</td>
<td>Rate</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Sr. Electrical Engineer</td>
<td>$160</td>
</tr>
<tr>
<td>Energy Engineer V</td>
<td>$160</td>
</tr>
<tr>
<td>Energy Engineer II</td>
<td>$115</td>
</tr>
<tr>
<td>Account Manager</td>
<td>$95</td>
</tr>
<tr>
<td>Sr. Energy Auditor</td>
<td>$78</td>
</tr>
<tr>
<td>Marketing Manager</td>
<td>$112</td>
</tr>
<tr>
<td>Creative Director</td>
<td>$165</td>
</tr>
<tr>
<td>Graphic Designer</td>
<td>$80</td>
</tr>
<tr>
<td>Copy Editor</td>
<td>$84</td>
</tr>
<tr>
<td>Web Developer</td>
<td>$130</td>
</tr>
<tr>
<td>IT Developer</td>
<td>$152</td>
</tr>
</tbody>
</table>

Additional roles and rates may be added to the table with prior written approval of Authority.

**Invoices**

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, 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.
Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

1. **COVERAGE:**

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

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

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

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

   (5) **Privacy and Cybersecurity Liability**
   Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least $5,000,000 US per occurrence.
Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

- The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers:
  (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.

- Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.

- From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.

- Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in
connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall ensure such employees or representatives are bound by confidentiality obligations at least as protective as the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant’s employee or representative (a “Third Party”), except where that Third Party has separately entered into a nondisclosure agreement with Authority.

- Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.

- Consultant shall immediately notify Authority if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person that could reasonably result in the use, disclosure, or theft of the Confidential Information.

- It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant’s misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer’s information to Consultant and shall notify the California Public Utilities Commission of the complaint.

- Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant’s compliance with the terms of this Agreement.
• Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

• In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority’s written request, and at Authority’s option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed. Notwithstanding the foregoing, Consultant will not be obligated to destroy or return Confidential Information that is contained in an archived computer system backup in accordance with Consultant’s backup policies; provided, however, that any such Confidential Information retained shall continue to be subject to the nondisclosure obligations of this Agreement.

• Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.

• In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys’ fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.

• When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, Consultant will not be obligated to return or destroy Confidential Information that is contained within an archived computer backup system in accordance with Consultant’s backup policies; provided, however, that any such Confidential Information retained shall continue to be subject to the nondisclosure obligations of this Agreement. Further, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
Item 1g: Approve Amendment to Fitness Reimbursement Policy

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 4/8/2020

RECOMMENDATION
Staff recommends that the Board approve an amendment to Human Resource Policy #8 ("HRP8") covering the purchase, repair, or maintenance of fitness equipment and the purchase of tele-fitness services up to $600 per year.

BACKGROUND
The Board of Directors approved HRP8 as part of an overall benefits upgrade package at the January 8, 2020 Board of Directors meeting.

ANALYSIS & DISCUSSION
With the shelter-in-place declaration in mid-March and its extension through April for Santa Clara County, staff is recommending an amendment to HRP8 to cover reimbursements for fitness equipment and tele-fitness services to promote employee health and morale.

The current policy provides reimbursement up to $600 per year for gym memberships and other similar facilities. Staff is not recommending any change to the funding cap, only to allow for reimbursement of fitness equipment and tele-fitness services against any unspent funds to-date.

STRATEGIC PLAN
This recommendation supports the health and wellness goals of the strategic plan.

ALTERNATIVE
Staff is open to other suggestions from the Board.

FISCAL IMPACT
There is no fiscal impact with this recommendation.

ATTACHMENTS
1. HRP8 – Fitness Reimbursement Policy
Category: HUMAN RESOURCES

FITNESS REIMBURSEMENT BENEFIT

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

II. SCOPE
All regular full-time employees.

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

“Approved Fitness Equipment” shall mean a physical fitness item or items, or the repair or maintenance of such items.

“Approved Fitness Service” shall mean a fitness service providing remote / tele-participation, including software/apps, podcasts/audio subscriptions, video subscriptions, or other similar services.

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

B. Enrollment

1. Employees must sign and return their Fitness Reimbursement Program Form to the Administrative Services Manager to participate in the program.

2. The form shall state the employee understands the terms and requirements of the program, the name of the
2. **Category: HUMAN RESOURCES** Approved Health Club, or Fitness Program, Equipment, or Service that the employee has selected, and the estimated membership cost.

3. Once the employee has chosen to participate in the program, they are assumed to be a participant until they notify the Administrative Services Manager that they no longer wish to participate.

**C. Gym Eligibility**

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

**D. Payment & Taxation**

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

**E. Eligible Expenses**

Reimbursements will be for the cost of the Approved Health Club or Fitness Program membership fees or Approved Fitness Equipment or Service only.

**F. Ineligible Expenses**

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

**V. ATTACHMENTS**

Fitness Reimbursement Benefit Form
FITNESS REIMBURSEMENT FORM

Employee Information

Name (Print): ____________________________________________________________

Approved Health Club or Fitness Program Information

Name of Facility / Program / Equipment / Service: ____________________________

Address (if applicable):_____________________________________________________

Membership / fee / Amount you paid: $ ________________________________

per Month □ Year □ Other:__________________________

(limit of $600/year)

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

Employee Signature: __________________________________________

Date: ____________________________________________________________

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

(Return signed copy to Administrative Services Manager)
The Executive Committee met for its first virtual meeting on March 27, 2020. Following a regular meeting to approve the February 24th, 2020 meeting minutes, the committee held a special meeting and received an update on potential policy changes in response to COVID-19 (on our agenda this evening), received an update on rates (which will be voted on this evening), received an update on SVCE’s Integrated Resource Plan, and received follow up information on the development of a desk reference for board members.

The next meeting of the Executive Committee will be Friday, April 24th, 8:30 am; meeting information will be listed on the agenda which will be posted 72 hours in advance of the meeting.
Staff Report – Item 1i

Item 1i: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/8/2020

No report as the Finance and Administration Committee has not met since January 17, 2020.
Staff Report – Item 1j

Item 1j: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/8/2020

No report as the Audit Committee has not met since February 5, 2020.
Staff Report – Item 1k

Item 1k: 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: 4/8/2020

No report as the Legislative and Regulatory Responses to Industry Transition Ad Hoc Committee has not met since March 4, 2020.
REPORT

COVID-19 Response
A verbal update will be provided at the board of directors meeting.

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

1) SMUD, Amendment: Heat Pump Water Heater Program Support, not to exceed $136,350
2) Energy and Environmental Economics, Amendment: Integration of DERs into SVCE’s long-term resource plan, not to exceed $15,000
3) Crossborder Energy, Amendment: Consultant and witness testimony in the PG&E 2020-2022 General Rate Case Application Services, not to exceed $7,000
4) Pivotal: Student Intern Staffing services, not to exceed $3,750
6) NewGen Strategies & Solutions, Second Amendment: Advice and expert testimony in PG&E 2020-22 GRC, not to exceed $55,302
7) PickMySolar: Solar marketplace program, not to exceed $10,000

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

<table>
<thead>
<tr>
<th>Counterparty Name</th>
<th>Execution Date</th>
<th>Transaction Type</th>
<th>Product</th>
<th>Start Date</th>
<th>End Date</th>
<th>Notional Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Energy Authority</td>
<td>3/10/2020</td>
<td>Purchase</td>
<td>Resource Adequacy</td>
<td>7/1/2020</td>
<td>7/31/2020</td>
<td>$414,000.00</td>
</tr>
<tr>
<td>Brookfield Renewable Trading</td>
<td>3/18/2020</td>
<td>Purchase</td>
<td>Resource Adequacy</td>
<td>7/1/2020</td>
<td>9/30/2020</td>
<td>$798,320.00</td>
</tr>
<tr>
<td>Coso Geothermal</td>
<td>3/18/2020</td>
<td>Purchase</td>
<td>Renewable Energy PCC1</td>
<td>1/1/2022</td>
<td>12/31/2036</td>
<td>Resolution: 2020-10</td>
</tr>
<tr>
<td>NextEra</td>
<td>3/13/2020</td>
<td>Purchase</td>
<td>Hedge Energy</td>
<td>1/1/2021</td>
<td>12/31/2022</td>
<td>$37,708,495.25</td>
</tr>
<tr>
<td>Calpine</td>
<td>3/27/2020</td>
<td>Purchase</td>
<td>Resource Adequacy</td>
<td>1/1/2021</td>
<td>12/31/2021</td>
<td>$1,872,000.00</td>
</tr>
</tbody>
</table>

These agreements are included in the Board packet as Appendix A.
Presentations & Relevant Meetings Attended by CEO
- Participated in CalCCA Monthly board, dues, executive, and legislative meetings;
- COVID-19 Impact calls with various CCAs, CPUC, etc.

ATTACHMENTS
1. Decarb & Grid Innovation Programs Update, April 2020
2. Account Services & Community Relations Update, April 2020
3. Regulatory and Legislative Update, April 2020
4. Agenda Planning Document, April – July 2020
1. Reach Code Initiative (1 of 2)

**Buildings**

- **Nine cities have adopted Reach Codes** – Morgan Hill, Mountain View, Milpitas, Saratoga, Monte Sereno, Los Gatos, Cupertino, Campbell, and Los Altos Hills.
- Sunnyvale and Los Altos making progress.
- Adding technical support options for existing buildings if new construction slows

**EVs**

- Amend **quantity, speed and/or readiness** of EV charging above code
- **Seven member agencies adopted EV reach codes**
- Morgan Hill considering adding EV code
### 1. Reach Code Initiative (2 of 2)

<table>
<thead>
<tr>
<th>Member Agency</th>
<th>Status</th>
<th>Next Meeting</th>
<th>Date of Next Meeting</th>
<th>Code Language</th>
<th>Encourage Gas Reduction (1 + 2 + 2A)</th>
<th>Limit Gas (1 + 2A)</th>
<th>Ban Gas (1 only)</th>
<th>Higher than CalGREEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain View</td>
<td>Approved</td>
<td>1st Reading</td>
<td>Begins on pg. 23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>Approved</td>
<td>2nd Reading</td>
<td>Begins on pg. 45</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Milpitas</td>
<td>Approved</td>
<td>1st Reading</td>
<td>Begins on pg. 118</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>Approved</td>
<td>2nd Reading</td>
<td>Begins on pg. 3</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Saratoga</td>
<td>Approved</td>
<td>Staff Proposal</td>
<td>Begins on pg. 33</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>Approved</td>
<td>Staff Proposal</td>
<td>Begins on pg. 33</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Cupertino</td>
<td>Approved</td>
<td>Ordinance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>Approved</td>
<td>Ordinance</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Campbell</td>
<td>Approved</td>
<td>Ordinance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Los Altos</td>
<td>1st Reading</td>
<td>1st Reading</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Santa Clara County</td>
<td>Staff Proposal</td>
<td>Staff Proposal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>Staff Proposal</td>
<td>Staff Proposal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Gilroy</td>
<td>Declined</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Key**

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

**Building Reach**

1. All-electric buildings
2. Mixed fuel has higher requirements
2A. Mostly electric/electric heating only
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
  - **78 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

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

### Optional Additional Rebates

<table>
<thead>
<tr>
<th>Rebate Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smart Performance Package</td>
<td>$1,500</td>
</tr>
<tr>
<td>Service Panel, upgrade to 200A</td>
<td>$2,500</td>
</tr>
<tr>
<td>CARE/FERA eligible customer</td>
<td>$1,500</td>
</tr>
</tbody>
</table>
3. EV Programs (1 of 2)

• **CALeVIP** scoping is ongoing

• Second meeting of **Silicon Valley Transportation Electrification Clearinghouse** held March 26th over Zoom, 35 participants and presentation by Rocky Mountain Institute

• Final development of **Regional EV Leadership Recognition**, with launch in coming months

• Contract for **Multifamily and Small/Medium Business Technical Assistance** completed for approval

Digital version available at: [https://www.svcleanenergy.org/programs/](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 executed in Spring 2020 for Summer 2020 launch**
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 as well as solar with storage.

- Approved with Decarb Roadmap
  ✓ $350k approved with Roadmap
  ✓ $250K annually for ongoing operation in FY2021, FY2022

- Online tools for electric vehicle and solar plus storage adoption are being integrated into a redesigned website. Work on the electric appliance tool to begin following Board approval of Enervee Agreement. Phased launch of website redesign and three tools in Q3.
6. Innovation Programs

• SVCE launched the **SVCE Data Hive** on March 30, a flagship pilot with UtilityAPI to streamline local clean energy projects by providing instant, authorized and secure access to standardized energy data. More info: [data.svcleanenergy.org/](http://data.svcleanenergy.org/)

• The third round of **Innovation Onramp** opened for applications on April 1, with the theme of resilience. The application deadline is April 30. More info: [www.svcleanenergy.org/innovation/](http://www.svcleanenergy.org/innovation/)
7. Other Updates

• SVCE submitted an application for the Center for Resource Solutions’ **Green Power Market Development Award** for the SVCE Data Hive pilot. Award decisions expected by early summer.
1. Outreach Events & Sponsorships

SVCE had originally planned on attending 12 community events in the month of April. However, due to public health concerns related to COVID-19 these events have been canceled. SVCE has also suspended attending events and sponsorships until further notice.

Past and upcoming events are currently not available:

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## 2. Customer Participation

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>96.21%</td>
<td>96.22%</td>
</tr>
<tr>
<td>Commercial</td>
<td>96.3%</td>
<td></td>
</tr>
</tbody>
</table>
3. Member Agency Working Group Update

The March meeting was held virtually and was attended by seven different agencies, totaling in ten participants in the meeting.

The following agenda items were presented and discussed:

- Updates
  - Building Decarb Joint Action Plan RFP
  - Streamlining Community Decarbonization
4. SVTEC Meeting Update

The Silicon Valley Transportation Electrification Clearinghouse (SVTEC) meeting virtually took place on March 26, 2020.

Twenty-five different agencies and organizations tuned-in and discussed at the following agenda items:

- Introductions
- “The Hidden Cost of EV Infrastructure” – Rocky Mountain Institute
- Questions and Answers
- Poll and Discussion
- SVCE Funding, Website, Regional Recognition Overview
- Wrap-Up

Meeting notes and slides can be found at: [SVCleanEnergy.org/svtec](http://SVCleanEnergy.org/svtec)
5. Media

Latest SVCE News

• SVCE and UtilityAPI Launch Pilot to Speed Clean Energy Commerce, Press Release, 03-30-20

• Campbell, Los Altos Hills Take Important Step to Promote Clean Air, Press Release, 03-11-20

News Mentions

• Going green at home: gradual changes can make a world of difference, Los Altos Town Crier, 03-24-20

• Ormat Technologies, Inc. (ORA), Market Screener, 03-02-20
As you all know, this has been an extremely unconventional month. The legislature is shut down at least until May 4th, but the California Public Utilities Commission (CPUC) has, with a few notable exceptions, kept humming along. We received word of major delays to the Integrated Resource Planning and Direct Access proceeding timelines this month, but also got a long-awaited Proposed Decision in the Resource Adequacy proceeding and further progress on the 2020 PCIA/generation rate setting and implementation process. From the policy team, we hope that you are all safe and healthy and will continue our advocacy on behalf of SVCE’s member communities despite the change in circumstances.

Regulatory

Ratesetting, Short- and Long-Term

The CPUC continues to wrap up the final stages of setting and implementing 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. PG&E’s implementation advice letter filed on 3/13/20 results in a forecast uncapped system average PCIA of 4.3 ¢/kWh (a 62% 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 5.0 ¢/kWh, a 90% increase over 2019, beginning Q3 2020. Continuing advocacy to reconcile the cap with the undercollection mechanisms is ongoing. In addition, the Joint CCAs will be closely reviewing PG&E’s ERRA Compliance Application to ensure that PG&E implemented rates in accordance with the Decision and made no errors.

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

The older proceeding, R.17-09-020, hit its final expected milestone this month. The last remaining open issue in this proceeding is the creation of a central buyer for local RA, which the Commission decreed was needed in a June 2018 Decision. Last August CalCCA and seven other parties brought a settlement proposal for the design of such a central buyer before the Commission. We've been waiting ever since for a Proposed Decision (PD) detailing the final central buyer structure, and the Commission released it on March 26th.

The PD is not what we were hoping for. One of the central debates in this proceeding has been the extent of the central buyer’s role. SVCE, CalCCA, and many other parties have pushed for a “residual” model, wherein local RA is procured first by individual load-serving entities (LSEs) before the central buyer fills in remaining gaps wherever needed. The central buyer would then allocate the costs of its procurement proportionately to each LSE after subtracting any capacity that LSE had procured on its own. This would allow LSEs to reduce their portion of the central buyer’s costs by procuring their own capacity, thus maintaining the incentive for all LSEs to build new capacity. At the other end of the spectrum is the “full procurement” model, wherein the central buyer is responsible for all local RA procurement. In this model, the only way LSEs can receive benefit for local RA capacity they have built or contracted for is by bidding it into one of the central buyer’s resource solicitations and hoping their bid is selected. The PD rejects CalCCA’s settlement proposal, which featured the residual model, and adopts a “hybrid” approach proposed by Southern California Edison (SCE) that is functionally very similar to the full procurement model. It also makes PG&E and SCE the central buyers on behalf of all CCAs and other LSEs in their respective service territories, an option that CalCCA has pushed back on throughout the proceeding. San Diego Gas & Electric (SDG&E), which has been vocal about not wanting the central buyer role and was the only investor-owned utility (IOU) to sign onto the settlement proposal, was excluded from the PD and not designated the central buyer in its service territory. For now, the local RA program will continue status quo in SDG&E’s service territory with no central procurement at all.

SVCE and the other members of the CCA community are in the process of evaluating the impacts of the PD and formulating a response. If the PD is adopted, 2023 is the first year the central buyer would procure local RA for. SVCE’s existing local RA contracts for post-2022 years are limited, but we are still analyzing how the PD, if adopted as written, could impact the value of those contracts as well as future procurement decisions. The PD will not be voted on at the Commission until May 7th at the earliest, and there will be opportunity for comments and meetings before then. SVCE will keep the Board apprised of advocacy outcomes and any revisions made to the PD.

This leads us into the newer RA proceeding (R.19-11-009), which is focusing 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). 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. CalCCA submitted comments on the proposals on 3/23, and SVCE submitted supplementary comments jointly with Monterey Bay Community Power and East Bay Community Energy regarding the treatment of the PG&E Other subareas.

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. This PD subsequently underwent significant revisions before the final version was accepted by the Commission at their 3/26 voting meeting. Among the changes in the final version was another extension of the timeline. Major changes to the IRP include having to submit two plans with one plan having a much more aggressive GHG reduction target. The CPUC leaves open the possibility of adopting the more aggressive goal. Additionally, the CPUC has also asked LSEs who claim to be 100% carbon free to tie LSE supply with LSE demand on a temporal basis, signaling to LSEs to procure resources which serve their customers' needs and preventing LSEs from “netting” or “offsetting” their emissions by overbuilding certain resources (e.g. solar PV). Further, LSEs' supply contributions towards critical reliability needs (peak, post-peak, ramping, morning peak, etc) will be a focus of this and future IRP cycles. The 2020 IRPs are now due on September 1, 2020, with final compliance instructions and materials to be released by the Commission in mid-May. In the meantime SVCE will continue our internal work to the extent we can without further Commission guidance, and will bring the IRP to the Board for approval on a timeline in accordance with the Commission’s.

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. The draft study, originally set to be released on 3/9/20, has been indefinitely delayed by the CPUC, presumably due in part to the impacts of Covid-19. The CPUC will also request an extension to the deadline to submit the report to the legislature. 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,
and a Decision on the second half of issues on 3/26/20. The Decision 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). PG&E did not support the Working Group 3 proposal (supported by SCE) and has filed an alternate proposal that is detrimental to SVCE’s interests. A final Decision from the Commission on these allocation proposals is expected in Q2 2020, and may be influenced by the provisions of the aforementioned PD in the RA proceeding.

**Legislative**
The California legislature has gone into emergency recess and will return May 4. Officially full operations will resume after that date. It is also very likely that when operations resume activity will be limited to passing the budget and bills associated with Covid-19 impacts, wildfires, and the PG&E bankruptcy. SVCE and CalCCA are monitoring events and are prepared to modify our legislative strategy to accommodate an unconventional legislative calendar this year.
## SVCE Agenda Planning, April - July 2020

### Board of Directors, April 8:
- Consent
- Minutes
- February 2020 Treasurer Report
- Resilience RFP Awards
- Regular Calendar
- Presentation of Mid-year budget
- Solar plus storage PPA (Tentative)
- Direction on PG&E Long-term Carbon-Free & RPS Allocation

### Board of Directors, May 13:
- Consent
- Minutes
- February 2020 Treasurer Report
- Resilience RFP Awards
- Regular Calendar
- Presentation of Mid-year budget
- Solar plus storage PPA (Tentative)
- Direction on PG&E Long-term Carbon-Free & RPS Allocation

### Board of Directors, June 10:
- Consent
- Minutes
- March 2020 Treasurer Report
- Resilience RFP Awards
- Regular Calendar
- Strategic Plan Update
- IRP Discussion

### Board of Directors, July 8:

### Executive Committee, April 24:
- Resilience RFP Update

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

### Executive Committee, June 26:

### Finance and Administration Committee, TBD:
- Power Prepay Agreement
- Budget Update
Staff Report – Item 3

Item 3: Adopt Resolution Delegating Authority to the Chief Executive Officer to Award Certain Contracts, Execute Agreements and Set Customer Rates on Behalf of Silicon Valley Clean Energy for the Next Ninety Days When Board Meetings are Cancelled or No Quorum Can Be Reached Due to a Public Health State of Emergency Relating to the COVID-19 Virus

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Don Eckert, Director of Finance and Administration

Date: 4/8/2020

RECOMMENDATION
Staff recommends adoption of Resolution 2020-13 delegating authority to the Chief Executive Officer ("CEO") to enter into certain contracts, set rates, and take other specific actions necessary to ensure the continuous operation of Silicon Valley Clean Energy ("SVCE") for ninety (90) days following the passage of this Resolution in which Board meetings are cancelled or no quorum can be achieved due to a Public Health Emergency relating to the COVID-19 virus.

BACKGROUND
Recent actions make it prudent to prepare for the possibility of a Board of Directors meeting being cancelled. Those actions include:
- The County of Santa Clara declared a Local Health Emergency on February 2, 2020;
- The Governor of California called for a State of Emergency on March 4, 2020;
- Non-essential businesses have already closed their facilities to the public or sent employees to work from home.

While temporary amendments waivers to certain requirements of the Brown Act by Governor Newsom should reduce the probability of a Board of Directors meeting being cancelled, a set of specific delegations of power are recommended for situations in the next 90 days where:
1. A State or County state of emergency is currently in effect; and
2. The SVCE Board Chair in consultation with the CEO, or Vice Chair if the Chair is unavailable, makes a determination that holding the next Board meeting is not possible; and
3. The cancellation of a Board meeting is made one month at a time to ensure that conditions remain in effect to warrant the cancellation.

ANALYSIS & DISCUSSION
Proposed Delegation of Authority
1. Customer Rates
   Staff recommends authority to:
   - Adopt rates to go into effect May 1, 2020 that ensure each customer rate class’ bills are 41% below PG&E May 1, 2020 bundled customer bills; and
   - Adopt temporary rates that go into effect at the earliest date following the California Public Utilities Commission ("CPUC") enactment of the Power Cost Indifference Charge ("PCIA") trigger (removal of the cap on the PCIA). This is expected to occur later this year but may
occur earlier or later. These temporary rates would set all customer classes to be at least 1% below PG&E’s bundled service bills.

If either or both of these rate changes are made, they would need to be ratified by the Board of Directors in the next regular SVCE Board meeting.

2. Long-Term Power Purchase Agreements ("PPAs")
Staff from both SVCE and Monterey Bay Community Power have been in PPA negotiations for several months. Three agreements are expected to be presented to the Board for approval in the next ninety days. If Board meetings are cancelled, Staff recommends delegation of authority to execute agreements of the three solar-plus-storage contracts with the following suppliers:
- NextEra Energy, Inc.
- 8minute Solar Energy
- Samsung Renewable Energy, Inc.

3. Mid-Year Budget Adjustment
As referenced earlier in this report, the PCIA is expected to increase which will impact revenues. The economic shut-down due to COVID-19 will also impact revenues with expected load loss. Staff recommends a delegation of authority to adopt an amended budget.

4. Business Continuity Plan
In reaction to recent events, Staff has been reviewing and updating the business continuity plan. The process includes obtaining plans from key vendors, cross-training within departments, and evaluating expansion of professional services as back-up for the extended absence of key personnel. Staff recommends a delegation of authority to execute either new agreements or amendments to current agreements of consulting services to ensure continuity of operations. New agreements or additional funding to existing agreements shall not exceed $100,000.

5. Customer Relief and Community Resilience
In response to expected Board direction on funding of various programs to provide customer relief during this stressful time, Staff recommends a delegation of authority to execute agreements or paying expenses to fund customer relief and community resiliency programs.

6. Continue Ordinary Expenses
Staff request authority to execute other agreements not specified earlier in this report that are considered vital to operational continuance.

STRATEGIC PLAN
This recommendation supports all goals of the strategic plan.

ALTERNATIVE
Staff is open to other suggestions from the Board.

FISCAL IMPACT
There is no fiscal impact with this recommendation.

ATTACHMENTS
1. Resolution 2020-13 Delegating Authority to the Chief Executive Officer to Award Certain Contracts, Execute Agreements and Set Customer Rates on Behalf of Silicon Valley Clean Energy for the Next Ninety Days When Board Meetings are Cancelled or No Quorum Can Be Reached Due to a Public Health State of Emergency Relating to the COVID-19 Virus
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2020-13

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICE TO AWARD CERTAIN CONTRACTS, EXECUTE AGREEMENTS AND SET CUSTOMER RATES ON BEHALF OF SILICON VALLEY CLEAN ENERGY AUTHORITY FOR THE NEXT NINETY DAYS WHEN BOARD MEETINGS ARE CANCELLED OR NO QUORUM CAN BE REACHED DUE TO A PUBLIC HEALTH STATE OF EMERGENCY RELATING TO THE COVID-19 VIRUS

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, Governor Newsom of California declared a State of Emergency in response to COVID-19 on March 4, 2020; and

WHEREAS, the County of Santa Clara declared a Local Public Health Emergency as well as a Local Emergency to respond to COVID-19 on February 10, 2020; and

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

Section 1. For the following ninety (90) days when the State of California or the County of Santa Clara have declared a state of emergency relating to the COVID-19 virus, the Chair of the Board, or the Vice Chair if the Chair is unavailable, may cancel a board meeting after conferring with SVCE’s CEO. Any further cancellations of board meetings may be made only if the state of emergency remains in effect.

Section 2. To assure the continued operations of SVCE, the CEO is hereby authorized to consider, approve, and execute contracts, set customer rates, and decide other administration matters needed for the on-going operation of the Authority within existing budgetary appropriations when pursuant to Section 1 above, a Board meeting has been cancelled due to the COVID-19 virus.
emergency, including and limited to the following:

- Adopt rates that go into effect May 1, 2020 that ensure SVCE customer rate class bills are 41% less than PG&E’s May 1, 2020 generation rates.

- Adopt customer rates that go into effect at the earliest date following the CPUC’s enactment of the PCIA trigger (removal of the cap on the PCIA). This is expected to occur outside the term of this Resolution but it may occur within the next ninety days. These revised rates shall be set so that all customer class rates are at least 1% less than PG&E’s generation rates.

- Approve SVCE’s FY 2019-20 Mid-Year Operating Budget.

- Approve the three solar-plus-storage long-term power purchase agreements with the following suppliers:
  - Samsung Renewable Energy, Inc.
  - 8minute Solar Energy
  - NextEra Energy, Inc.

- Approve agreements that support the Agency’s business continuity plan. New agreements to additional funding to current agreements for the purpose of business continuity would be limited to not higher than $100,000.

- Approve agreements that support customer relief and community resiliency efforts.

- Continue paying ordinary expenses.

Section 3. The CEO shall report to the Board regarding the actions taken under this Resolution within 7 days and additionally at the first Board meeting following resumption of regular meetings.
PASSED AND ADOPTED this 8\textsuperscript{th} day of April 2020, by the following vote:

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

______________________________

Chair

ATTEST:

______________________________

Andrea Pizano, Board Secretary
Item 4: Adopt Resolution to Implement SVCE Generation Rate Changes Effective May 1, 2020

To: Silicon Valley Clean Energy Board of Directors

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

Date: 4/8/2020

RECOMMENDATION
Adopt Resolution 2020-14
1. authorizing the CEO to implement SVCE generation rate changes effective May 1, 2020, resulting in an updated FY19/20 contribution to reserves of $30M and utilizing an applicable SVCE discount to PG&E rates under the ‘Discount Framework’ described herein; the applicable discount is expected to be 4%, but may be modified per the Discount Framework to reflect the impact of actual versus currently-projected May 1 PG&E generation rate and PCIA changes.
2. Set aside $10 million for customer relief and community resiliency efforts and direct the CEO to develop a program for such efforts and present it to the Board at the May Board meeting.

EXECUTIVE COMMITTEE RECOMMENDATION
At the March 27, 2020 Executive Committee meeting, the committee supported staff’s recommendation for a discount to PG&E generation rates effective May 1, 2020 that would result in contribution to reserves of approximately $20M after COVID-related relief and resilience programs. The committee felt this option best balanced customer rate changes with substantial risks in the current market, the plan to apply approximately additional reserves to customer and community relief associated with the COVID pandemic and Public Safety Power Shutoff (PSPS) electric outages, and additional reserve calls likely needed in FY20/21 to offset a large additional increase in the PCIA fee late in 2020.

BACKGROUND
Effective August 1 of 2019, SVCE implemented a 4% discount to PG&E rates. To determine SVCE’s exact generation rates, this discount amount was applied to PG&E’s unbundled generation rates that became effective July 1, 2019, and the applicable PCIA and franchise fees were subtracted. The resulting SVCE generation rates established as of August 1, 2019 are in effect currently. PG&E has made minor adjustments to their unbundled generation rates since last summer, but SVCE’s effective discount to PG&E remains at or very near 4% across residential and commercial rate classes.

SVCE’s FY2019/2020 operating budget, including projected revenues and contribution to reserves margin, was based upon the current rates and 4% discount currently in effect. The projected contribution to operating reserves for FY2019/2020 (year ending September 30, 2020) was budgeted at $50.6M.

As of November 2019, PG&E filings indicated major changes to PG&E generation and PCIA rates in 2020. The PCIA was projected to increase by ~21%, an increase limited by the $0.005 increase ‘cap’ approved by the CPUC in late 2018. This increase would result in a weighted average PCIA of 3.2 cents/kWh across SVCE customer classes. At the same time, PG&E generation rates were projected to decrease by an average of 6% across rate classes.
Further, PG&E continues to project a second PCIA increase later in 2020. This will be an additional 53% increase, when the PCIA ‘trigger’ mechanism is enforced that overrides the PCIA cap. This will make the average PCIA rate across SVCE customers approximately 4.9 cents/kWh.

Recently, per PG&E’s March 13, 2020 advice letter, the projected PCIA increase of ~21% continues to be anticipated as part of PG&E’s major rate update planned for May 1, 2020. And versus the 6% decrease in PG&E generation rates previously projected, this letter indicates a slight increase of 0.4% in generation rates as of May. The combined impact to SVCE rates of PG&E’s planned May 1st rate changes is a negative 8%. This means that SVCE would have to reduce its rates by 8% to remain at its current 4% discount to PG&E. Or if SVCE did nothing, SVCE generation rates would be 4% higher than PG&E as of May 1st.

While projections have been provided, PG&E’s actual May 2020 rates are not yet known. It is expected these will be released later in April. Given SVCE’s policy of maintaining competitive rates, it is important that SVCE’s rates are adjusted as close to the effective date of PG&E’s changes as possible (May 1st).

So that SVCE’s rate update is not delayed, SVCE will plan to have the Board pre-approve a new discount percentage. This can be rapidly applied to PG&E’s new rates when they are published later in April, such that SVCE can determine its new rates and have them go into effect in early May.

Finally, it is possible that PG&E’s actual rates published in later April and effective May 1 could vary significantly from the latest projections noted above. Accordingly, the Executive Committee requested creation of a ‘discount framework’ (aka guard rails) to be approved by the Board in April, whereby the new SVCE discount to be applied for May 1st would depend on the actual changes to PG&E generation rates and PCIA.

**ANALYSIS & DISCUSSION**

At the present time, SVCE is facing significant market uncertainties and risks. These include:

- Load loss from COVID
  - anticipated 15% reduction in C&I load for remainder of FY19/20; approximately 10% of total load
  - associated revenue reduction, and losses from excess supply
  - likely continued recessionary economic impact into FY20/21
- Delayed/reduced customer payments due to COVID shutdown impacts
  - business and personal defaults
  - increased use of payment plans that extend receipts, especially for residential resulting in unanticipated cash flow needs for SVCE
- PCIA
  - additional 53% increase in PCIA likely in fall 2020
  - compounds with a 21% jump in May 2020, for a total increase of 81% in 2020
  - to maintain rate competitiveness, reserve draw-down likely in FY2020/21
- Supply
  - SVCE suppliers seeing project construction delays due to COVID
- Direct Access
  - CPUC proposed decision expected shortly on further expansion of Direct Access market

In addition to the market uncertainties noted above, SVCE is in the process of planning a reserve ‘set aside’ to help our customers and communities cope with impacts of the COVID pandemic and this summer’s likely PSPS events. The amount currently being discussed is on the order of $10M, which would be drawn from reserves and paid out in the coming months.

Since shelter-in-place orders were issued in mid-March, C&I customer load loss of approximately 15%, and overall SVCE load loss of approximately 10% has been observed. Extending this 10% reduction in SVCE load
through September 2020 would reduce SVCE gross revenues by $19.9M and net operating margin by $11.4M. Planned reserve contribution in FY19/20 would be lowered from $50.6M to $39.2M.

Contribution to reserves will be further impacted by SVCE’s rate changes as of May 1st. Given the 21% increase expected in the PCIA, and minor changes to PG&E generation rates, an SVCE rate reduction of 8% to maintain a 4% discount effectively keeps customer generation rates flat, and fully shields customers from the impact of the large PG&E PCIA increase. Maintaining a 4% discount would lower SVCE’s planned contribution to reserves by approximately $9M, to $30M for FY19/20.

To best balance the need to minimize near-term rate change impacts to customers, likely upcoming COVID and PCIA reserve draw-down requirements and other market uncertainties, staff recommends that SVCE maintain its current 4% discount to PG&E, effective in May 2020. This will result in SVCE generation rate reductions of approximately 8% across rate classes. Combining the effects of COVID load losses and rate reductions, contribution to reserves in FY19/20 will be $30M versus the $50.6M originally projected in the FY19/20 operating budget.

An additional reserve draw-down of $10M is under discussion for the April/May timeframe, for customer and community-related relief programs related to COVID and PSPS. This would result in a net contribution to reserves in FY19/20 of approximately $20M.

Discount Framework

The 4% scenario recommended above assumes PG&E generation and PCIA rate changes projected as of May. In the event that PG&E’s actual May 1 rate changes are different than these projections, the Executive Committee recommended that staff establish ‘guard rails’, a framework by which the recommended 4% discount might be modified to reflect such differences should they occur.

Similar to the method used in 2019, staff proposes using a ‘net SVCE rate impact’ calculation, based on actual PG&E generation and PCIA rate changes published later in April (versus current projections) as shown below:

\[
\text{Anticipated SVCE Net Rate Impact: }\quad -8.0\% = (1.4 \times 0.4\%) - (21.4\% \times 0.4)
\]

Examples with Gen or PCIA change different than expected:

\[
\begin{align*}
-9.8\% &= (1.4 \times -1.0\%) - (21.0\% \times 0.4) \\
-12.8\% &= (1.4 \times -3.0\%) - (21.4\% \times 0.4)
\end{align*}
\]

The calculated net SVCE rate impact is then used in the ‘Discount Framework’ table below to indicate the associated SVCE discount level for May 1st. If actual PG&E generation and PCIA rate changes published in April are similar to recent projections, the net SVCE rate impact remains near -8%, and SVCE’s new rate discount is 4% as currently envisioned. In the event PG&E’s published rates for May 1st are more favorable to SVCE than current projections, then SVCE’s discount would be maintained at 4%.

However, if published PG&E rates are more negative to SVCE than anticipated, then SVCE would reduce its planned discount level according to the Discount Framework. Under the framework, a reduced discount will
still generally result in a 8% SVCE rate reduction, and a revised contribution to reserves of $30M (before COVID relief).

<table>
<thead>
<tr>
<th>Net Rate Impact</th>
<th>May 1 SVCE Discount</th>
<th>Average May 1 SVCE Rate Reduction</th>
<th>Projected Contribution FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 8% or less</td>
<td>4%</td>
<td>- 8% or less</td>
<td>&gt; $30M</td>
</tr>
<tr>
<td>- 8 to - 9%</td>
<td>4%</td>
<td>- 8%</td>
<td>$30M</td>
</tr>
<tr>
<td>- 9 to - 10%</td>
<td>3%</td>
<td>- 8%</td>
<td>$30M</td>
</tr>
<tr>
<td>- 10 to - 11%</td>
<td>2%</td>
<td>- 8%</td>
<td>$30M</td>
</tr>
<tr>
<td>- 11% or greater</td>
<td>1%</td>
<td>greater than - 8%</td>
<td>$30M</td>
</tr>
</tbody>
</table>

If actual PG&E gen or PCIA rates published for May 1 move still more negatively for SVCE... the recommended 4% SVCE discount would be decreased according to this framework, preserving a similar contribution to reserves

Rate Design and Update Methodology

Effective May 1st, 2020, SVCE plans to update all GreenStart generation rates to be exactly 4% (or other discount as determined by the Discount Framework) below PG&E’s corresponding generation rate, including surcharges (PCIA and Franchise Fee). This rate design approach has been used since the launch of SVCE and has the advantages of comparability and ease of customer communications in that the generation cost savings will be set at 1% for all customers, rates and rate determinants.

To illustrate the rate design approach that will be used to calculate the actual rate for 2020, Table 1 below (using hypothetical rates) shows how rate determinants are priced for a typical commercial rate schedule. The PCIA and FFS surcharges are applied on a per kWh basis and the SVCE energy charges are reduced to offset these charges. No additional PG&E surcharges apply to demand charges, so no adjustment is necessary for SVCE’s demand charges.

Table 1: Rate Design at an Example 3% Discount to PG&E - Commercial Rate Schedule

<table>
<thead>
<tr>
<th>Rate Determinant</th>
<th>PG&amp;E Generation</th>
<th>PCIA</th>
<th>FFS</th>
<th>SVCE GreenStart Generation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENERGY CHARGE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>($/kWh)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peak</td>
<td>$0.12552</td>
<td>*0.97</td>
<td>-</td>
<td>$0.01889</td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$0.08501</td>
<td>*0.97</td>
<td>-</td>
<td>$0.01889</td>
</tr>
<tr>
<td>Off-Peak</td>
<td>$0.05819</td>
<td>*0.97</td>
<td>-</td>
<td>$0.01889</td>
</tr>
<tr>
<td>Winter</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$0.07871</td>
<td>*0.97</td>
<td>-</td>
<td>$0.01889</td>
</tr>
<tr>
<td>Off-Peak</td>
<td>$0.06423</td>
<td>*0.97</td>
<td>-</td>
<td>$0.01889</td>
</tr>
<tr>
<td>DEMAND CHARGE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>($/kW)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peak</td>
<td>$12.63</td>
<td>*0.97</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Part-Peak</td>
<td>$3.12</td>
<td>*0.97</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
100% Renewable Energy Option

The GreenPrime rate for 2020, SVCE’s 100% renewable energy option, will remain unchanged from 2019. The charge is equivalent to the per unit cost difference between the default energy mix of 50% eligible renewable/carbon free energy and the 100% eligible renewable energy mix. This premium is calculated to be $0.008 per kWh, which is added to the otherwise applicable rate for the default GreenStart service offering.

Planned Timing and Approach for 2020 Rate Updates

If this recommendation is approved by the Board, SVCE rate tables will be updated as of May 1, 2020 to reflect a 4% discount across all rate schedules and billing determinants – with the SVCE discount percentage subject to the net impact of actual versus projected May 1, 2019 PG&E rate changes, and the discount framework described above.

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

FISCAL IMPACT
The fiscal impact of this recommendation is a reduction in reserve contribution of approximately $20.6M to SVCE from May 2020 through September 2020, relative to the FY19/20 operating budget. Of this amount, approximately $11.4M is from the estimated load loss due to the COVID pandemic, and $9.2M from the recommended rate and discount changes.

The resulting contribution to reserves for FY19/20 would be reduced from the planned $50.6M to $30M. An additional $10M in reserves is being recommended for COVID customer relief and community resiliency programs. The net contribution to reserves for FY19/20 would be $20M, in line with SVCE’s overall operating reserve policy.

ATTACHMENT
1. Resolution 2020-14, Approving Customer Generation Rates
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2020-14

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING CUSTOMER GENERATION 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, at the June 8, 2016 Board of Directors Meeting, the Board adopted the policy that the Authority’s customer generation rates for the default service will be 1% lower than Pacific Gas & Electric’s generation rates in place as of January 2017; and the policy allows reexamination of the rates, provided significant deviations in market prices or other extraordinary circumstances mandate an adjustment to the rates; and

WHEREAS, SVCE has a need to adopt customer generation rates that are competitive and contribute to the Authority’s cash reserves to allow the Authority to respond to risk, and

WHEREAS, due to the expected significant increase in the Power Charge Indifference Adjustment (PCIA) and for the reasons described in more detail in the agenda report, staff is recommending to maintain the 4% discount to PG&E’s customer generation rates resulting in a decrease in the 2020 customer generation rates under the ‘Discount Framework’ as described in more detail in the agenda report; and .

WHEREAS, since PG&E will not issue its final customer generation rates until later in April 2020, the Board of Directors desire to grant the Chief Executive Officer the authority to adjust the Authority’s current electric generation rates for its customers to generate an operating surplus for Fiscal Year 2019-20 of $30 million when PG&E finalizes its 2020 rates, and

WHEREAS, due to economic hardship from the shelter-in-place order in response to the COVID-19 virus, the Board of Directors desire to grant the Chief Executive Officer the authority to allocate $20 million of the FY 2019-20 operating surplus to reserves and $10 million towards customer relief and community resiliency efforts.

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

Section 1. Upon the release of PG&E’s final customer generation rates, the Chief Executive Officer is hereby authorized to amend the Authority’s 2020

Section 2. The Chief Executive Officer is hereby authorized to allocate the projected operating surplus for Fiscal Year 2019-20 of $20 million to reserves and $10 million for customer relief and community resiliency efforts.

Section 3. The Authority’s electric generation rates, as adjusted by the Chief Executive Officer to Section 1 above, shall become effective on May 1, 2020 or later, within 15 days after PG&E releases its final 2020 customer generation rates.

The Authority’s adjusted electric generation rates shall be set forth in an Amended 2020 Electric Generation Rates Schedule. The Chief Executive Officer shall provide a copy of the Amended 2020 Electric Generation Rates Schedule to the Board of Directors at its first meeting after the 2020 electric generation rates are adjusted.

Section 4. Resolution No. 2019-11 is hereby rescinded.

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

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

ATTEST:

Andrea Pizano, Board Secretary
RECOMMENDATION

Authorize the Chief Executive Officer (“CEO”) to execute a Confirmation Agreement with Pacific Gas and Electric (PG&E) to receive an allocation of greenhouse gas free (“GHG or carbon-free”) attributes paid for by SVCE customers and associated with PG&E’s large hydroelectric plants and its nuclear plant (Diablo Canyon Power Plant (“DCPP”)) for deliveries to start in mid-2020 and go through the end of 2020.

BACKGROUND

Since inception, SVCE has refrained from acquiring energy or energy attributes that are sourced from coal or nuclear fueled generating resources. In 2018, and after another sizable rise in the Power Charge Indifference Adjustment (PCIA), CalCCA appealed to the CPUC, demonstrating that CCAs are paying more than what’s considered fair and appropriate according the legislation that warranted the collection of the PCIA, while the IOUs argued the opposite. One of our positions was that the IOUs, unlawfully, included in their calculations the cost of their generating facilities that were built prior to enacting the legislation that allowed communities to form CCAs, primarily Diablo Canyon and many of the large hydro facilities located in northern California.

The CPUC Commission sided with the IOUs and ordered that all the IOU generating facilities and contracts (old and new) should be included in the calculation of the PCIA. Furthermore, the Commission ordered the formation of 3 working groups to address many of the legitimate issues that CalCCA brought to light during the proceeding.

One such issue was that the IOUs, in calculating the value of their existing resources (more specifically large hydro and nuclear) assume that the carbon free attributes are worthless, which unjustifiably increases the PCIA. We argued that the carbon free attribute certainly has value, evident by the fact that we are spending millions every year to acquire those attributes from owners of hydro facilities in the northwest, Canada, and lately from PG&E in order to meet our self-imposed commitment to be 100% carbon free.

After nearly a year of negotiations, the IOUs agreed that the attributes have value, however, instead of including that value in calculating the worth of the these resources, they agreed to allocate, for free, the carbon free attributes associated with the large hydro and nuclear power to the CCAs pro rata to their share of the PG&E service territory’s total demand.

A decision from the CPUC to accept, modify or deny the working proposal to allocate these carbon free attributes is expected in early May.

Silicon Valley Clean Energy Authority (“SVCE”) has a 100% clean energy goal comprised of an aggressive Renewable Portfolio Standard (RPS)\(^1\) of 50% in 2020 with the balance coming from non-RPS carbon-free resources such as large hydroelectricity. Market prices for carbon-free non-RPS energy have increased dramatically due to the proliferation of CCAs increasing the demand for these attributes.

---

\(^1\) RPS resources are clean, carbon-free energy deemed eligible by the California Energy Commission (CEC) and include solar, wind, small hydro, geothermal and biomass. For 2020, California’s mandated RPS is 33% of retail sales.
At the December 11, 2019 SVCE Board meeting, staff sought authority to execute a Confirmation Agreement to receive the full interim allocation for 2020 associated with PG&E’s carbon-free resources (i.e., large hydroelectric and nuclear). The Board did not approve the resolution and instead directed staff to assess interest from other LSEs to buy from SVCE its share of the nuclear allocations in 2020 thus avoiding having to demonstrate nuclear energy on its annual Power Content Label (PCL), while generating positive reserve contributions for SVCE. Through informal discussions with multiple community choice aggregators, staff received no interest in buying or taking SVCE’s allocation. Generally, other CCAs were either going to take the allocation but did not want more than their own share or had declined to take their share of the nuclear allocation.

Via a separate CPUC proceeding that has been underway since last summer, a decision related to the allocation for the post-2020 period is expected this summer. Staff intends to return to the Board with a discussion regarding longer-term allocations of PG&E’s resources including RPS, large hydroelectricity, nuclear and resource adequacy.

**ANALYSIS & DISCUSSION**

With this offer to allocate the paid-for carbon-free attribute to SVCE, we now have the choice to avoid paying twice for the carbon-free attributes.

There are essentially two practical alternatives:

1. Take the GHG-free allocation of large hydro and nuclear (Recommendation)
2. Take the GHG-free allocation of large hydro only

Alternative 1 will result in a net contribution to reserves between $2 and $3 million. Alternative 2 will result in a net contribution to reserves between $600 thousand and $1.2 million.

Alternative #1 would result in SVCE’s PCL for GreenStart showing roughly 48% RPS, 40% large hydroelectricity, and 12% nuclear. Alternative #2 would result in SVCE’s PCL for GreenStart showing 48% RPS and 52% large hydroelectricity. Under both alternatives, there is no change to the 2020 GreenPrime power content label as it is sourced with 100% RPS resources.

Rejecting our allocation of the carbon free attributes from Diablo Canyon will have no impact on the operation of the Diablo Canyon nuclear power plant. Diablo Canyon, like any other nuclear power generation, will always operate at full capacity 24/7 except during times of maintenance and inspection, generally scheduled for 3 weeks in the late Fall. Therefore, accepting or rejecting the free allocation should have no impact on the operation of the plant, nor for that matter, the flow of electricity from the plant to the grid, understanding that electricity travels in the path of least resistance. Neither alternative will impact the closure of the plant in 2025.

**STRATEGIC PLAN**

Execution of a Confirmation Agreement with PG&E comprised of allocated carbon-free attributes including attributes generated by DCPP for deliveries in 2020 will better enable staff to meet its clean power supply goals and rate objectives as provided for in SVCE’s Strategic Plan, Power Supply Goals 11 and 12. In addition, the allocation from PG&E’s portfolio provides equity as PG&E currently assigns all the carbon-free attributes to its own Power Content Label while CCA’s are obligated to pay the above market costs associated with these carbon-free resources.

**ALTERNATIVES**

The alternatives to the recommendation include the following:

A. Alternative #2 above to only accept the carbon-free attributes associated with the hydro energy and maintain the 100% carbon free goal at a higher cost than the recommended alternative. Or to be cost-equivalent with the recommendation, SVCE could reduce its self-imposed 100% carbon-free goal.

B. Reject the nuclear and hydro and allowing PG&E to retain SVCE’s load share of its carbon-free non-RPS portfolio and maintain the 100% carbon free goal at a higher cost than the recommended alternative. Or, to be cost-equivalent with the recommendation, SVCE could further reduce its self-imposed 100% carbon-free goal.

Alternatives A and B above would expose SVCE to significantly higher carbon-free procurement costs and fail to remedy the inequity associated with PG&E using its entire carbon-free non-RPS portfolio on its Power Content...
Label while SVCE customers pay the PCIA for those resources without receiving the carbon-free benefits. Or, if SVCE reduces its 100% carbon free commitment in order to be cost-equivalent with the recommendation, we would engage in a different public relations campaign to explain the presence of an “unspecified technology source” in the annual power content label.

**FISCAL IMPACT**
Approval of the request to delegate authority to execute a Confirmation Agreement with PG&E for full allocation of carbon-free resources is expected to result in a net contribution to reserves between $2-$3 million.

The long-term allocation – that will be determined later in the year via a separate CPUC proceeding – has the potential to contribute approximately $5 million/year to reserves and approximately $20 million through 2025, the year the nuclear plant will be shut down permanently.
Item 6: Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with Rabbitbrush Solar, LLC for Renewable Solar PV Supply (PCC1) and Energy Storage in Substantial Form and Including Any Necessary Ancillary Agreements and Documents

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Monica Padilla, Director of Power Resources

Date: 4/8/2020

RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy Authority (SVCE) Board authorize the Chief Executive Officer (CEO) to execute the attached Power Purchase Agreement (PPA) with Rabbitbrush Solar, LLC ("Rabbitbrush") in substantial form and any necessary ancillary agreements and documents with the following key terms:

- 40 MW of Solar photovoltaic (PV) supply with 8 MW of energy storage qualifying as Portfolio Category Content One (PCC1) renewable resource;
- 15-Year term power delivery from June 30, 2022 to June 29, 2037; and
- Total amount not-to-exceed $64,323,500.

Execution of the Rabbitbrush PPA will help SVCE meet its clean energy goals, Renewable Portfolio Standard and long-term procurement requirements.

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 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.

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 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 Rabbitbrush solar plus storage ("hybrid") resources was offered into the Joint RFO. In total six projects were shortlisted. Two geothermal projects (Ormat and Coso) have been approved by the Board and negotiations continue for three additional solar plus storage new projects. Table 1 is a status summary of the shortlisted projects and Table 2 is SVCE’s progress towards meeting the long-term RPS goals and mandates.

---

Table 1: 2019 Joint RFO Shortlisted Projects (SVCE’s Share)

<table>
<thead>
<tr>
<th>Project/Technology</th>
<th>Status</th>
<th>Approximate % of load served</th>
<th>Term (years)</th>
<th>Lifetime Nominal contract cost (M$)</th>
<th>Average Annual Cost (M$)</th>
<th>Nominal cost as % of power supply expenses</th>
<th>Expected Board date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Ormat Geothermal</td>
<td>Executed</td>
<td>1.4%</td>
<td>10</td>
<td>$43</td>
<td>$4</td>
<td>2%</td>
<td>Feb-20</td>
</tr>
<tr>
<td>2 Coso Geothermal</td>
<td>Executed</td>
<td>9.6%</td>
<td>15</td>
<td>$331</td>
<td>$22</td>
<td>9%</td>
<td>Mar-20</td>
</tr>
<tr>
<td>3 Rabbitbrush Solar + Storage</td>
<td>Pending Approval</td>
<td>3.0%</td>
<td>15</td>
<td>$64</td>
<td>$4</td>
<td>2%</td>
<td>Apr-20</td>
</tr>
<tr>
<td>4 Solar+Storage</td>
<td>Under negotiation</td>
<td>6.3%</td>
<td>20</td>
<td>$180</td>
<td>$9</td>
<td>4%</td>
<td>Jun-20</td>
</tr>
<tr>
<td>5 Solar+Storage</td>
<td>Under negotiation</td>
<td>3.9%</td>
<td>20</td>
<td>$82</td>
<td>$4</td>
<td>2%</td>
<td>Jun-20</td>
</tr>
<tr>
<td>6 Solar+Storage</td>
<td>Under negotiation</td>
<td>1.1%</td>
<td>15</td>
<td>$32</td>
<td>$2</td>
<td>1%</td>
<td>Jun-20</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>25%</strong></td>
<td></td>
<td><strong>$730</strong></td>
<td><strong>$46</strong></td>
<td><strong>19%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 2: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period – Before Execution of Rabbitbrush PPA

<table>
<thead>
<tr>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>50%</td>
<td>60%</td>
</tr>
<tr>
<td>2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (geothermal, wind &amp; solar plus storage)</td>
<td>29.0%</td>
<td>33.0%</td>
<td>31.0%</td>
</tr>
</tbody>
</table>

**DISCUSSION/ANALYSIS:**

Rabbitbrush Solar, LLC’s parent company is First Solar. First Solar has developed, financed, engineered, constructed and currently operates many of the world’s largest grid-connected PV power plants. When online, Rabbitbrush will produce 100 MW Solar PV with 20 MW of lithium-ion battery. SVCE’s share of the project is 40% and under a separate PPA MBCP will take the other 60% of the output.
Project Summary (SVCE’s Share)

<table>
<thead>
<tr>
<th>Counterparty/Project Name</th>
<th>First Solar/Rabbitbrush Solar, LLC (“Rabbitbrush”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product</strong></td>
<td>Bucket 1 (PCC1) Renewable Energy with Energy Storage System Resource Adequacy</td>
</tr>
<tr>
<td><strong>Delivery Term</strong></td>
<td>15 years</td>
</tr>
<tr>
<td></td>
<td>June 30, 2022 through June 29, 2037</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td>Kern County, California</td>
</tr>
<tr>
<td><strong>Average Annual Contract Capacity</strong></td>
<td>40 MW Solar PV plus</td>
</tr>
<tr>
<td></td>
<td>8 MW of Battery (2.5-hour discharge duration)</td>
</tr>
<tr>
<td><strong>Percentage of Retail Load Served</strong></td>
<td>3%</td>
</tr>
<tr>
<td><strong>Contract Price Structure</strong></td>
<td>Fixed price ($/MWh) for PV plus fixed battery capacity payment ($ per kW-month). No escalator</td>
</tr>
</tbody>
</table>

Project Value and Merits

Rabbitbrush is expected to generate enough clean energy to meet approximately three percent (3%) of SVCE’s energy needs on an annual basis. Since Rabbitbrush is a PCC1 renewable resource, it will count towards SVCE’s RPS requirements including long-term procurement mandates. The addition of the energy storage component is intended to increase the energy value of the PV system by enabling the storing of energy in less valuable hours which is then deployed in higher valued hours. The battery will also allow for opportunities to receive ancillary service benefits from the California Independent System Operator (CAISO).

California’s regulatory rules related to Resource Adequacy for solar and solar plus storage resources are in flux. The capacity which may be counted from solar only projects towards reliability has been heavily discounted such that a solar-only project is not considered a resource adequate to effectively meet reliability requirements. The inclusion of storage boosts the PV’s ability to meet reliability requirements, however the actual amount which may be counted is subject to future regulatory changes.

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 29% RPS in CP4. Rabbitbrush is expected to come on-line June 2022, midway through CP4 bringing SVCE’s long-term RPS in CP4 to 31% which is 5% above California’s mandated long-term RPS requirement of 26%.

With the inclusion of Rabbitbrush, 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; b) possibility of termination of one or more PPA’s; c) meet SVCE’s overall clean energy goals; and d) reduce portfolio cost.
Table 3: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>50%</td>
<td>57%</td>
</tr>
<tr>
<td>2.</td>
<td>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3.</td>
<td>State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>4.</td>
<td>SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (geothermal, wind &amp; solar plus storage)</td>
<td>29.0%</td>
<td>33.0%</td>
<td>31.0%</td>
</tr>
<tr>
<td>5.</td>
<td>SVCE: RPS Achieved with Proposed Rabbitbrush Solar + Storage</td>
<td>31.0%</td>
<td>36.0%</td>
<td>34.0%</td>
</tr>
<tr>
<td>6.</td>
<td>Open Position relative to State Mandate (Row #3) + Above/ (-) Short</td>
<td>+5%</td>
<td>+3%</td>
<td>-3%</td>
</tr>
</tbody>
</table>

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 2: SVCE Clean Net Open Position with Rabbitbrush Solar + Storage (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. Execution of the Rabbitbrush, LLC agreement will help satisfy Goal #10.

ALTERNATIVE
The Joint RFO selection criteria considered all submitted offers against quantitative and qualitative criteria. The Rabbitbrush, 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/Rabbitbrush, LLC PPA will not exceed $64,323,500 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. SVCE/Rabbitbrush, LLC Power Purchase Agreement (Redacted version)
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Rabbitbrush Solar, LLC

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

Description of Facility: A 40 MW solar photovoltaic facility plus 8 MW/20 MWh (2.5 hour) battery energy storage system, located in Kern County, California.

Milestones:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Completed</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>09/30/2019</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>03/31/2021</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Completed</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Completed</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>08/18/2021</td>
</tr>
<tr>
<td>Guaranteed Construction Start Date</td>
<td>08/18/2021</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>09/01/2020</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>06/30/2022</td>
</tr>
<tr>
<td>Guaranteed Commercial Operation Date</td>
<td>06/30/2022</td>
</tr>
</tbody>
</table>

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years.

Expected Energy:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>
**Guaranteed Capacity:** 40 MW

**Storage Contract Capacity:** 8 MW

**Storage Contract Output:** 20 MWh (at 2.5 hour discharge)

**Storage Facility Loss Factor:**

**Guaranteed Storage Availability:**

**Contract Price**

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
</tr>
</tbody>
</table>
Product:

☑ PV Energy
☑ Discharging Energy
☑ Green Attributes (Portfolio Content Category 1)
☑ Storage Capacity
☑ Capacity Attributes (select options below as applicable)
  ☐ Energy Only Status
  ☑ Full Capacity Deliverability Status (completed)
☑ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security: [Redacted]

Performance Security: [Redacted]
TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS ......................................................................................................................... 1
  1.1 Contract Definitions .................................................................................................................. 1
  1.2 Rules of Interpretation ............................................................................................................. 21

ARTICLE 2 TERM; CONDITIONS PRECEDENT ................................................................................. 22
  2.1 Contract Term .......................................................................................................................... 22
  2.2 Conditions Precedent .............................................................................................................. 22
  2.3 Development; Construction; Progress Reports ......................................................................... 23
  2.4 Remedial Action Plan ............................................................................................................... 24

ARTICLE 3 PURCHASE AND SALE ........................................................................................................ 24
  3.1 Purchase and Sale of Product .................................................................................................. 24
  3.2 Sale of Green Attributes ......................................................................................................... 24
  3.3 Imbalance Energy .................................................................................................................... 24
  3.4 Ownership of Renewable Energy Incentives .......................................................................... 25
  3.5 Future Environmental Attributes ............................................................................................ 25
  3.6 Test Energy ............................................................................................................................... 25
  3.7 Capacity Attributes .................................................................................................................. 25
  3.8 Resource Adequacy Failure ..................................................................................................... 26
  3.9 CEC Certification and Verification ......................................................................................... 26
  3.10 [Intentionally Deleted] .......................................................................................................... 27
  3.11 RPS Standard Terms and Conditions ................................................................................. 27
  3.12 Compliance Expenditure Cap ................................................................................................. 27
  3.13 Project Configuration ............................................................................................................ 28

ARTICLE 4 OBLIGATIONS AND DELIVERIES .................................................................................... 28
  4.1 Delivery .................................................................................................................................... 28
  4.2 Title and Risk of Loss ................................................................................................................ 29
  4.3 Forecasting ............................................................................................................................... 29
  4.4 Dispatch Down/Curtailment ...................................................................................................... 31
  4.5 Charging Energy Management ............................................................................................... 32
  4.6 Reduction in Delivery Obligation ............................................................................................ 33
  4.7 Guaranteed Energy Production ............................................................................................... 34
  4.8 Storage Availability .................................................................................................................. 34
  4.9 Storage Capacity Tests ............................................................................................................ 34
  4.10 WREGIS ................................................................................................................................. 35
  4.11 Green-E Certification .............................................................................................................. 36

ARTICLE 5 TAXES ................................................................................................................................. 36
  5.1 Allocation of Taxes and Charges ............................................................................................. 36
  5.2 Cooperation .............................................................................................................................. 37

ARTICLE 6 MAINTENANCE OF THE FACILITY .................................................................................. 37
6.1 Maintenance of the Facility .............................................................. 37
6.2 Maintenance of Health and Safety ...................................................... 37
6.3 Shared Facilities ........................................................................... 37

ARTICLE 7 METERING ........................................................................... 37
7.1 Metering ....................................................................................... 37
7.2 Meter Verification ........................................................................ 38

ARTICLE 8 INVOICING AND PAYMENT; CREDIT ........................................ 38
8.1 Invoicing ....................................................................................... 38
8.2 Payment ......................................................................................... 38
8.3 Books and Records ....................................................................... 39
8.4 Payment Adjustments; Billing Errors ................................................. 39
8.5 Billing Disputes ............................................................................ 39
8.6 Netting of Payments ...................................................................... 40
8.7 Seller’s Development Security .......................................................... 40
8.8 Seller’s Performance Security .......................................................... 40
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral .... 40
8.10 Financial Statements ..................................................................... 41

ARTICLE 9 NOTICES .............................................................................. 41
9.1 Addresses for the Delivery of Notices ................................................ 41
9.2 Acceptable Means of Delivering Notice ............................................ 41

ARTICLE 10 FORCE MAJEURE ................................................................. 42
10.1 Definition ...................................................................................... 42
10.2 No Liability If a Force Majeure Event Occurs ..................................... 43
10.3 Notice ............................................................................................ 43
10.4 Termination Following Force Majeure Event ....................................... 43

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION ................................. 43
11.1 Events of Default .......................................................................... 43
11.2 Remedies; Declaration of Early Termination Date ............................... 46
11.3 Termination Payment ..................................................................... 47
11.4 Notice of Payment of Termination Payment ...................................... 47
11.5 Disputes With Respect to Termination Payment ................................. 48
11.6 Rights And Remedies Are Cumulative ............................................. 48
11.7 Seller Pre-COD Liability Limitations ................................................. 48

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES 48
12.1 No Consequential Damages ............................................................. 48
12.2 Waiver and Exclusion of Other Damages .......................................... 48

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY ............... 49
13.1 Seller’s Representations and Warranties ............................................ 49
13.2 Buyer’s Representations and Warranties ........................................... 50
13.3 General Covenants ....................................................................... 51
13.4 Prevailing Wage ................................................................. 51

ARTICLE 14 ASSIGNMENT ................................................................. 52
14.1 General Prohibition on Assignments .................................. 52
14.2 Collateral Assignment ...................................................... 52

ARTICLE 15 DISPUTE RESOLUTION ...................................................... 54
15.1 Venue ............................................................................ 54
15.2 Dispute Resolution .......................................................... 54

ARTICLE 16 INDEMNIFICATION ......................................................... 54
16.1 Mutual Indemnity ............................................................ 54
16.2 Notice of Claim .............................................................. 55
16.3 Failure to Provide Notice ................................................ 55
16.4 Defense of Claims ........................................................... 55
16.5 Subrogation of Rights .................................................... 56
16.6 Rights and Remedies are Cumulative ................................ 56

ARTICLE 17 INSURANCE ................................................................. 56
17.1 Insurance ..................................................................... 56

ARTICLE 18 CONFIDENTIAL INFORMATION ....................................... 57
18.1 Definition of Confidential Information ............................. 57
18.2 Duty to Maintain Confidentiality ................................... 57
18.3 Irreparable Injury; Remedies .......................................... 58
18.4 Disclosure to Lenders, Etc .............................................. 58
18.5 Press Releases ............................................................... 58

ARTICLE 19 MISCELLANEOUS ....................................................... 58
19.1 Entire Agreement; Integration; Exhibits ......................... 58
19.2 Amendments .................................................................. 59
19.3 No Waiver ..................................................................... 59
19.4 No Agency, Partnership, Joint Venture or Lease ............. 59
19.5 Severability .................................................................... 59
19.6 Mobile-Sierra ............................................................... 59
19.7 Counterparts; Electronic Signatures ............................... 59
19.8 Electronic Delivery ........................................................ 59
19.9 Binding Effect ............................................................... 60
19.10 No Recourse to Members of Buyer ............................... 60
19.11 Forward Contract ........................................................ 60
19.12 Further Assurances ...................................................... 60
Exhibit A  Facility Description
Exhibit B  Major Project Development Milestones and Commercial Operation
Exhibit C  Compensation
Exhibit D  Scheduling Coordinator Responsibilities
Exhibit E  Progress Reporting Form
Exhibit F-1 Form of Average Expected Energy Report
Exhibit F-2 Form of Monthly Available Generating Capacity Report
Exhibit G  Guaranteed Energy Production Damages Calculation
Exhibit H  Form of Commercial Operation Date Certificate
Exhibit I  Form of Installed Capacity Certificate
Exhibit J  Form of Construction Start Date Certificate
Exhibit K  Form of Letter of Credit
Exhibit L  Form of Guaranty
Exhibit M  Form of Replacement RA Notice
Exhibit N  Notices
Exhibit O  Storage Capacity Tests
Exhibit P  Storage Facility Availability
Exhibit Q  Operating Restrictions
Exhibit R  Metering Diagram
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 intends to develop, design, permit, construct, own or otherwise control, and operate the Facility; and

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

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

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

“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.

“Ancillary Services” means all ancillary services, products and other attributes, if any, associated with the Facility.

“Approved Forecast Vendor” means a 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” means Silicon Valley Clean Energy Authority, a California joint powers authority.

“Buyer Bid Curtailment” means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(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 or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of 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 (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (ii) a curtailment of any portion of the Generating Facility or its output or any reduction in PV Energy arising out of Buyer’s issuance of any Discharging Notice or any other instruction, order or other communication requesting or requiring the Storage Facility to be discharged.

“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 (c) Buyer Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“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 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), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the 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.

“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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the as-available Energy produced by the Generating Facility and 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. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter.

“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 consistent with Section 4.9 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.

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

“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 .

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

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

“**Curtailment Order**” means any of the following:

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

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

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

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

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which generation from the Generating Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“**Daily Delay Damages**” means an amount equal to

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

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

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

“**Deemed Delivered Energy**” means the amount of 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, for any time period, be equal to

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).

“**Deliverability Allocation**” means the percentage of the Guaranteed Capacity for which the Facility has received an allocation of TP Deliverability (as defined in the CAISO Tariff) pursuant to Section 8.9 of Appendix DD to the CAISO Tariff.

“**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, except as otherwise provided in this Agreement, such as in the definition of Buyer Curtailment Order, 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.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of PV Energy or Discharging Energy, as applicable, 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.

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

“Excused Event” has the meaning set forth in Exhibit P.

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

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

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) 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.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

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

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

“Forecasting Penalty” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities in such hour with respect to Facility Energy, 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 Day-Ahead Forecast, or if there is no Day-Ahead Forecast, then 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.

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” means either (i) “Full Capacity Deliverability Status” as such term is defined in the CAISO Tariff or (ii) a Deliverability Allocation of one hundred percent (100%) has been achieved.

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

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

“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; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of 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 Capacity” means the amount of generating capacity of the Generating
Facility, as measured in MW at the Delivery Point, 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” means an amount of Adjusted Facility Energy, as
measured in MWh, equal to

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

“Guarantor” means, with respect to Seller, (a) First Solar, Inc., (b) a Person that is
reasonably acceptable to Buyer, or (c) any Person that (i) Buyer does not already have any material
credit exposure to under any other agreements, guarantees, or other arrangements at the time its
Guaranty is issued, (ii) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer,
(iii) has an Investment Grade Credit Rating, (iv) has a tangible net worth of at least $100 million,
(v) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (vi) 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.

“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 Facility Energy deviates from the amount of Scheduled Energy.

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

“Indemnified Group” 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, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as Exhibit I hereto.

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

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

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

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

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

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

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, 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), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

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

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

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.
“Lost Output” has the meaning set forth in Section 4.7.

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

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

“Maximum Charging Capacity” has the meaning set forth in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in Exhibit A.

“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 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 Interval, the Real-Time Market LMP at the Facility’s PNode is less than Zero dollars ($0).

“Negative LMP Costs” has the meaning set forth in Exhibit C.

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

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

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

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

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

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

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

“**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 two (2) consecutive Contract Year period during the Delivery Term.

“**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 satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than [redacted] 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 Generating Facility, or has retained a third-party with such experience to operate the Generating Facility.

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

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

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

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

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

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale 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 includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

“PV Energy” means that portion of Energy that is delivered from the Generating Facility directly to the Delivery Point, net of Electrical Losses, and is not Charging Energy or 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 date that is sixty (60) days after the Commercial Operation Date.
“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Planned Outage, (c) a Forced Facility Outage, and (d) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

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

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

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

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

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

“**Renewable Energy Incentives**” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; 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.

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

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

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

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

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

“Security Interest” has the meaning set forth in Section 8.8.

“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.

“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.
“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 (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for two and one-half (2.5) consecutive hours and (b) 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 in accordance with Section 5(b) of Exhibit B and from time to time pursuant to 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 of this Agreement.

“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 ten percent (10%) loss in Energy, the Storage Facility Loss Factor would be (.90).

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), 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 or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

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

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

“**Test Energy**” means 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 within the CAISO grid from the Delivery Point.

“Ultimate Parent” means First Solar Development, LLC.

“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 means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;
(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:
(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

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

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

(d) All regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required 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 that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

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

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

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall hold 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, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.
For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) 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 after the occurrence of (a), (b) or (c), 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, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**ARTICLE 3**

**PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of 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 of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, 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. Subject to Buyer’s obligation to purchase 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 and receive 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 there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments and charges related to such Imbalance Energy shall be 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. The Parties intend for the Facility (including the Storage Facility) to maintain eligibility for all available Renewable Energy Incentives and Tax Credits, including ITC, and Buyer and Seller each agree to cooperate reasonably as required to maintain such eligibility and to avoid risk of recapture of any Renewable Energy Incentives or Tax Credits, including ITC.

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 Section 3.5(b), 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 bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); provided, that the Parties acknowledge and agree 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 **(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, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

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

(c) For the duration of the Delivery Term, 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.

3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to 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 seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 CEC Certification and Verification. Subject to Section 3.12, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the RPS Eligibility Guidebook (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, subject to Section 3.12, obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an...
act or omission of Seller. Seller 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  **[Intentionally Deleted]**.

3.11  **RPS Standard Terms and Conditions**.

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

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery 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.

(d) 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.

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

3.12  **Compliance Expenditure Cap**. If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (“**Compliance Costs**”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [Redacted].
internal administrative costs association with obtaining, maintaining, conveying or effectuating, 
Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not 
obligated to take any Compliance Actions described in the Notice) and shall, within such time, 
either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed 
the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance 
Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for 
which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by 
Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be 
deemed to have waived its rights to require Seller to take the Compliance Actions that are the 
subject of the Notice, and Seller shall have no further obligation to take, and no liability for any 
failure to take, such Compliance Actions described in the Notice.

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 enabling the 
Storage Facility to be charged from the grid); 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 (and Seller’s Lenders) as set forth in a 
written agreement executed by the Parties.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the 
Commercial Operation Date and through the end of the Contract Term, Seller shall supply and 
deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at 
the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for 
paying or satisfying when due any costs or charges imposed in connection with the delivery of 
Facility Energy to the Delivery Point, including without limitation (but without limiting Buyer’s
obligation to pay amounts associated with the Storage Facility Loss Factor as expressly provided herein), Station Use (which, for the avoidance of doubt, may be supplied from Energy from the Facility), 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 on Seller 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 with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the 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 associated with the Facility Energy 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, including CAISO requirements applicable to projects similar to the Facility.

(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 for the Facility (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 for the Facility (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) expected Energy, and (iv) Stored Energy Level, in each case, for each Settlement Interval of 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 Settlement Interval of each hour, Seller’s best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the expected Energy, and (iv) Stored Energy Level. 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. By 5:00 PM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Buyer will provide to Seller the initial preferred hourly Charging Energy and Discharging Energy schedules for the Storage Facility for each hour of the applicable date of delivery.

(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, in each case, whether due to Forced Facility Outage, Force Majeure 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 or Storage Capacity 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 notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or Storage Capacity, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Seller shall also provide access to routinely updated forecasts for each Settlement Interval of each hour of the expected Energy. Such real-time forecasts of Energy shall be provided by the CAISO, or if the CAISO does not provide such forecasts for the Facility then such forecasts shall be provided by an Approved Forecast Vendor. 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 reasonably acceptable to Buyer; provided that Buyer specifies the method no later than twenty (20) Business 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 Seller’s failure and Buyer’s scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) **CAISO Tariff Requirements.** 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 such reduction or any such Curtailment Order, Buyer Curtailment Order or notice 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 in excess of the Curtailment Cap 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.** Subject to the last sentence of this Section 4.4(d), 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 reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols
or practices are not in compliance with then-current methodologies, Seller shall, subject to the last sentence of this Section 4.4(d), take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with this Section 4.4(d). For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.12.

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 from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Procedures), 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 Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Procedures 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, or as otherwise required by applicable law. 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. Subject to providing Buyer one-hundred twenty (120) days’ prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than , and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days’ prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), 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, 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) **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

(f) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Storage Capacity Tests, 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, (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, Transformer Failure, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods (“Lost Output”) during the applicable Performance Measurement Period, and (3) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit G. 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 **Storage Availability.**

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than [Redacted] (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 additional Storage Capacity Tests 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. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(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, including compensation under Exhibit C.

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 as to such Deficient Month so that it takes effect for the calendar year during which Deficient Month occurred, but no later than May 1 of the following calendar year, or (y) provides Replacement Green Attributes (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 (i) 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, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, 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 **Green-E Certification.** 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 the Facility is eligible for Green-e certification.

### ARTICLE 5

**TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such
5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6**
**MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer’s emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of 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 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 Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. 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 meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer’s prior written approval,
not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation 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 Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

**ARTICLE 8**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of 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 to the Delivery Point, 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, Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. 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 or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its
applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month LIBOR rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies, except to the extent such meter inaccuracies are recognized by CAISO or 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 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 after the Effective Date. Subject to Section 11.7, Seller shall maintain the Development Security in full force and effect, provided, however that Seller shall not have any obligation to replenish the Development Security after any draw thereon. 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 in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is 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. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance
Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 Financial Statements. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 9
NOTICES

9.1 Addresses for the Delivery of Notices. 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 N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

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

**ARTICLE 10**

**FORCE MAJEURE**

10.1 **Definition.**

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

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

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve
Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11**
**DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:
(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within 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 deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv), 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)(v), 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 14.1 or 14.2, as applicable; or

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

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

(i) if at any time, 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 within [redacted] after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a reasonable Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit...
G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(v) 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;

(ix) 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;
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

(x) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that
terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) subject to the limitations in Section 11.7, 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 the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for the 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 the 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 the 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, as applicable, and whether the
Termination Payment, if applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 Rights And Remedies Are Cumulative. Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 Seller Pre-COD Liability Limitations.

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 A THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION HEREUNDER, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR
ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, 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 the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) The Facility is located in the State of California.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller, or an Affiliate on behalf of Seller if permitted under CEQA, will be the applicant on any CEQA documents.

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of
indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

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

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

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

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

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

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.
ARTICLE 14
ASSIGNMENT

14.1 General Prohibition on Assignments. Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, 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, 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), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

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

(ii) Not assume this Agreement;

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

(h) Subject to Lender’s cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof; and, promptly after Lender’s written request, Buyer must enter into such replacement agreement with Lender or Lender’s designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer’s written request which must be made within forty-five (45) days after Buyer receives
notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Mutual Indemnity.**

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

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

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“Claim”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.
16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party’s rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance with a minimum of liability limits in the amount of [Redacted]. Coverage shall include products and completed operations, personal & advertising injury insurance, contractual liability, specifically covering Seller’s obligations under this Agreement. The policy shall include Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Umbrella or Excess Liability Insurance.** Seller shall maintain, or cause to be maintained at its sole expense, an Umbrella or Excess Liability Insurance policy in a minimum amount of [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 California Law. Employer’s Liability insurance shall be [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.

(d) **Business Auto Liability Insurance.** Seller shall maintain at all times during the Contract Term Business Auto Liability insurance for bodily injury and property damage with limits of [Redacted]. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating
equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Lender (if any) as the loss payee where its interest may appear.

(f) **Pollution Legal Liability.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of **redacted**. Such insurance shall include coverage for bodily injury and property damage, including clean-up costs and defense costs, resulting from sudden & accidental or new gradual pollution conditions.

(g) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry the same levels of insurance as Seller where exposure exists. All subcontractors shall include Seller as an additional insured to (i) Commercial General Liability insurance; (ii) Employers’ Liability coverage; and (iii) Business Auto Liability insurance for bodily injury and property damage. All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

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

**ARTICLE 18**

**CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas,
summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “Disclosing Party”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Disclosure to Lenders, Etc. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other
Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.
19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **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.

19.11 **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.

19.12 **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.

**RABBITBRUSH SOLAR, LLC**

By: __________________________
Name: _________________________
Title: __________________________

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

By: __________________________
Name: _________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Rabbitbrush Solar + Storage Project

Site includes all or some of the following APNs:

County: Kern County, California

CEQA Lead Agency: Kern County

Type of Generating Facility: Solar Photovoltaic

Operating Characteristics of Generating Facility: 100 MW as-available solar photovoltaic

Type of Storage Facility: battery energy storage facility

Operating Characteristics of Storage Facility:

- Maximum Stored Energy Level at COD (MWh): 50 MWh
- Maximum Charging Capacity at COD: 20 MW at the inverters
- Maximum Discharging Capacity at COD: 20 MW at the inverters

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Delivery Point: The Pnode assigned to the Facility by the CAISO

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

Facility Interconnection Point: SCE’s Whirlwind 220kv Substation

Participating Transmission Owner: Southern California Edison Company
EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

   (a) **Construction Start** will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the **Construction Start Date**. The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   (b) **Major Project Development Milestone** means the Guaranteed Construction Start Date. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer for each day for which the Major Project Development Milestone has not been completed. Daily Delay Damages shall be payable to Buyer by Seller if Seller achieves the Commercial Operation Date by the Guaranteed Commercial Operation Date, all accrued Daily Delay Damages are automatically waived. If Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall be entitled to collect all accrued Daily Delay Damages on the Guaranteed Commercial Operation Date and Buyer shall invoice Seller for all accrued Daily Delay Damages, and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the full amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestone, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **Commercial Operation** means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the **COD Certificate**), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The **Commercial Operation Date** shall be the later of.

   (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

   (b) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day
after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller

Commercial Operation Delay Damages shall be paid in advance on a monthly basis by Seller to Buyer. A prorated amount of Commercial Operation Delay Damages will be returned to Seller if the Commercial Operation Date occurs during a month in which the Commercial Operation Delay Damages were paid in advance. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both 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) Seller has not acquired its conditional use permit or any other material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility by March 31, 2021, despite the exercise of diligent and commercially reasonable efforts by Seller;

   (b) a Force Majeure Event occurs; or

   (c) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by March 5, 2022, despite the exercise of commercially reasonable efforts by Seller; or

   (d) 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 granted under Section 4(a), 4(b), and 4(c) above under the Development Cure Period shall not exceed for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.
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 or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to [redacted], 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 or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [redacted] and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
EXHIBIT C

COMPENSATION

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

(a) **Renewable Rate.**

(b) **Deemed Delivered Energy.**

(c) **Excess Contract Year Deliveries.**

(d) **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").

(e) **Curtailment Payments.**

(f) **Storage Rate.** All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by the Availability Adjusted Storage Contract Capacity for such month, as determined under Exhibit P. Without limiting Buyer’s obligation to pay Seller for Discharging Energy included in Adjusted Facility Energy, such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(g) **Test Energy.** Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(h) **Tax Credits.** The Parties agree that the neither the 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.

Exhibit C - 1
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

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer 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 and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. 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 or by electronic mail transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 such 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 File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master 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, such consent not to be unreasonably withheld.

(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. Summary of activities during the previous calendar quarter or month, as applicable.

6. Forecast of activities scheduled for the current calendar quarter.

7. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

8. List of issues that are likely to potentially affect Seller’s Milestones.

9. 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.

10. 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.

11. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

12. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

AVERAGE EXPECTED ENERGY

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

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

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Available Generating Capacity, MW Per Hour – January

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The following 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.
Available Generating Capacity, MW Per Hour – February

The following 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.

| 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 |
|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9    |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28   |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
Available Generating Capacity, MW Per Hour – March

The following 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.

|   | 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 |
|---|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| 1 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 2 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 3 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 4 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 5 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 6 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 7 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 8 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 9 |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 10|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 11|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 12|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 13|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 14|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 15|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 16|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 17|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 18|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 19|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 20|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 21|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 22|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 23|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 24|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 25|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 26|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 27|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 28|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 29|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 30|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| 31|      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
Available Generating Capacity, MW Per Hour – April

The following 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.

<table>
<thead>
<tr>
<th>1:00</th>
<th>2:00</th>
<th>3:00</th>
<th>4:00</th>
<th>5:00</th>
<th>6:00</th>
<th>7:00</th>
<th>8:00</th>
<th>9:00</th>
<th>10:00</th>
<th>11:00</th>
<th>12:00</th>
<th>13:00</th>
<th>14:00</th>
<th>15:00</th>
<th>16:00</th>
<th>17:00</th>
<th>18:00</th>
<th>19:00</th>
<th>20:00</th>
<th>21:00</th>
<th>22:00</th>
<th>23:00</th>
<th>24:00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Available Generating Capacity, MW Per Hour – May

The following 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.

<table>
<thead>
<tr>
<th></th>
<th>1:00</th>
<th>2:00</th>
<th>3:00</th>
<th>4:00</th>
<th>5:00</th>
<th>6:00</th>
<th>7:00</th>
<th>8:00</th>
<th>9:00</th>
<th>10:00</th>
<th>11:00</th>
<th>12:00</th>
<th>13:00</th>
<th>14:00</th>
<th>15:00</th>
<th>16:00</th>
<th>17:00</th>
<th>18:00</th>
<th>19:00</th>
<th>20:00</th>
<th>21:00</th>
<th>22:00</th>
<th>23:00</th>
<th>24:00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Available Generating Capacity, MW Per Hour – June

The following 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.

|   | 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 |
|---|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|10 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|11 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|12 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|13 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|14 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|15 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|16 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|17 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|18 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|19 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|20 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|21 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|22 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|23 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|24 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|25 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|26 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|27 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|28 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
Available Generating Capacity, MW Per Hour – July

The following 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.

|   | 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 |
|---|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
Available Generating Capacity, MW Per Hour – August

The following 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.

|       | 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 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 29    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 30    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 31    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

Exhibit F-2 - 8
Available Generating Capacity, MW Per Hour – September

The following 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.

|    | 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 |
|----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
Available Generating Capacity, MW Per Hour October

The following 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.

<table>
<thead>
<tr>
<th>1:00</th>
<th>2:00</th>
<th>3:00</th>
<th>4:00</th>
<th>5:00</th>
<th>6:00</th>
<th>7:00</th>
<th>8:00</th>
<th>9:00</th>
<th>10:00</th>
<th>11:00</th>
<th>12:00</th>
<th>13:00</th>
<th>14:00</th>
<th>15:00</th>
<th>16:00</th>
<th>17:00</th>
<th>18:00</th>
<th>19:00</th>
<th>20:00</th>
<th>21:00</th>
<th>22:00</th>
<th>23:00</th>
<th>24:00</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Available Generating Capacity, MW Per Hour – November

The following 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.

|   | 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 |
|---|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
Available Generating Capacity, MW Per Hour December

The following 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.

|       | 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 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 2     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 3     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 4     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 5     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 6     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 7     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 8     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 9     |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 10    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 11    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 12    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 13    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 14    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 15    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 16    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 17    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 18    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 19    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 20    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 21    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 22    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 23    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 24    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 25    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 26    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 27    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 28    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 29    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 30    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| 31    |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[ [(A - B) \times (C - D)] \]

where:

- \( A \) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- \( B \) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- \( C \) = Renewable Rate for the Contract Year, in $/MWh
- \( D \) = 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 Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

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

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 Renewable Power Purchase Agreement dated _______ (“Agreement”) by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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 an aggregate inverter nameplate capacity of no less than _______ of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with an aggregate inverter nameplate capacity of no less than _______ of the Storage Contract Capacity.

4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than _______ of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as projected by the capacity test 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 _______ 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]_.

Exhibit H - 1
Draft Redacted SVCE Rabbitbrush PPA
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: ____________________________

Its: ____________________________

Date: ____________________________
EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“Certification”) of Installed Capacity is delivered by [licensed professional engineer] (“Engineer”) to Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ (“Agreement”) by and between [SELLER ENTITY] 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:

1. 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”);

2. The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for two and one-half consecutive hours 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

3. The sum of 1. and 2. 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 [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 Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

2. the Construction Start Date occurred on _____________ (the “Construction Start Date”); and

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _________________________________.

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

[SELLER ENTITY]

By:_____________________________

Its:_____________________________

Date:_____________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

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

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $[XXXXXXX] (United States Dollars [XXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date ] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.
The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentment of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

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

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

____________________________________
Name and Title of Authorized Representative

Date___________________________

Exhibit K - 3
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [______], a [______] (“Guarantor”), and Silicon Valley Clean Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and [SELLER ENTITY], a [____________________] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20__.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty...
and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

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

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

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

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

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

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

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

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

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company/corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or...
affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Santa Clara, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to
reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

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

GUARANTOR:

[______]

By:______________________________

Printed Name:__________________

Title:____________________________

BUYER:

[______]

By:______________________________

Printed Name:__________________

Title:____________________________

By:______________________________

Printed Name:__________________

Title:____________________________
**EXHIBIT M**

**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:

<table>
<thead>
<tr>
<th>Unit Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td></td>
</tr>
<tr>
<td>Unit SCID</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td></td>
</tr>
<tr>
<td>Resource Type</td>
<td></td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (&quot;substation or transmission line&quot;)</td>
<td></td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
<td></td>
</tr>
<tr>
<td>LCR Area (if any)</td>
<td></td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td></td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td></td>
</tr>
<tr>
<td>Delivery Period</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ____________________________

Its: ____________________________

Date: ____________________________
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>Rabbitbrush Solar, LLC (“Seller”)</th>
<th>Silicon Valley Clean Energy Authority (“Buyer”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street:</td>
<td>Street: 333 W. El Camino Real, Suite 290</td>
</tr>
<tr>
<td>City:</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td>With a copy to:</td>
<td></td>
</tr>
<tr>
<td>Street:</td>
<td></td>
</tr>
<tr>
<td>City:</td>
<td></td>
</tr>
<tr>
<td>Attn:</td>
<td></td>
</tr>
<tr>
<td>Phone:</td>
<td></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
</tbody>
</table>

| **Reference Numbers:**            | **Reference Numbers:**                        |
| Duns:                             | Duns:                                        |
| Federal Tax ID Number:            | Federal Tax ID Number:                       |

| **Invoices:**                     | **Invoices:**                                |
| Attn:                             | Attn: Power Supply Group                     |
| Phone:                            | Phone: (408) 721-5301                        |
| Email:                            | Email: SVCEpowersettlements@svcleanenergy.org |

| **Scheduling:**                   | **Scheduling:**                              |
| Attn:                             | Attn: ZGlobal                                |
| Phone:                            | Phone: (916) 221-4327                        |
| Email:                            | Email: eric@zglobal.biz                      |

<p>| <strong>Confirmations:</strong>                | <strong>Confirmations:</strong>                           |
| Attn:                             | Attn: Monica Padilla, Director of Power Resources |
| Phone:                            | Phone: (408) 721-5301 x1009                  |
| Email:                            | Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a>      |</p>
<table>
<thead>
<tr>
<th>Rabbitbrush Solar, LLC (“Seller”)</th>
<th>Silicon Valley Clean Energy Authority (“Buyer”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Finance Group</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td>BNK:</td>
<td>BNK: [REDACTED]</td>
</tr>
<tr>
<td>ABA:</td>
<td>ABA: [REDACTED]</td>
</tr>
<tr>
<td>ACCT:</td>
<td>ACCT: [REDACTED]</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>With additional Notices of an Event of Default to:</strong></td>
<td><strong>With additional Notices of an Event of Default to:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td>Phone:</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>E-mail:</td>
<td>Phone: (503) 313-0755</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
</tr>
<tr>
<td>With a copy to:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
</tbody>
</table>
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 once per Contract Year within the first quarter of each 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 most recent 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 perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Notwithstanding anything herein to the contrary, any revenues associated with a Storage Capacity Test that is initiated by Seller shall accrue to Buyer.

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, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) 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. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Contract Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge ramp rate;

(4) Determine the Storage Facility discharge ramp rate.

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

(1) time (minutes);

(2) charging energy (MWh);

(3) discharging energy (MWh);

(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 Elements. Each SCT Shall include the following test elements:

(1) The discharging of the Storage Facility to 0% Stored Energy Level;

(2) The charging of the Storage Facility at a constant power charge rate equal to the Storage Contract Capacity as of the commencement of the Storage Capacity Test;

(3) The measurement of the time from when the charge signal is sent until the constant power charge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated charging ramp rate);
(4) The measurement of Energy, as measured by the Storage Facility Meter, that is required to charge the Storage Facility until a 100% Stored Energy Level is achieved;

(5) The discharging of the Storage Facility at a constant power discharge rate equal to the Storage Contract Capacity as of the commencement of the Storage Capacity Test;

(6) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate);

(7) The measurement of Energy, as measured by the Storage Facility Meter, that is discharged from the Storage Facility to the Delivery Point until a 0% Stored Energy Level is achieved as indicated by the battery management system.

E. Test Conditions.

(1) 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.

(2) 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.

(3) 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 D, as applicable, including copies of the raw data taken during the test;

(3) the current level of storage contract capacity, the amount of Energy required to fully charge the battery, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each 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 reasonably 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 the first two and one-half 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) 2.5 hours) shall be divided by two and one-half 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 FACILITY 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, Buyer Default, Storage Capacity Tests, 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. For any other event that results in unavailability of one or more components of the Storage Facility, but not the entire Storage Facility, the \( \text{UNAVAILHRS}_m \) will be proportioned based on the power capability of the component in the Storage Facility that is unavailable relative to the total capability of the Storage Facility. The following illustrates two examples:

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:

   \[ AA = \text{[Redacted]} \]

(iii) If the Monthly Storage Availability is less than [Redacted], then:

   \[ AA = 0 \]
## EXHIBIT Q

### OPERATING RESTRICTIONS

The Storage Facility shall be subject to the following Operating Restrictions:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage Contract Capacity</td>
<td></td>
<td>Measured at the Delivery Point</td>
</tr>
<tr>
<td>Maximum Stored Energy Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum Stored Energy Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Charging Capacity</td>
<td></td>
<td>At Medium Voltage Level as measured by the Storage Facility Meter</td>
</tr>
<tr>
<td>Minimum Charging Capacity</td>
<td></td>
<td>At Medium Voltage Level as measured by the Storage Facility Meter. Station Use must be covered by PV energy, BESS energy or the grid</td>
</tr>
<tr>
<td>Maximum Discharging Capacity</td>
<td></td>
<td>Measured at the Delivery Point</td>
</tr>
<tr>
<td>Minimum Discharging Capacity</td>
<td></td>
<td>Measured at the Delivery Point. Station Use must be covered by PV energy, BESS energy or the grid</td>
</tr>
<tr>
<td>Maximum State of Charge (SOC) during Charging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum State of Charge (SOC) during Discharging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Average State of Charge Range (SOC)</td>
<td></td>
<td>Measured during each Contract Year</td>
</tr>
<tr>
<td>Annual Cycle Limit</td>
<td></td>
<td>One (1) cycle is equal to 1 kWh throughput per kWh calculated by the product of the Storage Contract Capacity and 2.5 hours Not to exceed the stated value Measured during each Contract Year</td>
</tr>
<tr>
<td>Daily Dispatch Limits</td>
<td></td>
<td>One (1) cycle is equal to 1 kWh throughput per kWh calculated by the product of the Storage Contract Capacity and 2.5 hours Not to exceed the stated value</td>
</tr>
<tr>
<td>Maximum Annual Time at High State of Charge (SOC)</td>
<td></td>
<td>Not to exceed the stated value Measured during each Contract Year</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>14. Ramp rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Charging energy source</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT R

METERING DIAGRAM

Exhibit R-1
Silicon Valley Clean Energy
Board of Directors Meeting

April 8, 2020

Appendix A

Power Resource Contracts Executed by CEO
Import Resource Adequacy Capacity Product
Confirmation Agreement
Between
The Energy Authority, Inc. and
Silicon Valley Clean Energy Authority

This confirmation agreement ("Confirmation") dated 3/10/2020 (the "Confirmation Effective Date"), shall document the negotiated transaction between The Energy Authority, Inc. ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), together the "Parties", in which Seller agrees to provide to Buyer the right to Import Resource Adequacy ("RA") Capacity as specified herein. This Transaction is governed by the Western Systems Power Pool Agreement (Effective January 25, 2020) of which both Seller and Buyer are members, along with any amendments and annexes thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below). The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and protocols of the California Independent System Operator ("CAISO"), as amended from time to time ("Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Consistent with Sections 32 and 35 of the Master Agreement, this Confirmation, together with all other transactions, confirmations (as defined in the Master Agreement) and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts.

1. Definitions:

1.1 "Contract Quantity" means the amount of Import RA Capacity stated in megawatts ("MW"), made available to the RA Capacity Delivery Point through transmission service that is not recallable for economic reasons, and which is backed by operating reserves in the originating control area, delivered to the RA Capacity Delivery Point on a firm basis as set forth in this Confirmation.

1.2 "Import RA Capacity Product", or "Import RA Capacity" means the qualified and deliverable capacity from the System Resource that can be counted toward Buyer’s System Resource Adequacy Requirements ("RAR") as described in the CPUC's RA Rules, and all other resource adequacy requirements established by any other regional entity responsible for RAR including but not limited to the CAISO. Import RA Capacity does not confer to Buyer any right to the Contract Quantity of Seller’s System Resource other than the right to count such Contract Quantity toward Buyer’s RAR during the Delivery Term. Specifically, no energy associated with Seller’s System Resource is required to be made available to Buyer as part of this RA Capacity obligation, and Buyer shall in no way be responsible to compensate Seller for any commitments to CAISO as set forth in this Transaction.

1.3 "Product" means Import RA Capacity as defined herein.

1.4 "RA Capacity Delivery Point" means the CAISO Scheduling Point Malin 500 (COB) which maps to the CAISO Branch Group PACL_MSL where Buyer holds intertie import capability.
The RA Capacity Delivery Point is firm and may not be modified without the consent of Buyer (i.e., the RA Capacity Delivery Point is not Seller’s choice).


1.6 "System Resource" means a group of resources, single resource, or a portion of a resource located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point.

2. Representations and Warranties:

2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, consistent with the Tariff and RA Rules. Such commercially reasonable actions may include but are not limited to the following:

a) Meeting requirements established by the Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) provision of a Supply Plan to the CAISO by Seller’s Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by Buyer’s Scheduling Coordinator (as such terms are defined in the Tariff);

b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Confirmation to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and

c) At all times using “Good Utility Practice” as defined in the Tariff.

2.2 Seller represents and warrants that throughout the Delivery Term:

a) Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity Product from Seller’s System Resource toward Buyer’s RAR;

b) No portion of the Contract Quantity of Import RA Capacity Product is curtailable for economic reasons or has been committed by Seller to any third party in order to satisfy RAR or analogous capacity obligations in other markets; and
c) Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission ("FERC"), and RA Rules approved by the CPUC as they apply to the Import RA Capacity Product.

3. CAISO Dispatch Requirements:

During the Delivery Period, unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, Seller shall commit the full Contract Quantity to the CAISO in compliance with the applicable section of the Tariff implementing the RA Rules.

In compliance with section 40.6 of the Tariff, Seller shall submit a bid or self-schedule or have a bid submitted on the Seller’s behalf by the CAISO into the CAISO Day Ahead Integrated Forward Market (“IFM”) at the RA Capacity Delivery Point of the Import RA Capacity in all hours of the Delivery Term for an amount of the Contract Quantity, adjusted for any outages or reductions in Contract Quantity reported to the CAISO in accordance with the Tariff, except for any hours in which the Seller was prohibited by section 30.8 from bidding across an out-of-service transmission path at the RA Capacity Delivery Point.

In compliance with section 40.6 of the Tariff, Seller shall submit a bid into the CAISO Day Ahead Residual Unit Commitment (“RUC”) Procedure at the RA Capacity Delivery Point of the Import RA Capacity for the amount of the Contract Quantity.

Notwithstanding any provision herein to the contrary, Seller shall submit self-schedules in the CAISO’s Hour Ahead Scheduling Procedure at the RA Capacity Delivery Point of the Import RA Capacity for the amount of the Contract Quantity for a minimum of 160 hours during the Delivery Period.

4. Contract Quantity and Delivery Term (full capacity of the System Resource) are as follows:

   Delivery Term:

   Contract Quantity:

   Intertie Resource ID:

   MCC Bucket:

5. Contract Price and Payment: Buyer shall pay the following Contract Price to Seller in accordance with the Master Agreement.

   Contract Price: [redacted]

   Buyer shall make a monthly payment to Seller by the later of (i) ten (10) Calendar Days after Buyer’s receipt of Seller’s invoice or (ii) the twentieth (20th) day of the Showing Month; provided, however, if such day is not a Business Day then payment shall be made by the following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall be equal to the product of (1) the applicable Contract Price for that month (in $/kW-month), (2) the amount of Contract Quantity of Import RA Capacity
for such month delivered to Buyer (in MW), and (3) 1,000. Each payment calculation hereunder shall be rounded to two decimal places.

6. CAISO Revenues: Seller shall retain any and all revenues received from the CAISO in relation to this Confirmation.

7. Indemnity Against Penalties and Replacement: Seller agrees to indemnify Buyer for:
   a) any monetary penalties assessed by the CPUC for failure to meet the requirements with respect to annual or monthly supply plans and Seller further agrees not to pass onto Buyer any penalties assessed to Seller by the CAISO for Seller's failure to meet the requirements of the RA Rules or Tariff as a result of Seller not fulfilling any of its obligations under this Confirmation and to the extent Seller has not provided Buyer with sufficient notice to take action necessary to avoid such monetary penalties being assessed; and
   b) costs incurred, using reasonable efforts, by Buyer to replace, if required, any RA Capacity to bring the total volume back to Contract Quantity and Delivery Term specified in Section 4.

8. Confidentiality: Notwithstanding the Master Agreement, the Parties agree that Buyer may disclose this Confirmation to the CPUC, the CAISO or any other governmental body having jurisdiction as necessary to support its RAR showings, as applicable, and Seller may disclose the transfer of the Import RA Capacity under this Confirmation to the Scheduling Coordinator in order for such Scheduling Coordinator to timely submit accurate Supply Plans (as such terms are defined in the Tariff). Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

9. Governing Law: Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

10. Change of Law: If, after the Confirmation Effective Date, there (i) is a determination made by the CPUC or (ii) are any changes, revisions, additions or clarifications to or of the RA Rules, Tariff or other laws, regulations or rules governing resource adequacy rendered by the CPUC, (including, but no limited to, CPUC Energy Division Staff), CAISO or any regional entity or entities responsible for resource adequacy administration (collectively, a "Change in Law"), that A) result in material change(s) to Buyer's or Seller's obligations with regard to the Import RA Capacity transferred under this Confirmation such that implementation of this Confirmation becomes impossible or impracticable or (B) provide a reasonable basis for concluding that this Confirmation (and the Import RA Capacity) likely cannot or will not be counted toward Buyer's System RA requirements for all or a portion of the Delivery Term because Seller's obligations hereunder do not meet the CPUC's requirements under the current RA Rules for System RA, including on the basis that the Import RA Capacity does not provide for "resource-specific RA import" as specified in D.19-10-021, the Parties shall work in good faith to try and revise this Confirmation so that this Confirmation complies with the requirements for System RA or the Parties can perform their obligations with respect to the Import RA Capacity in order to maintain the benefits of the bargain struck by the Parties, as applicable. In the event the Parties cannot reach
agreement on any such amendments to this Confirmation within 30 days after initiating discussions to revise this Confirmation following the Change in Law ("Negotiation Period"); to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder in accordance with the RA Rules, Tariff or other applicable laws, regulations or rules 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. Notwithstanding the foregoing, if the Change in Law results in the Import RA Capacity transferred or to be transferred hereunder (or the Parties’ respective obligations with respect thereto) not satisfying the requirements for System RA and following the Negotiation Period the Parties cannot reach agreement on amendments to this Confirmation or other agreed measures such that the Import RA Capacity does satisfy the requirements for System RA, then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party provided Buyer shall remain liable to Seller to the extent Seller, in performing its obligations hereunder, has made any commitments to the CPUC or CAISO prior to receipt of Buyer's written notice of termination that cannot be rescinded without Seller incurring penalties or other charges.

11. 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.

12. No Recourse to Members of Buyer: Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation.

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

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

The Energy Authority, Inc.

By: Marty Parsons  
Name: Marty Parsons  
Title: Director, West Operations

Silicon Valley Clean Energy Authority, a California joint powers authority

DocuSign by: Girish Balachandran  
By:  
Name: Girish Balachandran  
Title: CEO
IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
THE ENERGY AUTHORITY, INC.

This confirmation letter including all appendices hereto ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and The Energy Authority, Inc. ("Seller"), each individually a "Party" and together the "Parties", dated as of March 10, 2020 (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, in the amounts described in this Confirmation. This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of June 21, 2018, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below). Consistent with Sections 32 and 35 of the Master Agreement, this Confirmation, together with all other transactions, confirmations (as defined in the Master Agreement) and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts.

ARTICLE 1
TRANSACTION

1.1 Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the "Product"), at the Delivery Point in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

(a) Delivery Period. The Delivery Period is July 1, 2020, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

(b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 Contract Quantity

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the "Contract Quantity").
1.4 Contract Price

The Contract Price means, for any Contract Month, the price specified in the Contract Price table as set forth below.

**CONTRACT PRICE TABLE**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Month</th>
<th>Contract Price ($/kW-month)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.5 Delivery Point

---

ARTICLE 2

DELIVERY OBLIGATIONS

2.1 Delivery

Prior to April 30, 2020, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Month, and completing any other action or documentation required by the CAISO to effect such transfer (the "Registration").

2.2 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

---

ARTICLE 3

PAYMENT

3.1 One-Time Payment

Buyer shall make a One-Time Payment to Seller for the Product on the twenty-third (23rd) day of the month occurring at least five (5) Business Days after receipt of Seller's invoice.

The One-Time Payment is calculated as follows:

\[
\text{One-Time Payment} = \sum_{i}^{m}(A \times B \times 1,000)
\]

where:
\[ A = \text{Contract Price (in $/kW-month) for Contract Month } i \]
\[ B = \text{Contract Quantity } i \text{ (in MW) transferred by Seller for Contract Month } i \]
\[ i = \text{Each Contract Month} \]
\[ n = \text{number of Contract Months} \]

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 **Offset Rights**

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

**ARTICLE 4**

**CONFIDENTIALITY**

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

(a) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.);

(b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller's performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller's performance; and

(c) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price;

provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

**ARTICLE 5**

**COLLATERAL REQUIREMENTS**

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.
ARTICLE 6
GENERAL PROVISIONS

6.1 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.

6.2 Joint Powers Authority

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

6.3 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterpart were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.4 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.
Acknowledged and agreed to as of the Confirmation Effective Date.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

DocuSigned by: Girish Balachandran
By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

The Energy Authority, Inc.

By: Marty Parsons
Name: Marty Parsons
Title: Director Origination-West
APPENDIX A
DEFINED TERMS

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Applicable Laws” means any constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority having jurisdiction over one or both Parties, this Transaction, or the terms of this Agreement.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

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

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

“CEC” means the California Energy Commission.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table specified Section 1.03.

“Contract Price” has the meaning specified in Section 1.04.

“Contract Quantity” has the meaning specified in Section 1.03. “CPUC” means the California Public Utilities Commission.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by any Ratings Agency, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody's. If an entity is rated by more than one Ratings Agency and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Delivery Period” has the meaning specified in Section 1.02(a).

“Delivery Point” has the meaning specified in Section 1.05.
“Good Utility Practice” has the meaning set forth in the CAISO Tariff.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) 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 (c) court or governmental tribunal.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048. “Intertie” has the meaning set forth in the CAISO Tariff.

“Investment Grade Rating” means a Credit Rating of “BBB- or above” by S&P and “Baa3 or above” by Moody’s if rated by both S&P and Moody’s or “BBB- or above” by S&P or “Baa3 or above” by Moody’s if rated by S&P or Moody’s but not both.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Malin” means the CAISO Branch Group corresponding to the CAISO Intertie, PACI_MSL.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“Moody’s” means Moody’s Investor Services, Inc.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning specified in Section 3.01.

“Pre-Pay Buyer” means a Buyer who fails to maintain an Investment Grade Rating or has no Credit Rating, or whose guarantor fails to maintain an Investment Grade Rating or has no Credit Rating.

“Product” has the meaning specified in Section 1.01.

“Ratings Agency” means any of S&P and Moody’s (collectively the “Ratings Agencies”).

“Registration” has the meaning specified in Section 2.01.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

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

“Seller” has the meaning specified in the introductory paragraph of

“S&P” means Standard & Poor’s Financial Services LLC.

“Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

“Term” has the meaning specified in Section 1.02(b).

“WSPP Agreement” is defined in the introductory paragraph hereof.
IMPORT RA PRODUCT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY
AND
BROOKFIELD RENEWABLE TRADING AND MARKETING LP

This confirmation letter ("Confirmation") confirms the Transaction between Brookfield Renewable Trading and Marketing LP ("Seller") and Silicon Valley Clean Energy, a California joint powers authority, ("Buyer"), each individually a “Party” and together the “Parties,” dated as of January 8, 2020 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the terms and conditions of the Western System Power Pool Agreement effective as of the Confirmation Effective Date, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, as amended or modified, 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. The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time (the “CAISO Tariff” or the “Tariff”), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. Consistent with Sections 32 and 35 of the Master Agreement, this Confirmation, together with all other transactions, confirmations (as defined in the Master Agreement) 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.

ARTICLE 1 DEFINITIONS

1.1 “Contract Quantity” means the amount of Import RA Product stated in megawatts (“MW”) in Section 5.1(b). The Import RA Product shall be self-scheduled into the CAISO IFM in accordance with Section 4.2 below, unless self-scheduling is not required pursuant to Section 4.2.

1.2 “Import Energy Product” has the meaning set forth in CPUC D.04-10-035, D.05-10-042, and D.19-10-021.

1.3 “Import Resource Adequacy (RA) Product” or “Import RA Product” means Resource Adequacy Capacity, as defined by Appendix A to the CAISO Tariff, that meets the following requirements: (a) is an Import Energy Product with operating reserves, (b) cannot be curtailed for economic reasons, and (c) is (i) delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (ii) specifies a firm delivery point (i.e., not Seller’s choice). The Import RA Product is delivered from the System Resource and can be counted toward Buyer’s RAR as described in the applicable RA Rules, and all other resource adequacy requirements established by any other regional entity responsible for RAR. Notwithstanding the foregoing, Buyer and Seller acknowledge and agree that any Energy self-scheduled by Seller into the CAISO IFM pursuant to Section 4.2 will be delivered to the
CAISO, and not to Buyer, and Buyer shall have no right to take delivery or possession of, no title to, nor any ownership interest in any Energy generated by the System Resource and delivered to the CAISO. For the purposes of the preceding sentence and Section 4.2, the capitalized term “Energy” shall have the meaning ascribed by Appendix A to the CAISO Tariff.

1.4 “Monthly Import RA Capacity Payment” has the meaning provided for in Article 6 hereof.

1.5 “Non-Resource-Specific Import RA Product” means Import RA Product from a RA import resource that does not meet the requirements of a “resource-specific” RA import as defined under the RA Rules.

1.6 “Product” means Import RA Product as defined herein.

1.7 “RA Capacity Delivery Point” means the CAISO Scheduling Point PVWEST which maps to the CAISO Branch Group PALOVERDE_ITC where Buyer holds intertie import capability, or another location as agreed to in writing by the Parties.

1.8 “Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for Buyer by the California Public Utilities Commission (“CPUC”) pursuant to the RA Rules, or by any other governmental body having jurisdiction.


1.10 “System Resource” means one or more of 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.

ARTICLE 2
TRANSACTION TERMS AND CONDITIONS

2.1 Seller and Buyer acknowledge and agree that, subject to meeting the other terms and conditions of this Confirmation, Seller shall have the sole discretion to designate the Import RA Product provided for under this Confirmation as either a Resource-Specific Import RA Product or a Non-Resource-Specific Import RA Product pursuant to Section 4.2.

ARTICLE 3
FURTHER ASSURANCES; REPRESENTATIONS AND WARRANTIES

3.1 Throughout the Delivery Term, Seller and Buyer shall take all commercially reasonable actions and execute any and all documents or instruments, including attestations reasonably
necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s or subsequent purchaser’s RAR in accordance with Section 9 herein consistent with the Tariff and RA Rules. Such commercially reasonable actions may include but are not limited to the following:

(a) Meeting requirements established by the Tariff and CPUC in its RA counting protocols, including demonstration of the ability to deliver the Contract Quantity over the hours of the Delivery Term required for full RAR eligibility of the Contract Quantity in accordance with Section 1.1 herein, and 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 provision of a Supply Plan to the CAISO by Seller’s Scheduling Coordinator and sufficient information to allow for the submission of a complete Resource Plan by Buyer’s Scheduling Coordinator;

(b) Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and

(c) At all times using “Good Utility Practice” as defined in the Tariff.

### 3.2 Seller represents and warrants that throughout the Delivery Term:

(a) Buyer or subsequent purchaser has the exclusive right to count the Contract Quantity of Import RA Product from Seller’s System Resource toward Buyer’s or subsequent purchaser’s RAR;

(b) No portion of the Contract Quantity of Import RA Product is curtailable for economic reasons or has been committed by Seller to any third party in order to satisfy RAR or analogous capacity obligations in other markets; and

(c) Seller shall abide by all applicable CAISO Tariff provisions and procedures approved by the Federal Energy Regulatory Commission (“FERC”), and RA Rules approved by the CPUC as they apply to the Import RA Product.

### 3.3 For the avoidance of doubt, if approved by the CPUC and/or the CAISO, Seller may replace any Product necessary for Buyer to make its equivalent RA demonstration with another System Resource.

**ARTICLE 4 CAISO DISPATCH REQUIREMENTS**

### 4.1 Unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, Seller shall commit the full Contract Quantity to the CAISO in compliance with the applicable provisions of the Tariff implementing the RA Rules, including, without reservation, section 40.6 of the Tariff. Buyer shall
have no liability for the failure of Seller to comply with such Tariff provisions, including any penalties or fines imposed on Seller for such noncompliance.

4.2 Seller agrees that, in compliance with Section 40.6 of the Tariff, during the Delivery Term Seller shall self-schedule the Energy associated with the Contract Quantity into the CAISO Day Ahead Integrated Forward Market (“Integrated Forward Market” or “IFM”) at the RA Capacity Delivery Point of the Import RA Product at a minimum during the Timeframe, as adjusted for any outages or reductions in Contract Quantity reported to the CAISO in accordance with the Tariff. “Timeframe” means the hours of 4:00 to 9:00 pm PST, inclusive, or any other hours the CAISO may identify as Availability Assessment Hours (“AAH”) during the Delivery Term of this Confirmation. In compliance with Section 40.6 of the Tariff, Seller shall submit a bid or a self-schedule or have a bid submitted on the Seller’s behalf by the CAISO into the IFM in all hours not covered in the Timeframe. Seller shall self-schedule a sufficient number of hours, inclusive of those scheduled during the AAH window, during each month of the Delivery Term such that the total number of hours self-scheduled into the CAISO Integrated Forward Market is greater than or equal to 160 hours per month. In the event that D.19-10-021 is, in part or in its entirety, stayed, vacated, set aside, annulled, rescinded, replaced, superseded, revised or its enforcement enjoined by the CPUC, the FERC or a court of competent jurisdiction, such that the Energy associated with a Non-Resource-Specific Import RA Product does not need to be self-scheduled into the Integrated Forward Market in order for the Import RA Product to be eligible to meet Buyer’s RAR, as per ordering paragraphs 2 and 3 of D.19-10-021, then Seller shall not be subject to the self-scheduling obligation set forth by this Section 4.2 to the extent and for any period of time in the Delivery Term during which self-scheduling is not required in order for the Contract Quantity to be eligible to meet Buyer’s RAR.

ARTICLE 5
CONTRACT QUANTITY AND DELIVERY TERM

5.1 **Contract Quantity and Delivery Term**

ARTICLE 6
MONTHLY IMPORT RA PRODUCT PAYMENT

With respect to each Showing Month, Buyer shall make a payment to Seller for each Unit, in arrears, after the applicable Showing Month (the “Monthly Import RA Capacity Payment”). The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the
twentieth (20th) day of the month following the Showing Month, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twentieth (20th) day of such month. Each Unit’s Monthly Import RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Contract Quantity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, that the invoice shall be adjusted for any Contract Quantity that was not delivered for such Showing Month.

**Contract Price:**

![Blackout](image)

Buyer shall pay the Contract Price to Seller in accordance with the Master Agreement.

**ARTICLE 7**

**BUYER’S AND SELLER’S SCID**

![Blackout](image)

**ARTICLE 8**

**CAISO REVENUES**

Seller shall retain any and all revenues received from the CAISO in relation to this Transaction.

**ARTICLE 9**

**RESALE OF IMPORT RA PRODUCT**

9.1 Buyer 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 Buyer re-sells all or a portion of the Contract Quantity of Import RA Product and any associated rights acquired under this Transaction (“Resold Import RA Product”) Seller agrees to follow Buyer’s instructions with respect to providing such Resold Import RA Product to subsequent purchasers of such Resold Import RA Product. Seller further agrees 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 Import RA Product, provided the foregoing shall not require Seller to enter into any agreements or transactions directly with any such subsequent purchaser.

9.2 Seller’s obligations under this Section 9 are contingent on Buyer notifying Seller with the information required by this Section 9 no later than five (5) Business Days prior to the deadline for filing the Supply Plan for the Resold Import RA Product. Further, any resale of Import RA Product by Buyer to a subsequent purchaser must be permitted under the Tariff, CAISO business practices and applicable law, and Seller 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 law.
9.3 In the event there is any Resold Import RA Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Section 9) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale:

- Benefit serving entity SC identification number (SCID),
- Volume (in MW) of Resold Import RA Product,
- Subsequent Sale delivery period for Resold Import RA Product.

ARTICLE 10
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

10.1 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; and (iii) Buyer may disclose information to any subsequent purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

(b) Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer.

10.2 Indemnification

To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under this Confirmation or the Master Agreement or by Buyer’s (or any purchaser of Resold Import RA Product) failure to perform, then Seller agrees to indemnify Buyer for:
monetary penalties, directly resulting from Seller’s nonperformance hereunder, assessed against Buyer by the CPUC or the CAISO, as applicable, pursuant to the RA Rules or Tariff as applicable as of the date of this Confirmation, but only to the extent such penalties being assessed could not be avoided by Buyer following notice from Seller of its nonperformance; and

costs of any RA Capacity incurred by Buyer to address a deficiency hereunder, using reasonable efforts to procure a product similar in price to Import RA Product, in such quantity equal to the Contract Quantity less the quantity of Import RA Product provided to Buyer by Seller hereunder. At Seller’s discretion, in lieu of reimbursing Buyer for the costs set out in this Section 10.3, Seller may provide RA Capacity to Buyer, provided such RA Capacity meets the requirements of the RA Rules and the Tariff.

10.3 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 Buyer’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 Buyer’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.

If the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days following initiation of discussions regarding the Change in Law ("Negotiation Period"), to the extent practicable and lawful, the Parties shall perform their respective obligations hereunder in accordance with the RA Rules, Tariff or other applicable laws, regulations or rules prior to the Change in Law; provided, however, that if the Change in Law results in the Product no longer being able to be counted towards Buyer’s Resource Adequacy Requirements, then Buyer may terminate this Confirmation upon written notice to Seller, which shall be effective the next Business Day after such notice is received, and any such termination shall be without liability to either Party.

10.4 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

10.5 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.
10.6 **No Recourse to Members of Buyer**

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

10.7 **Other WSPP Agreement Changes**

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

(a) 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.”

(b) 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.

(c) 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.”

(d) The phrase “arbitration or” is hereby deleted from the first line of Section 34.4.

(e) 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.”

(f) 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,”.

(g) 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

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.

10.8 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.

10.9 Entire Agreement; No Oral Agreements or Modifications

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.
SILICON VALLEY CLEAN ENERGY, a California joint powers authority

By: Girish Balachandran

Name: Girish Balachandran

Title: CEO

BROOKFIELD RENEWABLE TRADING AND MARKETING LP

By: Marco Talamo

Name: ____________________________

Title: ____________________________

Digitally signed by Marco Talamo
Date: 2020.03.18 08:26:25 -04'00'

RFA

Francois Trottier
**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:**

**Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>
**Expected RA:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected RA (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

**Buyer’s Contract Capacity (MW):**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Buyer’s Contract Capacity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
Buyer’s Output Share: The Product produced by the Facility from Buyer’s Contract Capacity

Buyer’s Annual Energy Share: Expected Energy for the applicable Contract Year.

Contract Price:

The Contract Price of the Product shall be the Primary Contract Price or the Alternative Contract Price as applicable. The Primary Contract Price shall apply for all months in which Buyer achieves and maintains an Investment Grade Credit Rating and the Alternative Contract Price shall apply in all months when the Primary Contract Price does not apply:
Product: The following that is associated with Buyer’s Contract Capacity from the Facility:

- Delivered Energy
- Green Attributes (Portfolio Content Category 1)
- Capacity Attributes (The Facility has achieved Full Capacity Deliverability Status)
- Ancillary Services

Scheduling Coordinator: Seller or a third party, acting on Seller’s behalf.

Performance Security:
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1 DEFINITIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Contract Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
<td>17</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 2 TERM; CONDITIONS PRECEDENT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Contract Term</td>
<td>18</td>
</tr>
<tr>
<td>2.2 Conditions Precedent</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 3 PURCHASE AND SALE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Purchase and Sale of Product</td>
<td>19</td>
</tr>
<tr>
<td>3.2 Sale of Green Attributes</td>
<td>19</td>
</tr>
<tr>
<td>3.3 Imbalance Energy</td>
<td>19</td>
</tr>
<tr>
<td>3.4 Ownership of Renewable Energy Incentives</td>
<td>19</td>
</tr>
<tr>
<td>3.5 Future Environmental Attributes</td>
<td>19</td>
</tr>
<tr>
<td>3.6 Reserved</td>
<td>20</td>
</tr>
<tr>
<td>3.7 Capacity Attributes</td>
<td>20</td>
</tr>
<tr>
<td>3.8 Resource Adequacy Failure</td>
<td>21</td>
</tr>
<tr>
<td>3.9 CEC Certification and Verification</td>
<td>22</td>
</tr>
<tr>
<td>3.10 RPS Standard Terms and Conditions</td>
<td>22</td>
</tr>
<tr>
<td>3.11 Compliance Expenditure Cap</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 4 OBLIGATIONS AND DELIVERIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Delivery</td>
<td>23</td>
</tr>
<tr>
<td>4.2 Title and Risk of Loss</td>
<td>24</td>
</tr>
<tr>
<td>4.3 Forecasting</td>
<td>24</td>
</tr>
<tr>
<td>4.4 Reserved</td>
<td>25</td>
</tr>
<tr>
<td>4.5 Reserved</td>
<td>25</td>
</tr>
<tr>
<td>4.6 Reduction in Delivery Obligation</td>
<td>25</td>
</tr>
<tr>
<td>4.7 Guaranteed Energy Production</td>
<td>25</td>
</tr>
<tr>
<td>4.8 WREGIS</td>
<td>26</td>
</tr>
<tr>
<td>4.9 Green-e Certification</td>
<td>27</td>
</tr>
<tr>
<td>4.10 Financial Statements</td>
<td>27</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 5 TAXES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Allocation of Taxes and Charges</td>
<td>28</td>
</tr>
<tr>
<td>5.2 Cooperation</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 6 MAINTENANCE OF THE FACILITY</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 Maintenance of the Facility</td>
<td>28</td>
</tr>
<tr>
<td>6.2 Reserved</td>
<td>28</td>
</tr>
<tr>
<td>6.3 Shared Facilities</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 7 METERING</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1 Metering</td>
<td>29</td>
</tr>
<tr>
<td>7.2 Meter Verification</td>
<td>29</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 8 INVOICING AND PAYMENT; CREDIT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1 Invoicing</td>
<td>29</td>
</tr>
</tbody>
</table>
ARTICLE 15 LIMITATION OF LIABILITY AND EXCLUSION

15.1 NO CONSEQUENTIAL DAMAGES ........................................ 30
15.2 WAIVER AND EXCLUSION OF OTHER DAMAGES ................. 30

ARTICLE 16 INDEMNIFICATION ........................................... 31

16.1 INDEMNITY ................................................................. 31
16.2 NOTICE OF CLAIM ....................................................... 31
16.3 FAILURE TO PROVIDE NOTICE .................................... 31
16.4 DEFENSE OF CLAIMS .................................................... 31

ARTICLE 17 ASSIGNMENT .................................................. 32

17.1 GENERAL PROHIBITION ON ASSIGNMENTS ...................... 32
17.2 COLLATERAL ASSIGNMENT ........................................... 32
17.3 PERMITTED ASSIGNMENT BY SELLER ............................ 32
17.4 SHARED FACILITIES; PORTFOLIO FINANCING ................. 32

ARTICLE 18 DISPUTE RESOLUTION ...................................... 33

18.1 VENUE ........................................................................ 33
18.2 DISPUTE RESOLUTION ................................................... 33

ARTICLE 19 RESERVATIONS AND TERMINATION ...................... 34

19.1 EVENTS OF DEFAULT. AN “EVENT OF DEFAULT” SHALL MEAN, 34
19.2 REMEDIES; DECLARATION OF EARLY TERMINATION DATE ... 36
19.3 TERMINATION PAYMENT ................................................. 37
19.4 NOTICE OF PAYMENT OF TERMINATION PAYMENT .......... 37
19.5 RIGHTS AND REMEDIES ARE CUMULATIVE ....................... 37

ARTICLE 20 REPRESENTATIONS AND WARRANTIES; AUTHORITY ...... 38

20.1 SELLER’S REPRESENTATIONS AND WARRANTIES ................ 38
20.2 BUYER’S REPRESENTATIONS AND WARRANTIES ................ 38
20.3 GENERAL COVENANTS .................................................... 38

ARTICLE 21 PROCEEDINGS .................................................. 39

21.1 RELATION TO OTHER PROCEEDINGS ................................ 39
21.2 REMEDIES .................................................................... 39

ARTICLE 22 SATISFACTION .................................................. 40

22.1 SATISFACTION ............................................................... 40
22.2 RELATION TO OTHER SATISFACTION ........................... 40

ARTICLE 23 COMPLIANCE .................................................... 41

23.1 COMPLIANCE ................................................................. 41
23.2 RELATION TO OTHER COMPLIANCE ............................ 41

ARTICLE 24 NOTICES .......................................................... 42

24.1 NOTICES ...................................................................... 42
24.2 RELATION TO OTHER NOTICES .................................... 42

ARTICLE 25 EXECUTION ......................................................... 43

25.1 EXECUTION ................................................................... 43
25.2 RELATION TO OTHER EXECUTION ................................. 43

ARTICLE 26 FURTHER AGREEMENTS .................................... 44

26.1 FURTHER AGREEMENTS ................................................ 44
26.2 RELATION TO OTHER FURTHER AGREEMENTS .......... 44

ARTICLE 27 TERMINATION ..................................................... 45

27.1 TERMINATION ............................................................... 45
27.2 RELATION TO OTHER TERMINATION ............................ 45

ARTICLE 28 LIABILITY ........................................................... 46

28.1 LIABILITY ...................................................................... 46
28.2 RELATION TO OTHER LIABILITY ................................... 46

ARTICLE 29 REMEDIES .......................................................... 47

29.1 REMEDIES .................................................................... 47
29.2 RELATION TO OTHER REMEDIES ................................. 47

ARTICLE 30 ASSIGNMENT ....................................................... 48

30.1 ASSIGNMENT ................................................................. 48
30.2 RELATION TO OTHER ASSIGNMENT ............................ 48

ARTICLE 31 DEFAULTS; REMEDIES; TERMINATION ................ 49

31.1 EVENTS OF DEFAULT. AN “EVENT OF DEFAULT” SHALL MEAN, 49
31.2 REMEDIES; DECLARATION OF EARLY TERMINATION DATE ... 51
31.3 TERMINATION PAYMENT ................................................. 51
31.4 NOTICE OF PAYMENT OF TERMINATION PAYMENT .......... 51
31.5 RIGHTS AND REMEDIES ARE CUMULATIVE ....................... 51

ARTICLE 32 REPRESENTATIONS AND WARRANTIES; AUTHORITY ...... 52

32.1 SELLER’S REPRESENTATIONS AND WARRANTIES ................ 52
32.2 BUYER’S REPRESENTATIONS AND WARRANTIES ................ 52
32.3 GENERAL COVENANTS .................................................... 52

ARTICLE 33 PROCEEDINGS ..................................................... 53

33.1 RELATION TO OTHER PROCEEDINGS ................................ 53
33.2 REMEDIES .................................................................... 53

ARTICLE 34 SATISFACTION ..................................................... 54

34.1 SATISFACTION ............................................................... 54
34.2 RELATION TO OTHER SATISFACTION ........................... 54

ARTICLE 35 COMPLIANCE ...................................................... 55

35.1 RELATION TO OTHER COMPLIANCE ............................ 55
35.2 COMPLIANCE ................................................................. 55

ARTICLE 36 NOTICES ............................................................. 56

36.1 NOTICES ...................................................................... 56
36.2 RELATION TO OTHER NOTICES .................................... 56

ARTICLE 37 EXECUTION .......................................................... 57

37.1 RELATION TO OTHER EXECUTION ................................. 57
37.2 EXECUTION ................................................................... 57

ARTICLE 38 FURTHER AGREEMENTS .................................... 58

38.1 RELATION TO OTHER FURTHER AGREEMENTS .......... 58
38.2 FURTHER AGREEMENTS ................................................ 58

ARTICLE 39 TERMINATION ...................................................... 59

39.1 RELATION TO OTHER TERMINATION ............................ 59
39.2 TERMINATION ............................................................... 59

ARTICLE 40 LIABILITY ............................................................. 60

40.1 RELATION TO OTHER LIABILITY ................................... 60
40.2 LIABILITY ...................................................................... 60

ARTICLE 41 REMEDIES .......................................................... 61

41.1 RELATION TO OTHER REMEDIES ................................. 61
41.2 REMEDIES .................................................................... 61

ARTICLE 42 ASSIGNMENT ....................................................... 62

42.1 RELATION TO OTHER ASSIGNMENT ............................ 62
42.2 ASSIGNMENT ................................................................. 62

ARTICLE 43 DEFAULTS; REMEDIES; TERMINATION ................ 63

43.1 EVENTS OF DEFAULT. AN “EVENT OF DEFAULT” SHALL MEAN, 63
43.2 REMEDIES; DECLARATION OF EARLY TERMINATION DATE ... 65
43.3 TERMINATION PAYMENT ................................................. 65
43.4 NOTICE OF PAYMENT OF TERMINATION PAYMENT .......... 65
43.5 RIGHTS AND REMEDIES ARE CUMULATIVE ....................... 65

ARTICLE 44 REPRESENTATIONS AND WARRANTIES; AUTHORITY ...... 66

44.1 SELLER’S REPRESENTATIONS AND WARRANTIES ................ 66
44.2 BUYER’S REPRESENTATIONS AND WARRANTIES ................ 66
44.3 GENERAL COVENANTS .................................................... 66

ARTICLE 45 PROCEEDINGS ..................................................... 67

45.1 RELATION TO OTHER PROCEEDINGS ................................ 67
45.2 REMEDIES .................................................................... 67

ARTICLE 46 SATISFACTION ..................................................... 68

46.1 SATISFACTION ............................................................... 68
46.2 RELATION TO OTHER SATISFACTION ........................... 68

ARTICLE 47 COMPLIANCE ...................................................... 69

47.1 RELATION TO OTHER COMPLIANCE ............................ 69
47.2 COMPLIANCE ................................................................. 69

ARTICLE 48 NOTICES ............................................................. 70

48.1 NOTICES ...................................................................... 70
48.2 RELATION TO OTHER NOTICES .................................... 70

ARTICLE 49 EXECUTION .......................................................... 71

49.1 RELATION TO OTHER EXECUTION ................................. 71
49.2 EXECUTION ................................................................... 71

ARTICLE 50 FURTHER AGREEMENTS .................................... 72

50.1 RELATION TO OTHER FURTHER AGREEMENTS .......... 72
50.2 FURTHER AGREEMENTS ................................................ 72

ARTICLE 51 TERMINATION ...................................................... 73

51.1 RELATION TO OTHER TERMINATION ............................ 73
51.2 TERMINATION ............................................................... 73

ARTICLE 52 LIABILITY ............................................................. 74

52.1 RELATION TO OTHER LIABILITY ................................... 74
52.2 LIABILITY ...................................................................... 74

ARTICLE 53 REMEDIES .......................................................... 75

53.1 RELATION TO OTHER REMEDIES ................................. 75
53.2 REMEDIES .................................................................... 75

ARTICLE 54 ASSIGNMENT ....................................................... 76

54.1 RELATION TO OTHER ASSIGNMENT ............................ 76
54.2 ASSIGNMENT ................................................................. 76

ARTICLE 55 DEFAULTS; REMEDIES; TERMINATION ................ 77

55.1 EVENTS OF DEFAULT. AN “EVENT OF DEFAULT” SHALL MEAN, 77
55.2 REMEDIES; DECLARATION OF EARLY TERMINATION DATE ... 79
55.3 TERMINATION PAYMENT ................................................. 79
55.4 NOTICE OF PAYMENT OF TERMINATION PAYMENT .......... 79
55.5 RIGHTS AND REMEDIES ARE CUMULATIVE ....................... 79

ARTICLE 56 REPRESENTATIONS AND WARRANTIES; AUTHORITY ...... 80

56.1 SELLER’S REPRESENTATIONS AND WARRANTIES ................ 80
56.2 BUYER’S REPRESENTATIONS AND WARRANTIES ................ 80
56.3 GENERAL COVENANTS .................................................... 80

ARTICLE 57 PROCEEDINGS ..................................................... 81

57.1 RELATION TO OTHER PROCEEDINGS ................................ 81
57.2 REMEDIES .................................................................... 81

ARTICLE 58 SATISFACTION ..................................................... 82

58.1 SATISFACTION ............................................................... 82
58.2 RELATION TO OTHER SATISFACTION ........................... 82

ARTICLE 59 COMPLIANCE ...................................................... 83

59.1 RELATION TO OTHER COMPLIANCE ............................ 83
59.2 COMPLIANCE ................................................................. 83

ARTICLE 60 NOTICES ............................................................. 84

60.1 NOTICES ...................................................................... 84
60.2 RELATION TO OTHER NOTICES .................................... 84

ARTICLE 61 EXECUTION .......................................................... 85

61.1 RELATION TO OTHER EXECUTION ................................. 85
61.2 EXECUTION ................................................................... 85

ARTICLE 62 FURTHER AGREEMENTS .................................... 86

62.1 RELATION TO OTHER FURTHER AGREEMENTS .......... 86
62.2 FURTHER AGREEMENTS ................................................ 86

ARTICLE 63 TERMINATION ...................................................... 87

63.1 RELATION TO OTHER TERMINATION ............................ 87
63.2 TERMINATION ............................................................... 87

ARTICLE 64 LIABILITY ............................................................. 88

64.1 RELATION TO OTHER LIABILITY ................................... 88
64.2 LIABILITY ...................................................................... 88

ARTICLE 65 REMEDIES .......................................................... 89

65.1 RELATION TO OTHER REMEDIES ................................. 89
65.2 REMEDIES .................................................................... 89

ARTICLE 66 ASSIGNMENT ....................................................... 90

66.1 RELATION TO OTHER ASSIGNMENT ............................ 90
66.2 ASSIGNMENT ................................................................. 90
16.5 Subrogation of Rights ......................................................... 45
16.6 Rights and Remedies Are Cumulative .................................... 46

ARTICLE 17 INSURANCE .......................................................... 46
17.1 Insurance ........................................................................ 46

ARTICLE 18 CONFIDENTIAL INFORMATION .................................. 47
18.1 Definition of Confidential Information .................................... 47
18.2 Duty to Maintain Confidentiality .......................................... 47
18.3 Irreparable Injury; Remedies ................................................ 47
18.4 Disclosure to Lenders, Etc .................................................... 48
18.5 Press Releases .................................................................. 48

ARTICLE 19 MISCELLANEOUS .................................................... 48
19.1 Entire Agreement; Integration; Exhibits ................................. 48
19.2 Amendments .................................................................... 48
19.3 No Waiver ......................................................................... 48
19.4 No Agency, Partnership, Joint Venture or Lease ..................... 48
19.5 Severability ...................................................................... 49
19.6 Mobile-Sierra .................................................................... 49
19.7 Counterparts; Electronic Signatures ....................................... 49
19.8 Binding Effect .................................................................... 49
19.9 No Recourse to Members of Buyer ....................................... 49
19.10 Forward Contract .............................................................. 49
19.11 Change in Electric Market Design ........................................ 50
19.12 Further Assurances ............................................................ 50

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  

iii
RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of April 8, 2020 (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller 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.

“Alternative Contract Price” means that certain price designated as the “Alternative Contract Price” set forth within the definition of the Contract Price on the Cover Sheet.

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

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

“Guaranteed 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 at least $1,000,000,000, and (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 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) a tangible net worth of \[\text{------------------------}\] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch or Baa3 from Moody’s; 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.

“Primary Contract Price” means that certain price designated as the “Primary Contract Price” set forth within the definition of the Contract Price on the Cover Sheet.

“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, 10-636, 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 $200,000. 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.

12 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 (b) the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor).

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 at \[
\text{per MW of Buyer’s Contract Capacity as of the first Contract Year (“Compliance Expenditure Cap”)}
\]
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 loses 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 1st and September 30th, 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 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practice, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “Planned Outage”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency 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; provided, that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP-15 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 Year (i) upon delivery of Replacement Product pursuant to an Approved Replacement Product Schedule, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement and (iii) not to exceed fifteen percent (15%) of the Expected Energy for the Contract Year corresponding to such applicable Performance Measurement Period. Buyer shall pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

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.
82 **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.

83 **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 $50,000,000.

84 **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.

85 **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.

86  **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.

87  **Reserved.**

88  **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.

89  **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
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
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 COMMERCIALLY 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 (including any Change of Control of Seller) 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:

(a) the assignee is a Permitted Transferee;

(b) Seller has given Buyer Notice at last fifteen (15) Business Days before the date of such proposed assignment; and

(c) 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 Buyer.

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 lenderestoppels).

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.
162 **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.

163 **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.

164 **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 Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith.

Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

165 **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 One Million Dollars ($1,000,000) per
occurrence, and an annual aggregate of not less than One Million Dollars ($1,000,000), endorsed
to provide contractual liability in said amount, specifically covering Seller’s obligations under this
Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in
a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be provided
as an additional benefit and not included within the limits of liability. Such insurance shall contain
standard cross-liability and severability of interest provisions.

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

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

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

(e) 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 Disclosing 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.

195  **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.

196  **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.

197  **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.

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

199  **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: Joseph Greco
Title: President

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: __________________________
Name: Girish Balachandran
Title: CEO
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Coso Geothermal Project

Site includes all or some of the following CAISO Generator Resource IDs: [redacted].

County: Inyo

CEQA Lead Agency: County of Inyo

Type of Facility: Geothermal

Operating Characteristics of Facility: Dual Flash Geothermal System

Interconnection Point: Southern California Edison via 115kV Inyokern and 230kV Kramer Junction

Maximum Output: 145 MWs

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 the Contract Price.

(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:

(i) exceeds one hundred percent (100%) but is less than or equal to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, notwithstanding anything to the contrary in this Agreement, Buyer shall pay Seller the Excess Production Price applicable to such Delivered Energy in excess of one hundred percent (100%) but less than or equal to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year; and

(ii) exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, notwithstanding anything to the contrary in this Agreement, Buyer is not obligated to purchase the Product associated with such Delivered Energy in excess of one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, and, if Seller delivers any such Product without Buyer’s written consent, the price shall be [redacted] for such excess Product.

(c) **Excess Energy.** Notwithstanding anything in this Agreement to the contrary, Seller may retain for its own use or sell to one or more third parties, and retain all associated revenues, each of (i) all Energy in excess of the product of (A) the Buyer’s Contract Capacity and (B) the duration of the Settlement Interval, expressed in hours, and (ii) unless otherwise agreed by the Parties in a subsequent writing, all Energy in excess of one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(d) **Replacement Product.** Buyer shall pay Seller the Contract Price for each MWh of Replacement Product provided pursuant to Section 4.7 of the Agreement.

(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 asset 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]

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:00</td>
<td>2:00</td>
<td>3:00</td>
<td>4:00</td>
<td>5:00</td>
<td>6:00</td>
<td>7:00</td>
<td>8:00</td>
<td>9:00</td>
<td>10:00</td>
<td>11:00</td>
<td>12:00</td>
</tr>
</tbody>
</table>

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.
### AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [Insert Month]

|        | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

|        | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[ [(A - B) \times (C - D)] \]

where:

\( A \) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

\( B \) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

\( C \) = Price for Replacement Product for the Contract Year, in $/MWh, which shall be the sum of (a) the simple average of the Integrated Forward Market (as defined in the CAISO Tariff) 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 market value of Replacement Green Attributes. Buyer shall use commercially reasonable efforts to determine, in good faith, the market value of Replacement Green Attributes on the basis of quotations from at least three leading brokers of Replacement Green Attributes. If more than three quotations are obtained, Buyer shall determine such market value through the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three quotations are obtained by Buyer, such market value shall be the quotation remaining after disregarding the highest and lowest quotations (where if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded). If, after using commercially reasonable efforts, Buyer is not able to obtain at least three such market quotations, Buyer may, in good faith and in a commercially reasonable manner, calculate such market value. Buyer is not required to enter into a replacement transaction in order to determine this amount.

\( D \) = the Contract Price for the Contract Year, in $/MWh

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

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which 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.

Exhibit G - 1
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. [XXXXXXX]

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, XXXXXXXXX (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Silicon Valley Clean Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. $________________________ (________________________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. [XXXXXXX] (“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 XXXXXXXXXXXXXXXXXX. 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 XXXXXXXXXXXXXXX, referring specifically to Issuer’s Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at XXXXXXXXXX or XXXXXXXXXX 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

__________________________
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. [XXXXXXX] (the “Letter of Credit”) issued by XXXXXXX (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:

<table>
<thead>
<tr>
<th>Unit Information¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Location</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
</tr>
<tr>
<td>Unit SCID</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
</tr>
<tr>
<td>Resource Type</td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
</tr>
<tr>
<td>LCR Area (if any)</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
</tr>
<tr>
<td>Delivery Period</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹To be repeated for each unit if more than one.
[SELLER ENTITY]

By:____________________________

Its:__________________________

Date: _________________________
**EXHIBIT J**

**NOTICES**

<table>
<thead>
<tr>
<th><strong>Coso Geothermal Power Holdings, LLC</strong></th>
<th><strong>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 9460 Double R Boulevard, Suite 104</td>
<td>Street: 333 W. El Camino Real, Suite 290</td>
</tr>
<tr>
<td>City: Reno, NV 89521-5916</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn: Joe Greco</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone: 775-376-9702</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>With a copy to:</strong></td>
<td><strong>With a copy to:</strong></td>
</tr>
<tr>
<td>Street: 200 W Madison, Suite 3810</td>
<td>Street:</td>
</tr>
<tr>
<td>City: Chicago, IL 60606</td>
<td>Chicago, IL 60606</td>
</tr>
<tr>
<td>Attn: Karolina Javaheri/Ed Karas</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone: 312-766-4499</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email:</td>
</tr>
<tr>
<td>Email: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></td>
<td>Email:</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></td>
</tr>
<tr>
<td></td>
<td><a href="mailto:ekaras@mrpgenco.com">ekaras@mrpgenco.com</a></td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: Karolina Javaheri</td>
<td>Attn: Power Supply Group</td>
</tr>
<tr>
<td>Phone: 312-766-4499</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email:</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn: Chris Ellis</td>
<td>Attn: ZGlobal</td>
</tr>
<tr>
<td>Phone: 760-764-1300 x207</td>
<td>Phone: (916) 221-4327</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email:</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></td>
<td><a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
</tr>
<tr>
<td><strong>Coso Geothermal Power Holdings, LLC</strong> (‘‘Seller’’)</td>
<td><strong>Silicon Valley Clean Energy Authority</strong> (‘‘Buyer’’)</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>Confirmations:</strong></td>
<td><strong>Confirmations:</strong></td>
</tr>
<tr>
<td>Attn: Joe Greco</td>
<td>Attn: Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: 775-376-9702</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: Karolina Javaheri</td>
<td>Attn: Finance Group</td>
</tr>
<tr>
<td>Phone: 312-766-4499</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:kjavaheri@mrpgenco.com">kjavaheri@mrpgenco.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td>With additional Notices of an Event of Default to:</td>
<td></td>
</tr>
<tr>
<td>Attn: Joe Dubinski</td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td>Phone: 816-374-3383</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:jpdubinski@bclplaw.com">jpdubinski@bclplaw.com</a></td>
<td>Phone: (503) 313-0755</td>
</tr>
<tr>
<td>With a copy to:</td>
<td>Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
</tr>
<tr>
<td>Attn: Joe Greco</td>
<td></td>
</tr>
<tr>
<td>Phone: 775-376-9702</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:jgreco@mrpgenco.com">jgreco@mrpgenco.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn: Control Room</td>
<td>Attn: Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: 760-764-1300 x600</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></td>
<td>Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>With a copy to:</td>
<td></td>
</tr>
<tr>
<td>Attn: Chris Ellis</td>
<td></td>
</tr>
<tr>
<td>Phone: 760-764-1300 x207</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:cellis@cosoenergy.com">cellis@cosoenergy.com</a></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT K

OPERATING RESTRICTIONS

N/A
EXHIBIT L
METERING DIAGRAM

[See next page.]
Coso Operating Company LLC
115 kV & 230 kV Transmission Lines

BLM Project
ISO Project # 17GEN2252

Resource ID: BLM_2_UNIT 5

Device ID: 3910721

Device ID: 3910723

Device ID: 3910722

Device ID: 3920210

Device ID: 3920238

Device ID: 3910774

Device ID: 3910773

Combined Facility Metering Option

CAISO Meter

[Grid Diagram]

Exhibit L - 2
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.

Exhibit M - 1
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 ASFOLLOWS:

(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).

Exhibit M - 5
(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:____________________________
CONFIRMATION OF POWER PURCHASE AND SALE TRANSACTION

Date: March 16, 2020
Transaction Number: 2798563
To: Silicon Valley Clean Energy Authority (Buyer)
Trader:
From: NextEra Energy Marketing, LLC (Seller)
Trader: Ruben Lorenzo

This confirmation confirms the terms and conditions of the physical power transaction entered into between the parties.

Trade Date: March 13, 2020
Type of Transaction: FIRM (LD)
Term: From and including: 01/01/2021
Through: 12/31/2021

Delivery Period: 

Contract Quantity: See Annex A
Total Contract Quantity: 
Contract Price: See Annex A
Delivery Point: 

700 Universe Blvd, EPM/IB, Juno Beach, FL 33408  NEM Ref No: 2798563  page 1
CONFIRMATION OF POWER PURCHASE
AND SALE TRANSACTION

Scheduling Rules: Seller shall schedule DAY-AHEAD physical delivery of the Contract Quantity to Buyer at the Delivery Point to occur during the applicable Delivery Period in accordance with the rules and procedures of the Transmission Provider. The Contract Quantity will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). “Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

Special Terms: ZG RT Scheduling
Phone: 760-483-5000
Email: 24hrdesk@zglobal.biz

ZG DA Scheduling
Phone: 916-221-1009
Email: DAscheduler@zglobal.biz

Governing Terms: Unless otherwise noted in this confirmation, this transaction is governed by the terms and conditions of the Master Agreement between NextEra Energy Marketing, LLC and Silicon Valley Clean Energy Authority executed on March 14, 2019.

Upon receipt:

1. If this confirmation does not reflect your understanding of this Transaction please notify the Risk Management Department of NextEra Energy Marketing, LLC by fax at 561-625-7517 or email to NextEra.Confirmations@NextEraEnergy.com.
2. If this confirmation reflects your understanding of this Transaction please sign where indicated and fax to 561-625-7517 or email to NextEra.Confirmations@NextEraEnergy.com.

NextEra Energy Marketing, LLC
By: ____________________________
Name: Nicole Lawrence
Title: Trading Risk Analyst
Date: March 16, 2020
Contact: phone:561-304-6181 fax:561-625-7517

Silicon Valley Clean Energy Authority
By: ____________________________
Name: Girish Balachandran
Title: CEO
Date: 3/16/2020
Contact: ____________________________
Annex A

Deal flows on the days outlined below, either excluding or including NERC holidays depending on the "Holidays" flag setting on Hour Type.

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>Days of Week</th>
<th>Hour Type</th>
<th>MW</th>
<th>Price $/MWH</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

On Peak
CONFIRMATION OF POWER PURCHASE AND SALE TRANSACTION

Date: March 16, 2020
Transaction Number: 2798566

To: Silicon Valley Clean Energy Authority (Buyer)
Trader: Ruben Lorenzo

From: NextEra Energy Marketing, LLC (Seller)
Trader: Ruben Lorenzo

This confirmation confirms the terms and conditions of the physical power transaction entered into between the parties.

Trade Date: March 13, 2020
Type of Transaction: FIRM (LD)

Term: From and including: 01/01/2022
Through: 12/31/2022

Delivery Period: See Annex A

Contract Quantity: See Annex A
Total Contract Quantity: [redacted] MWH
Contract Price: See Annex A
Delivery Point: [redacted]
CONFIRMATION OF POWER PURCHASE
AND SALE TRANSACTION

Scheduling Rules: Seller shall schedule DAY-AHEAD physical delivery of the Contract Quantity to Buyer at the Delivery Point to occur during the applicable Delivery Period in accordance with the rules and procedures of the Transmission Provider. The Contract Quantity will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). “Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

Special Terms: ZG RT Scheduling
Phone: 760-483-5000
Email: 24hrdesk@zglobal.biz

ZG DA Scheduling
Phone: 916-221-1009
Email: DAscheduler@zglobal.biz

Governing Terms: Unless otherwise noted in this confirmation, this transaction is governed by the terms and conditions of the Master Agreement between NextEra Energy Marketing, LLC and Silicon Valley Clean Energy Authority executed on March 14, 2019.

Upon receipt:

1. If this confirmation does not reflect your understanding of this Transaction please notify the Risk Management Department of NextEra Energy Marketing, LLC by fax at 561-625-7517 or email to NextEra.Confirmations@NextEraEnergy.com.

2. If this confirmation reflects your understanding of this Transaction please sign where indicated and fax to 561-625-7517 or email to NextEra.Confirmations@NextEraEnergy.com.

NextEra Energy Marketing, LLC
By: _________________________________
Name: Nicole Lawrence
Title: Trading Risk Analyst
Date: March 16, 2020
Contact: phone:561-304-6181 fax:561-625-7517

Silicon Valley Clean Energy Authority
By: _________________________________
Name: Girish Balachandran
Title: CEO
Date: 3/16/2020
Contact: _________________________________
Deal flows on the days outlined below, either excluding or including NERC holidays depending on the "Holidays" flag setting on Hour Type.

<table>
<thead>
<tr>
<th>Contract Month</th>
<th>Days of Week</th>
<th>Hour Type</th>
<th>MW</th>
<th>Price $/MWH</th>
</tr>
</thead>
</table>

On Peak
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 March 27, 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 August 7, 2017, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (as defined herein).

1. DEFINITIONS

1.1 "Agreement" has the meaning specified in the introductory paragraph hereof.

1.2 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.

1.3 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.4 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.5 "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.7 "CAISO" means the California Independent System Operator or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the definition of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.
1.12 “Contract Price” means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.

1.13 “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month (as such amount may be adjusted pursuant to Section 4.4).

1.14 “Control Area” has the meaning set forth in the Tariff.

1.15 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, and any other existing or subsequent decisions related to resource adequacy issued from time to time by the CPUC, as amended from time to time.

1.16 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

1.17 “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.18 “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.19 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.20 “Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

1.21 “FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or redefines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.22 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

1.23 “Firm RA Product” has the meaning specified in the Section 3.3 hereof.

1.24 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.25 “Flexible RA Product” has the meaning specified in the Section 3.2 hereof.

1.26 “GADS” means the Generating Availability Data System or its successor.
1.27 “Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.28 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

1.29 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.30 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

1.31 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.32 “LRA” has the meaning set forth in the Tariff.

1.33 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.34 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

1.35 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.36 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

1.37 “NERC” means the North American Electric Reliability Council, or its successor.

1.38 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

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

1.40 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.41 “Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.
“Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).

“Party” and “Parties” have the meanings specified in the introductory paragraph hereof.

“Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” has the meaning specified in Article 3 hereof.

“RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

“RA Capacity Price” means the price specified in the RA Capacity Price Table in Section 4.9 hereof.

“RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.

“RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

“Replacement Capacity” has the meaning specified in Section 4.7 hereof.

“Replacement Unit” means a generating unit meeting the requirements specified in Section 4.5.

“Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.

“Seller” has the meaning specified in the introductory paragraph hereof.

“Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

“Subsequent Buyer” means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
1.58 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

1.59 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.

1.60 “Transaction” has the meaning specified in the introductory paragraph hereof.

1.61 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.62 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.

1.63 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT INFORMATION

Name: Los Medanos Energy Center AGGREGATE

Location: Pittsburg, CA

CAISO Resource ID: LMEC_1.PL1X3

Resource Type: I.Phys_Res

Resource Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid (“Substation”): Pittsburg

Path 26 (North, South or None): North

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None

Run Hour Restrictions: None

LAR Attributes (Yes/No): No

If yes: Local Capacity Area (as of Confirmation Effective Date): N/A
Product Type (Flexible/Generic): Flexible

If Generic: Unit NQC (as of the Confirmation Effective Date): N/A

If Flexible: Unit EFC (as of the Confirmation Effective Date): Varies by Month

Flexible Capacity Category (Base/Peak/Super-peak) (as of the Confirmation Effective Date): Base

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity. If, and to the extent, the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with such Product from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that, (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure or any reduction in Contract Quantity in accordance with Section 4.4, and (ii) Seller has given Buyer timely notice pursuant to Section 4.5, then, Seller may either reduce the Contract Quantity or provide Buyer with Product from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with any portion of the Designated RA Capacity (x) for a reason other than a Force Majeure, Planned Outage in accordance with Section 4.4(a), or reduction of the RA Capacity of any Unit, or (y) Seller failed to give Buyer timely notice pursuant to Section 4.5(a), then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.
4. DELIVERY AND PAYMENT

4.1 Delivery Period

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

<table>
<thead>
<tr>
<th>Contract Year/Month</th>
<th>Contract Quantity (MWs)</th>
</tr>
</thead>
</table>

4.4 Adjustments to Contract Quantity

(a) Planned Outages: Seller’s obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller’s option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline, of the amount of Product from the Unit Buyer is permitted to include in Buyer’s RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the
applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) **Reductions in Unit NQC:** If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(c) **Reductions in Unit EFC:** If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller’s obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller’s potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (c) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

(d) **UCAP:** If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement, Seller shall convey to Buyer an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Buyer’s share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity. Seller’s pro-rata delivery obligation pursuant to clause (i) above will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit’s overall qualifying capacity (in MW) as measured by such new method of measuring a Unit’s qualifying capacity).

### 4.5 Alternate Capacity and Replacement Units

(a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternative Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such
Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

(b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 or Force Majeure and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller’s intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) (“Replacement Capacity”). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement:
an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 **Indemnities for Failure to Deliver Contract Quantity**

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.6;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 **Monthly RA Capacity Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).
4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (c) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such revenues received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation.

5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure
of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

6. RESERVED

7. OTHER BUYER AND SELLER COVENANTS

7.1. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (neither Party shall be required to spend more than $10,000 in total under the Agreement in support of such actions) shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;

If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit’s SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;

Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;

Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to the Buyer, at least five (5) Business Days before the relevant deadline for each RAR Showing, LAR Showing, and/or FCR Showing, as applicable, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans. Buyer may disclose information related to this Transaction to a Subsequent Buyer.

9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder. Seller will, or will cause the Unit’s SC, to follow Buyer’s instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer’s rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit’s SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.
(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller’s obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

10. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

11. COLLATERAL REQUIREMENTS

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Calpine Energy Services, L.P.  
By: ____________________________
Name: Andrew Novotny
Title: Vice President

Silicon Valley Clean Energy Authority  
By: ____________________________
Name: Girish Balachandran
Title: CEO