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 public comment period or the applicable agenda item. The public will also have an opportunity to provide comments during the meeting.

The public may provide comments on any matter listed on the Agenda. Speakers are customarily limited to 3 minutes each, however, the Board Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

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
Adoption of Resolutions Commending Bruce Karney and James Tuleya for Their Promotion of Community Choice Energy in Santa Clara County and Their Dedicated Service Representing Community and Customer Interests.

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any matter not listed on the Agenda provided that it is within the subject matter jurisdiction of SVCE. Speakers are customarily limited to 3 minutes each, however, the Board Chair may increase or decrease the time allotted to each speaker based on the number of speakers, the length of the agenda and the complexity of the subject matter. Speaking time will not be decreased to less than one minute.

Consent Calendar (Action)

1a) Approve Minutes of the March 10, 2021, Board of Directors Meeting
1b) Approve Minutes of the March 5, 2021, Board of Directors Special Meeting
1c) Approve Minutes of the March 19, 2021, Board of Directors Special Meeting
1d) Receive February 2021 Treasurer Report
1e) Adopt Resolution Amending SVCE Conflict of Interest Code to Amend Title of Manager of Regulatory and Legislative Affairs to Principal Policy Analyst and Add Senior Financial Analyst Position
1f) Receive Quarterly Decarbonization and Grid Innovation Programs Update
1g) Executive Committee Report
1h) Finance and Administration Committee Report
1i) Audit Committee Report
1j) Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report
1k) California Community Power Report

Regular Calendar

2) CEO Report (Discussion)
3) Approve Participation in the California Community Choice Financing Authority Joint Powers Authority (Action)
4) Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with San Luis West Solar, LLC for Renewable Solar
PV Supply (PCC1) and Energy Storage in Substantial Form and Any Necessary Ancillary Agreements and Documents (Action)

Board Member Announcements and Direction on Future Agenda Items

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

Convene to Closed Session
Conference with Legal Counsel – Initiation of Litigation
Government Code Section 54956.9(d)(4)
One Case

Report from Closed Session

Adjourn

svcleanenergy.org
333 W El Camino Real
Suite 330
Sunnyvale, CA 94087
CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California’s electric flow). Its stated mission is to “operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

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

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

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

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

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

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

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

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

DAC – Disadvantaged Community

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

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

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

Distribution - The delivery of electricity to the retail customer’s home or business through low voltage distribution lines.
DLAP – Default Load Aggregation Point – In the CAISO’s electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

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

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

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

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

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

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

EV – Electric Vehicle

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

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

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

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


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

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

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.
LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

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

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

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

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

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

NRDC – Natural Resources Defense Council

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

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

MWH – Megawatt-hour – measure of energy

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

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

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

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

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

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

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

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.
**PPA – Power Purchase Agreement** – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

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

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

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

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

**SCE** – Southern California Edison

**SDG&E** – San Diego Gas & Electric

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

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

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

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

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

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

A guide to industry terminology

What's a watt?

A watt is a measure of electricity. If you have ten 100-watt bulbs on at the same time, the "demand" or instantaneous measure of the power required for the job is 1,000 watts, also called one kilowatt or kW. If you keep them lit for one full hour, you have used 1,000 watt hours of electricity also called a kilowatt-hour or kWh. The typical American home uses about 840 kWh per month.

Megawatt

One megawatt equals one million watts or 1,000 kilowatts, roughly enough electricity for the instantaneous demand of 750 homes at once. That number fluctuates because electrical demand changes based on the season, the time of day and other factors.

Voltage

Just as it takes pressure to move water through a pipe, it takes voltage to move electricity across a wire. The high-voltage transmission lines operated by the ISO carry power at 500, 230, 115 and 70 kV. It is "stepped down" into lower voltage by transformers at utility-operated substations and then to 12 or 21 kV for delivery to homes and businesses. Final delivery by the utilities is at 220 volts; most household plugs deliver power at 110 volts.

Capacity

The amount of electricity an electrical facility can carry or generate; usually applied to generators, transmission lines, substation equipment and distribution lines.

Energy vs. capacity

If you're filling up a bucket with water from a garden hose, the amount of water moving through the hose is the "energy" or wattage, and the water pressure inside the hose is the voltage. The size of the hose is the capacity.

The electrical grid

Continuing the water analogy, envision the electrical grid as a big pressurized water system with hundreds of devices (generators) pumping water into the system through long pipes (transmission lines), and literally millions of customers sucking water out through smaller straws (utility distribution systems). There are hundreds of places (substations) where valves and adapters (switches and transformers) are used to break large volumes of water down into smaller units under less pressure for delivery through straws. The ISO job is to make sure that the high-pressure system, the water pressure (voltage) and pump output (frequency) remain constant even though inflow and outflow (measured in wattage) are changing minute by minute.

Frequency

Much like radio signals, electric generators can be "tuned" to produce power that vibrates at different frequencies. In the United States, virtually all electricity is generated and transmitted at 60-hertz or 60 cycles per second (cps). If the frequency fluctuates, it can damage all manner of electrical equipment. Frequency can be affected by a variety of factors and must be monitored closely by the ISO to make sure it remains very close to the 60 cps target.

Load
Load is the energy use; the ISO refers to utilities as load serving entities (LSEs) because that’s what they do, serve load. Load is frequently confused with demand, which is actually how much power the load requires.

**Demand**

The number of kilowatts or megawatts delivered to the load at a given instant.

**Market participant**

Any entity that buys, sells, trades, transmits or distributes electricity in the California ISO control area. This includes utilities, generating companies, transmission owners, energy-trading companies and Scheduling Coordinators (SCs).

**Scheduling coordinator**

Entities that buy or sell power through the California ISO have to do so through a SC that is specifically authorized by the ISO to handle this type of transaction. SCs may be a subsidiary of the company they represent or hired as agents for the company.

**Investor-owned utility (IOU)**

The term investor-owned utility or IOU refers to the fact that these are private companies, owned by stockholders, as opposed to municipal utilities that are owned by the customers they serve. The three largest utilities in California are: Pacific Gas and Electric (PG&E), Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E).
RESOLUTION NO. 2021-07

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY COMMENDING BRUCE KARNEY FOR HIS PROMOTION OF COMMUNITY CHOICE ENERGY IN SANTA CLARA COUNTY AND HIS DEDICATED SERVICE REPRESENTING COMMUNITY AND CUSTOMER INTERESTS

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

WHEREAS, the Silicon Valley Clean Energy Authority (“SVCEA”) was formed on March 31, 2016, with eleven Cities and Towns and the County of Santa Clara deciding to become the initial members; and

WHEREAS, Bruce Karney played an important role as volunteer with Carbon Free Mountain View and Carbon Free Silicon Valley in promoting community clean energy in Santa Clara County; and

WHEREAS, Bruce Karney attended local council meetings and advocated for jurisdictions to join and become members of the Silicon Valley Clean Energy Joint Powers Authority; and

WHEREAS, Bruce Karney represented community advocates and customers during the SVCEA launch ceremony in April 2017; and

WHEREAS, Bruce Karney attended and participated in a majority of board and committee meetings over five years; and

WHEREAS, Bruce Karney did attend an SVCE Board meeting and stated that he was not a cat; and

WHEREAS, Bruce Karney, in spite of being an avid golfer, if given a choice, always wishes that SVCE emissions go down faster than his handicap; and

WHEREAS, Bruce Karney has participated in statewide advocacy efforts such as letter writing to the California Public Utilities Commission and legislators to influence state energy policy; and

WHEREAS, Bruce Karney provided stakeholder feedback in the development of the ground-breaking Decarbonization Strategy and Programs Roadmap, adopting strategic plans to reduce not only electricity emissions but also emissions associated with buildings and transportation; and

WHEREAS, Bruce Karney supported development of the SVCEA Building Decarbonization Joint Action Plan, which defines strategies to reduce building emissions; and
WHEREAS, Bruce Karney advocated for reach codes in cities throughout the SVCEA service area, supporting a healthy community and cost savings; and

WHEREAS, Bruce Karney guided the SVCEA decision to provide carbon-free electricity resulting in a 24% reduction in overall community emissions since 2015; and

NOW, THEREFORE, the Board of Directors of SVCEA hereby commends Bruce Karney with a Community Energy Hero Award and expresses its sincere appreciation for his promotion of Community Choice Energy in Santa Clara County and his dedicated service as a valued member of the community.

ADOPTED AND APPROVED this 14th day of April 2021, by the following vote:

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Chair

ATTEST:

Secretary
RESOLUTION NO. 2021-08

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY COMMENDING JAMES TULEYA FOR HIS PROMOTION OF COMMUNITY CHOICE ENERGY IN SANTA CLARA COUNTY AND HIS DEDICATED SERVICE REPRESENTING COMMUNITY AND CUSTOMER INTERESTS

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

WHEREAS, the Silicon Valley Clean Energy Authority (“SVCEA”) was formed on March 31, 2016, with eleven Cities and Towns and the County of Santa Clara deciding to become the initial members; and

WHEREAS, James Tuleya played an important role as volunteer with Carbon Free Silicon Valley and Sunnyvale Cool in promoting community clean energy in Santa Clara County; and

WHEREAS, James Tuleya attended local council meetings and advocated for jurisdictions to join and become members of the Silicon Valley Clean Energy Joint Powers Authority; and

WHEREAS, James Tuleya attended and participated in a majority of board and committee meetings over five years; and

WHEREAS, James Tuleya assisted with community outreach events and presentations during the SVCEA launch period; and

WHEREAS, James Tuleya was frequently to be found working at the Starbucks opposite SVCE’s office, wherein many productive conversations with SVCE employees related to program design and solving global emission problems ensued; and

WHEREAS, James Tuleya has participated in statewide advocacy efforts such as letter writing to the California Public Utilities Commission and legislators to influence state energy policy; and

WHEREAS, James Tuleya participated as a member of the Customer Programs Advisory Group in the development of the ground-breaking Decarbonization Strategy and Programs Roadmap, adopting strategic plans to reduce not only electricity emissions but also emissions associated with buildings and transportation; and

WHEREAS, James Tuleya supported development of the SVCEA Building Decarbonization Joint Action Plan, which defines strategies to reduce building emissions; and

WHEREAS, James Tuleya provided stakeholder input for the All-Electric Showcase Awards Program; and
WHEREAS, James Tuleya advocated for reach codes in cities throughout the SVCEA service area, supporting a healthy community and cost savings; and

WHEREAS, James Tuleya guided the SVCEA decision to provide carbon-free electricity resulting in a 24% reduction in overall community emissions since 2015; and

NOW, THEREFORE, the Board of Directors of SVCEA hereby commends James Tuleya with a Community Energy Hero Award and expresses its sincere appreciation for his promotion of Community Choice Energy in Santa Clara County and his dedicated service as a valued member of the community.

ADOPTED AND APPROVED this 14th day of April 2021, by the following vote:

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Chair

ATTEST:

______________________________
Secretary

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Resolution 2021-08
Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, March 10, 2021
7:00 pm

Pursuant to State of California Executive Order N-29-20, dated March 17, 2020, the meeting was conducted via teleconference.

DRAFT MINUTES

Call to Order
Chair Abe-Koga called the meeting to order at 7:02 p.m.

Roll Call
Present:
Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Liz Gibbons, City of Campbell
Director Jon Robert Willey, City of Cupertino (arrived at 7:04 p.m.)
Alternate Director Rebeca Armendariz, City of Gilroy (arrived at 7:03 p.m.)
Director Neysa Fligor, City of Los Altos
Director George Tyson, Town of Los Altos Hills
Director Rob Rennie, Town of Los Gatos
Director Evelyn Chua, City of Milpitas
Alternate Director Bryan Mekechuk, City of Monte Sereno
Alternate Director Anthony Eulo, City of Morgan Hill
Director Tina Walia, City of Saratoga
Director Gustav Larsson, City of Sunnyvale
Director Susan Ellenberg, County of Santa Clara

Absent:
None.

All present Board members participated via teleconference.

Public Comment on Matters Not Listed on the Agenda
Bruce Karney, on behalf of the boards of Carbon Free Mountain View and Carbon Free Silicon Valley, announced Chair Abe-Koga and Director Rob Rennie were being recognized for serving five terms on SVCE’s Board of Directors. Karney noted the award certificates had been given to Board Clerk Andrea Pizano and she would be distributing them.

Chair Abe-Koga thanked Karney for the recognition and noted she looked forward to receiving the certificate.

Consent Calendar
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
MOTION: Vice Chair Gibbons moved and Alternate Director Mekechuk seconded the motion to approve the Consent Calendar.

The motion carried by verbal roll call vote.

1a) Approve Minutes of the February 10, 2021, Board of Directors Meeting
1b) Approve Minutes of the February 5, 2021, Board of Directors Special Meeting
1c) Receive January 2021 Treasurer Report
1d) Authorize the Chief Executive Officer to Execute Second Amendment to Agreement with Keyes & Fox for Legislative Support and Legal Representation Amending the Not-to-Exceed Amount and Scope of Services
1e) Receive SVCE Rate Schedules Effective March 18, 2021
1f) Executive Committee Report
1g) Finance and Administration Committee Report
1h) Audit Committee Report
1i) Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report
1j) California Community Power Report

Regular Calendar

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

CFO and Director of Administrative Services Amrit Singh introduced external auditors Brett Bradford and Andrea Lifto of Pisenti & Brinker LLP, who presented a PowerPoint presentation of the results of the financial audit. Bradford noted the audit went well and SVCE received a clean opinion, and there were no material weaknesses in internal controls identified.

As Chair of the Audit Committee, Alternate Director Mekechuk provided a summary of the report from the Audit Committee.

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

MOTION: Director Tyson moved and Alternate Director Eulo seconded the motion to receive the year-end financial statements and the independent auditor’s report for the fiscal year 2019-20.

The motion carried by verbal roll call vote.

3) CEO Report (Discussion)

CEO Girish Balachandran provided a CEO report which included an introduction of new employee Karthik Rajan, Principal Power Analyst, who provided brief welcome comments. CEO Balachandran presented a PowerPoint presentation on SVCE future work, five focus areas distilled from the Strategic Plan, board oversight and policy direction, and SVCE priorities and issue spotting. CEO Balachandran responded to a question regarding the PCIA from Director Willey.

Director of Regulatory and Legislative Policy Melicia Charles and Director of Decarbonization and Grid Innovation Programs Aimee Bailey presented a PowerPoint presentation on SVCE’s equity efforts.

Chair Abe-Koga opened public comment.
Bruce Karney inquired what happens when a customer does not pay SVCE for service, and referenced and quoted a segment from the SVCE Implementation Plan. Karney posed questions based off of the
SVCE Implementation Plan language on customers who do not pay.
Chair Abe-Koga closed public comment.

CEO Balachandran noted staff would reach out to Mr. Karney directly to address his questions.

Vice Chair Gibbons commented she listened to the Berkeley Energy Institute at Haas' webinar on Designing Electricity Rates for an Equitable Energy Transition, and recommended it to the board.

4) Approve the FY 2020-21 Adjusted Operating Budget and Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule (Action)

CFO and Director of Administrative Services Amrit Singh presented a PowerPoint presentation and responded to board member questions. Director Larsson noted the staff report was missing a reference to millions in the amount of money being requested to draw from reserves.

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

MOTION: Director Chua moved and Alternate Director Mekechuk seconded the motion to approve the fiscal year (FY) 2020-21 Adjusted Operating Budget that requires drawing $6.025 million from the reserves to cover projected expenses, and adopt Resolution 2021-06 amending the approved positions chart, job classifications, and salary schedule.

The motion carried by verbal roll call vote.

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

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

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

MOTION: Vice Chair Gibbons moved and Director Ellenberg seconded the motion to authorize the Chief Executive Officer to execute the Power Purchase Agreement (PPA) with Angiola East, LLC in substantial form and any necessary ancillary agreements and documents with the following key terms: 20 megawatt (MW) of Solar photovoltaic (PV) supply with 10 MW (four-hour duration) of energy storage qualifying as Portfolio Category Content One (PCC1) renewable resource; 15-Year term PPA with expected delivery from March 31, 2023 through March 30, 2038; and Total amount not-to-exceed $35,000,000.

The motion carried by verbal roll call vote.

Board Member Announcements and Direction on Future Agenda Items
Vice Chair Gibbons requested follow up on the questions from Bruce Karney’s public comment regarding SVCE customers who have failed to pay in the form of a presentation or memo to the Board.

Alternate Director Eulo commented on the meeting duration.

Adjourn

Chair Abe-Koga adjourned the meeting at 8:40 p.m.
Pursuant to State of California Executive Order N-29-20, dated March 17, 2020, the meeting was conducted via teleconference.

**DRAFT MINUTES**

Prior to the call of order, Board Clerk Andrea Pizano noted in the absence of the Chair and Vice Chair, the longest serving member of the board, Director Gustav Larsson, would serve as Interim Chair of the meeting.

**Call to Order**

Interim Chair Larsson called the meeting to order at 1:01 p.m.

**Roll Call**

**Present:**

Directors:
- Director Gustav Larsson, City of Sunnyvale
- Director Jon Robert Willey, City of Cupertino
- Director Zach Hilton, City of Gilroy
- Director Evelyn Chua, City of Milpitas (arrived at 1:10 p.m.)
- Director Javed Ellahie, City of Monte Sereno (arrived following roll call)
- Director Tina Walia, City of Saratoga

Alternate Directors:
- Alternate Director Hung Wei, City of Cupertino
- Alternate Director Rebeca Armendariz, City of Gilroy
- Alternate Director Sally Meadows, City of Los Altos
- Alternate Director Lisa Schmidt, Town of Los Altos Hills (arrived following roll call)
- Alternate Director Anthony Eulo, City of Morgan Hill
- Alternate Director Bryan Mekechuk, City of Monte Sereno
- Alternate Director Larry Klein, City of Sunnyvale

**Absent:**

Directors:
- Chair Margaret Abe-Koga, City of Mountain View
- Vice Chair Liz Gibbons, City of Campbell
- Director Neysa Fligor, City of Los Altos
- Director George Tyson, Town of Los Altos Hills
- Director Rob Rennie, Town of Los Gatos
- Director Yvonne Martinez Beltran, City of Morgan Hill
- Director Susan Ellenberg, County of Santa Clara
Alternate Directors:
Alternate Director Sergio Lopez, City of Campbell
Alternate Director Marico Sayoc, City of Los Gatos
Alternate Director Elaine Marshall, City of Milpitas
Alternate Director Lisa Matichak, City of Mountain View
Alternate Director Rishi Kumar, City of Saratoga
Alternate Director Otto Lee, County of Santa Clara

All present Board members participated via teleconference.

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

Regular Calendar

1) SVCE Board Workshop – Power Supply and Regulatory and Legislative Policy

Director of Power Resources Monica Padilla presented a PowerPoint presentation and provided an overview of power supply which included an introduction to the Power Resources team, electricity 101, portfolio planning and management, energy market participants and products, the California grid, SVCE’s Power Content Label, and reliability and resource adequacy. Director of Power Resources Padilla responded to board member questions.

Director of Regulatory and Legislative Policy Melicia Charles presented a PowerPoint presentation which included an introduction to the Legislative and Regulatory Policy team, key California Public Utilities Commission (CPUC) terms, and resource planning and reliability. Senior Regulatory Analyst Poonum Agrawal presented slides on the power charge indifference adjustment (PCIA) and direct access. Staff responded to board member questions.

CFO and Director of Administrative Services Amrit Singh presented a PowerPoint presentation on Risk Management Concepts which included risks arising from the power supply portfolio, market risk measures, credit risk, collateral posting, and trade-offs among market, credit, and liquidity risk. CFO and Director of Administrative Services Singh responded to board member questions.

Interim Chair Larsson opened public comment.
No speakers.
Interim Chair Larsson closed public comment.

CEO Girish Balachandran noted staff would be available for meetings to discuss the content in more detail for interested board members.

Board Member Announcements and Direction on Future Agenda Items
No comments.

Adjourn

Interim Chair Larsson adjourned the meeting at 2:59 p.m.
Silicon Valley Clean Energy Authority
Board of Directors Special Meeting
Friday, March 19, 2021
1:00 pm

Pursuant to State of California Executive Order N-29-20, dated March 17, 2020, the meeting was conducted via teleconference.

DRAFT MINUTES

Prior to the call of order, Board Clerk Andrea Pizano noted in the absence of the Chair and Vice Chair, Director Gustav Larsson, would serve as Interim Chair of the meeting.

Call to Order

Interim Chair Larsson called the meeting to order at 1:02 p.m.

Roll Call

Present:

Directors:
Director Gustav Larsson, City of Sunnyvale
Director Zach Hilton, City of Gilroy
Director Rob Rennie, Town of Los Gatos
Director Evelyn Chua, City of Milpitas
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived following roll call)
Director Tina Walia, City of Saratoga

Alternate Directors:
Alternate Director Sergio Lopez, City of Campbell
Alternate Director Hung Wei, City of Cupertino
Alternate Director Sally Meadows, City of Los Altos
Alternate Director Lisa Schmidt, Town of Los Altos Hills (arrived following roll call)
Alternate Director Bryan Mekechuk, City of Monte Sereno
Alternate Director Larry Klein, City of Sunnyvale

Absent:

Directors:
Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Liz Gibbons, City of Campbell
Director Jon Robert Willey, City of Cupertino
Director Neysa Fligor, City of Los Altos
Director George Tyson, Town of Los Altos Hills
Director Javed Ellahie, City of Monte Sereno
Director Susan Ellenberg, County of Santa Clara

Draft Minutes of the March 19, 2021 SVCE Board of Directors Special Meeting
All present Board members participated via teleconference.

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

**Regular Calendar**

1) **SVCE Board Workshop – Customers, Programs, and Finance and Administration**

CEO Girish Balachandran provided welcome comments.

Director of Account Services and Community Relations Don Bray presented a PowerPoint presentation which included an introduction of the Account Services and Community Relations team, key functions of the department, SVCE customers, SVCE’s ‘value proposition’, SVCE rates and billing, and current customer-related topics. Director of Account Services and Community Relations Bray responded to board member questions.

Director of Decarbonization and Grid Innovation Programs Aimee Bailey presented a PowerPoint presentation which included an introduction to the Decarbonization and Grid Innovation Programs team, and a focus on the following questions:
Who is responsible for programs at SVCE?
Why does SVCE offer programs?
How does SVCE decide which programs to offer?
What programs are currently available?
Where do I go to get more information?

Director of Decarbonization and Grid Innovation Programs Bailey responded to board member questions.

CFO and Director of Administrative Services Amrit Singh presented a PowerPoint presentation on an overview of Finance and Administration which included an introduction of the Finance and Administration team, responsibilities of the department, Strategic Plan goals, power prepay, administrative services, and information technology. CFO and Director of Administrative Services Singh responded to board member questions.

CEO Balachandran invited board members to reach out if they were interested in meeting with staff for more information on a particular topic.

Interim Chair Larsson opened public comment.
No speakers.
Interim Chair Larsson closed public comment.

**Board Member Announcements and Direction on Future Agenda Items**
No comments.

**Adjourn**

Interim Chair Larsson adjourned the meeting at 2:46 p.m.
TREASURER REPORT

Fiscal Year to Date
As of February 28, 2021

(Preliminary & Unaudited)

Issue Date: April 14, 2021

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<th>Page</th>
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<td>4</td>
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<tr>
<td>Statement of Revenues, Expenses &amp; Changes in Net Position</td>
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<td>Statement of Cash Flows</td>
<td>6-7</td>
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<td>Actuals to Budget Report</td>
<td>8-10</td>
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<td>Monthly Change in Net Position</td>
<td>11</td>
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<td>Investments Report</td>
<td>12</td>
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<td>Customer Accounts</td>
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<td>Accounts Receivable Aging Report</td>
<td>14</td>
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SILICON VALLEY CLEAN ENERGY AUTHORITY

Financial Statement Highlights ($ in 000’s)

Financial Highlights for the month of February 2021:

> SVCE operations resulted in a negative change in net position for the month of $2.9 million and year-to-date change in net position of $8.8 million.

> Retail GWh sales for the month landed 1% above budget.

> YTD operating margin of $15.5 million or 16% is below budget expectations of a 17.5% operating margin for the fiscal year to date.

> Power Supply costs are 4.2% below budget for the fiscal year year to date.

> SVCE is investing ~94.2% of available funds generating year-to-date investment income of $0.14 million

<table>
<thead>
<tr>
<th>Change in Net Position</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>
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<td>Actual</td>
<td>9,773</td>
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<td>(3,100)</td>
<td>(2,913)</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<th>Power Supply Costs</th>
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<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>
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<tr>
<td>Energy &amp; REC’s</td>
<td>12,559</td>
<td>13,126</td>
<td>15,668</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>Wholesale Sales</td>
<td>(116 )</td>
<td>(33 )</td>
<td>(19 )</td>
<td>(49 )</td>
<td>(46 )</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>10,576</td>
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<td>Capacity</td>
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<td>2,245</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3,347</td>
<td>(3,255)</td>
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<tr>
<td>CAISO Charges</td>
<td>548</td>
<td>704</td>
<td>357</td>
<td>823</td>
<td>(30 )</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>2,403</td>
<td>(540)</td>
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<tr>
<td>NEM Expense</td>
<td>(60 )</td>
<td>(103)</td>
<td>(178)</td>
<td>(133)</td>
<td>(65 )</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>3,347</td>
<td>(3,255)</td>
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<td>Charge/Credit (IST/Net Rev)</td>
<td>1,932</td>
<td>(471)</td>
<td>(287)</td>
<td>936</td>
<td>1,237</td>
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<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>3,347</td>
<td>(3,255)</td>
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<td>Net Power Costs</td>
<td>17,134</td>
<td>15,075</td>
<td>17,475</td>
<td>18,505</td>
<td>15,539</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>83,729</td>
<td>(235,237)</td>
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<table>
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<tr>
<th>Other</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>
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<td>Capital Expenditures</td>
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<td>-</td>
<td>-</td>
<td>49</td>
<td>0</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>231</td>
<td>400</td>
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<tr>
<td>Energy Programs</td>
<td>110</td>
<td>69</td>
<td>149</td>
<td>301</td>
<td>92</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>720</td>
<td>5,270</td>
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<table>
<thead>
<tr>
<th>Load Statistics - GWh</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>
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</thead>
<tbody>
<tr>
<td>Retail Sales Actual</td>
<td>325</td>
<td>305</td>
<td>331</td>
<td>325</td>
<td>289</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1,574</td>
<td>(3,762)</td>
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<tr>
<td>Retail Sales Budget</td>
<td>325</td>
<td>305</td>
<td>331</td>
<td>320</td>
<td>286</td>
<td>302</td>
<td>279</td>
<td>291</td>
<td>314</td>
<td>345</td>
<td>355</td>
<td>330</td>
<td>3,781</td>
<td>(3,762)</td>
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</table>

Treasurer Report, February 2021
Other Statistics and Ratios

<table>
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<tr>
<th>Item</th>
<th>Value</th>
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<tbody>
<tr>
<td>Working Capital</td>
<td>$189,484,495</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>8.4</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>16%</td>
</tr>
<tr>
<td>Expense Coverage Days</td>
<td>256</td>
</tr>
<tr>
<td>Expense Coverage Days w/ LOC</td>
<td>306</td>
</tr>
<tr>
<td>Long-Term Debt</td>
<td>$0</td>
</tr>
<tr>
<td>Total Accounts</td>
<td>273,323</td>
</tr>
<tr>
<td>Opt-Out Accounts (Month)</td>
<td>71</td>
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<tr>
<td>Opt-Out Accounts (FYTD)</td>
<td>326</td>
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<tr>
<td>Opt-Up Accounts (Month)</td>
<td>(2)</td>
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<tr>
<td>Opt-Up Accounts (FYTD)</td>
<td>(28)</td>
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</tbody>
</table>
# SILICON VALLEY CLEAN ENERGY AUTHORITY

## STATEMENT OF NET POSITION

As of February 28, 2021

### ASSETS

<table>
<thead>
<tr>
<th>Current Assets</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>$177,390,822</td>
</tr>
<tr>
<td>Accounts Receivable, net of allowance</td>
<td>19,653,933</td>
</tr>
<tr>
<td>Accrued Revenue</td>
<td>9,866,859</td>
</tr>
<tr>
<td>Other Receivables</td>
<td>86,318</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>2,966,046</td>
</tr>
<tr>
<td>Deposits</td>
<td>600,013</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,500,000</td>
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<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>215,063,991</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Noncurrent assets</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital assets, net of depreciation</td>
<td>315,526</td>
</tr>
<tr>
<td>Deposits</td>
<td>145,130</td>
</tr>
<tr>
<td><strong>Total Noncurrent Assets</strong></td>
<td><strong>460,656</strong></td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>215,524,647</strong></td>
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### LIABILITIES

<table>
<thead>
<tr>
<th>Current Liabilities</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>1,127,775</td>
</tr>
<tr>
<td>Accrued Cost of Electricity</td>
<td>23,222,977</td>
</tr>
<tr>
<td>Accrued Payroll &amp; Benefits</td>
<td>516,364</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>-</td>
</tr>
<tr>
<td>User Taxes and Energy Surcharges due to other gov'ts</td>
<td>712,380</td>
</tr>
<tr>
<td>Supplier Security Deposits</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>25,579,496</strong></td>
</tr>
</tbody>
</table>

### NET POSITION

<p>| Net investment in capital assets                    | 315,526      |
| Restricted for security collateral                  | 4,500,000    |
| Unrestricted (deficit)                              | 185,129,625  |
| <strong>Total Net Position</strong>                              | <strong>$189,945,151</strong> |</p>
<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$ 98,733,471</td>
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<tr>
<td>GreenPrime electricity premium</td>
<td>473,739</td>
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<tr>
<td>Other income</td>
<td>12,500</td>
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<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>99,219,710</strong></td>
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<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
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<tbody>
<tr>
<td>Cost of Electricity</td>
<td>83,729,189</td>
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<tr>
<td>Contract services</td>
<td>3,741,489</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>2,362,513</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>692,288</td>
</tr>
<tr>
<td>Depreciation</td>
<td>34,315</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>90,559,794</strong></td>
</tr>
<tr>
<td><strong>OPERATING INCOME(LOSS)</strong></td>
<td><strong>8,659,916</strong></td>
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</table>

<table>
<thead>
<tr>
<th>NONOPERATING REVENUES (EXPENSES)</th>
<th></th>
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</thead>
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<tr>
<td>Interest Income</td>
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</tr>
<tr>
<td>Financing costs</td>
<td>(1,170)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING REVENUES (EXPENSES)</strong></td>
<td><strong>141,847</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>181,143,388</td>
</tr>
<tr>
<td>Net Position at end of period</td>
<td><strong>$189,945,151</strong></td>
</tr>
</tbody>
</table>
CASH FLOWS FROM OPERATING ACTIVITIES
Receipts from customers $120,686,876
Other operating receipts 5,582,740
Payments to suppliers for electricity (99,257,770)
Payments for other goods and services (4,726,078)
Payments for staff compensation and benefits (2,255,860)
Tax and surcharge payments to other governments (2,468,320)
Net cash provided (used) by operating activities 17,561,588

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES
Finance costs paid (1,170)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Acquisition of capital assets (237,348)

CASH FLOWS FROM INVESTING ACTIVITIES
Interest income received 143,017
Net change in cash and cash equivalents 17,466,087
Cash and cash equivalents at beginning of year 164,424,735
Cash and cash equivalents at end of period $181,890,822

Reconciliation to the Statement of Net Position
Cash and cash equivalents (unrestricted) $177,390,822
Restricted cash 4,500,000
Cash and cash equivalents $181,890,822
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2020 through February 28, 2021

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

Operating Income (loss) $ 8,659,916

Adjustments to reconcile operating income to net cash
provided (used) by operating activities
Depreciation expense 34,315
(Increase) decrease in net accounts receivable 11,804,381
(Increase) decrease in energy settlements receivable 107,318
(Increase) decrease in other receivables 121,682
(Increase) decrease in accrued revenue 7,650,365
(Increase) decrease in prepaid expenses (375,500)
(Increase) decrease in current deposits 3,632,404
Increase (decrease) in accounts payable (198,664)
Increase (decrease) in accrued payroll & benefits 100,632
Increase (decrease) in accrued cost of electricity (14,455,490)
Increase (decrease) in accrued liabilities (10,000)
Increase (decrease) in Energy settlements payable 933,630
Increase (decrease) in taxes and surcharges due to other governments (443,401)
Increase (decrease) in supplier security deposits -

Net cash provided (used) by operating activities $ 17,561,588
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### BUDGETARY COMPARISON SCHEDULE
**October 1, 2020 through February 28, 2021**

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Amended Budget</td>
<td>$</td>
<td>%</td>
<td>Amended Budget</td>
</tr>
<tr>
<td>Energy Sales</td>
<td>$98,733,471</td>
<td>$105,442,431</td>
<td>-$6,708,960</td>
<td>-6%</td>
<td>$250,747,000</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>473,739</td>
<td>448,947</td>
<td>24,792</td>
<td>6%</td>
<td>981,000</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>99,207,210</strong></td>
<td><strong>105,891,378</strong></td>
<td><strong>(6,684,168)</strong></td>
<td><strong>-6%</strong></td>
<td><strong>251,728,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
<td>83,729,189</td>
<td>87,371,903</td>
<td>(3,642,714)</td>
<td>-4.2%</td>
<td>235,237,000</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>15,478,021</td>
<td>18,519,475</td>
<td>(3,041,454)</td>
<td>-16%</td>
<td>16,491,000</td>
</tr>
<tr>
<td><strong>TOTAL ENERGY EXPENSES</strong></td>
<td><strong>5,933,289</strong></td>
<td><strong>7,120,686</strong></td>
<td><strong>(1,187,397)</strong></td>
<td><strong>-17%</strong></td>
<td><strong>17,146,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
<td>1,317,803</td>
<td>1,357,609</td>
<td>(39,806)</td>
<td>-3%</td>
<td>3,258,000</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td>489,349</td>
<td>560,876</td>
<td>(71,527)</td>
<td>-13%</td>
<td>1,350,000</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>2,362,513</td>
<td>2,603,449</td>
<td>(240,936)</td>
<td>-9%</td>
<td>6,248,000</td>
</tr>
<tr>
<td>Professional Services</td>
<td>968,069</td>
<td>1,652,048</td>
<td>(683,979)</td>
<td>-41%</td>
<td>3,800,000</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>170,823</td>
<td>342,121</td>
<td>(171,298)</td>
<td>-50%</td>
<td>820,000</td>
</tr>
<tr>
<td>Notifications</td>
<td>55,521</td>
<td>17,500</td>
<td>38,021</td>
<td>217%</td>
<td>100,000</td>
</tr>
<tr>
<td>Lease</td>
<td>175,855</td>
<td>208,333</td>
<td>(32,478)</td>
<td>-16%</td>
<td>500,000</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>393,356</td>
<td>378,750</td>
<td>14,606</td>
<td>4%</td>
<td>1,070,000</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>5,933,289</strong></td>
<td><strong>7,120,686</strong></td>
<td><strong>(1,187,397)</strong></td>
<td><strong>-17%</strong></td>
<td><strong>17,146,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING INCOME/(LOSS)</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9,544,732</td>
<td>11,398,789</td>
<td>(1,854,057)</td>
<td>-16%</td>
<td>(655,000)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING REVENUES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income</td>
<td>12500</td>
<td>20,833</td>
<td>(8,333)</td>
<td>-40%</td>
<td>50,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td>143,017</td>
<td>133,840</td>
<td>9,177</td>
<td>7%</td>
<td>321,000</td>
</tr>
<tr>
<td>Grant Income</td>
<td>-</td>
<td>28,633</td>
<td>(28,633)</td>
<td>-100%</td>
<td>68,000</td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING REVENUES</strong></td>
<td><strong>155,517</strong></td>
<td><strong>183,306</strong></td>
<td><strong>(27,789)</strong></td>
<td><strong>-15%</strong></td>
<td><strong>439,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
<td>1,170</td>
<td>108,833</td>
<td>(107,663)</td>
<td>-99%</td>
<td>139,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>230,666</td>
<td>250,000</td>
<td>(19,334)</td>
<td>-8%</td>
<td>400,000</td>
</tr>
<tr>
<td>Transfer to Programs Fund</td>
<td>5,270,000</td>
<td>5,270,000</td>
<td>0</td>
<td>0%</td>
<td>5,270,000</td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
<td><strong>5,500,666</strong></td>
<td><strong>5,520,000</strong></td>
<td><strong>(19,334)</strong></td>
<td><strong>0%</strong></td>
<td><strong>5,670,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$4,198,413</td>
<td>$5,953,262</td>
<td>-$1,754,849</td>
<td>-29%</td>
<td>-$6,025,000</td>
</tr>
</tbody>
</table>
### SILICON VALLEY CLEAN ENERGY AUTHORITY
### PROGRAM FUND
### BUDGETARY COMPARISON SCHEDULE
October 1, 2020 through February 28, 2021

#### REVENUE & OTHER SOURCES:
<table>
<thead>
<tr>
<th></th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>AMENDED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$5,270,000</td>
<td>$5,270,000</td>
<td>$-</td>
<td>100%</td>
</tr>
</tbody>
</table>

#### EXPENDITURES & OTHER USES:
|                                                   |          |        |          |               |
| Program expenditures                             | 6,475,000 | 720,317 | 5,754,683 | 11.1%         |

**Net increase (decrease) in fund balance**
- ($1,205,000) to $4,549,683
  - Fund balance at beginning of period: 4,437,570
  - Fund balance at end of period: $8,987,253

### CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
### BUDGETARY COMPARISON SCHEDULE
October 1, 2020 through February 28, 2021

#### REVENUE & OTHER SOURCES:
<table>
<thead>
<tr>
<th></th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>AMENDED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund *</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
</tbody>
</table>

#### EXPENDITURES & OTHER USES:
|                                                   |          |        |          |               |
| Program expenditures *                           | 2,170,000 | 142,684 | 2,027,316 | 6.6%          |

**Net increase (decrease) in fund balance**
- ($2,170,000) to $(142,684)
  - Fund balance at beginning of period: 8,422,537
  - Fund balance at end of period: $8,279,853
SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2020 through February 28, 2021

Net Increase (decrease) in available fund balance per budgetary comparison schedule $ 4,198,413

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

Subtract depreciation expense (34,315)
Subtract program expense not in operating budget (720,317)
Subtract CRCR expense not in operating budget (142,684)
Add back transfer to Program fund 5,270,000
Add back capital asset acquisition 230,666

Change in Net Position 8,801,763
Treasurer Report, February 2021

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2020 through February 28, 2021

<table>
<thead>
<tr>
<th>Item 1d</th>
<th>Item 1d</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATING REVENUES</td>
<td>OPERATING REVENUES</td>
</tr>
<tr>
<td>October</td>
<td>November</td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$ 28,096,823</td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>115,513</td>
</tr>
<tr>
<td>Other Income</td>
<td></td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>28,212,336</td>
</tr>
<tr>
<td>OPERATING EXPENSES</td>
<td>OPERATING EXPENSES</td>
</tr>
<tr>
<td>Cost of electricity</td>
<td>17,134,450</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>515,431</td>
</tr>
<tr>
<td>Data manager</td>
<td>263,699</td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>96,883</td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>316,457</td>
</tr>
<tr>
<td>General and administration</td>
<td>142,834</td>
</tr>
<tr>
<td>Depreciation</td>
<td>6,737</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>18,476,491</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>9,735,845</td>
</tr>
<tr>
<td>NONOPERATING REVENUES (EXPENSES)</td>
<td>NONOPERATING REVENUES (EXPENSES)</td>
</tr>
<tr>
<td>Interest income</td>
<td>36,768</td>
</tr>
<tr>
<td>Financing costs</td>
<td></td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>36,768</td>
</tr>
<tr>
<td>CHANGE IN NET POSITION</td>
<td>$ 9,772,613</td>
</tr>
</tbody>
</table>
# SILICON VALLEY CLEAN ENERGY AUTHORITY
## INVESTMENTS SUMMARY
### October 1, 2020 through February 28, 2021

### Return on Investments

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market</td>
<td>$36,768</td>
<td>$30,271</td>
<td>$29,178</td>
<td>$27,507</td>
<td>$19,293</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$143,017</td>
</tr>
</tbody>
</table>

### Portfolio Invested

- **Average daily portfolio available to invest**
  - October: 153,022,170
  - November: 156,551,866
  - December: 169,439,956
  - January: 174,590,999
  - February: 175,717,184

- **Average daily portfolio invested**
  - October: 144,362,137
  - November: 144,437,356
  - December: 160,267,489
  - January: 161,586,880
  - February: 165,502,382

- **% of average daily portfolio invested**
  - October: 94.3%
  - November: 92.3%
  - December: 94.6%
  - January: 92.6%
  - February: 94.2%

### Detail of Portfolio

<table>
<thead>
<tr>
<th>Money Market - River City Bank</th>
<th>Opening Rate</th>
<th>February Rate</th>
<th>Carrying Value</th>
<th>Interest Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1.26%</td>
<td>0.14%</td>
<td>$160,342,400</td>
<td>$19,279</td>
</tr>
</tbody>
</table>

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

RESIDENTIAL ACCOUNTS

NON-RESIDENTIAL ACCOUNTS
### SILICON VALLEY CLEAN ENERGY AUTHORITY
#### ACCOUNTS RECEIVABLE AGING REPORT

<table>
<thead>
<tr>
<th></th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 30 days</td>
<td>81.5%</td>
<td>79.8%</td>
<td>75.4%</td>
<td>75.9%</td>
<td>74.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31 to 60 days</td>
<td>7.2%</td>
<td>6.7%</td>
<td>10.0%</td>
<td>7.1%</td>
<td>6.6%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>61 to 90 days</td>
<td>3.3%</td>
<td>3.6%</td>
<td>3.8%</td>
<td>4.0%</td>
<td>3.9%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>91 to 120 days</td>
<td>2.0%</td>
<td>2.1%</td>
<td>2.7%</td>
<td>2.8%</td>
<td>3.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 120 days</td>
<td>6.0%</td>
<td>7.7%</td>
<td>8.1%</td>
<td>10.2%</td>
<td>12.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Accounts Receivable Days**

- **33 DAYS**
- **$22,613,295**
- **TOTAL DUE**

**Bad Debt % (Budget)**

- **1%**

**AGE SUMMARY**

- **<30 days**
  - $16,782,284
- **<60 days**
  - $1,490,125
- **<90 days**
  - $877,126
- **<120 days**
  - $713,564
- **Older**
  - $2,750,097
Item 1e: Adopt Resolution Amending SVCE Conflict of Interest Code to Amend Title of Manager of Regulatory and Legislative Affairs to Principal Policy Analyst and Add Senior Financial Analyst Position

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 4/14/2021

RECOMMENDATION
Adopt Resolution 2021-09 amending the SVCE conflict of interest code to amend the title of the Manager of Regulatory and Legislative Affairs position to Principal Policy Analyst and add the Senior Financial Analyst position in the list of 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 10, 2021 Board meeting, the Board of Directors approved the request for a title change for “Manager of Regulatory and Legislative Affairs” to “Principal Policy Analyst” and the addition of a Senior Financial Analyst position by adopting Resolution 2021-06 amending the positions chart, job classifications, and salary schedule.

ANALYSIS & DISCUSSION
SVCE staff and general counsel have identified the newly approved Senior Financial Analyst position as needing to report financial interests based on the decisions he/she will be making; the Principal Policy Analyst position (formerly Manager of Regulatory and Legislative Affairs) is an existing position required to file in the code.

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 position as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to SVCE’s code to reflect a change in the title of “Manager of Regulatory and Legislative Affairs” to “Principal Policy Analyst” and the addition of the Senior Financial Analyst position.

STRATEGIC PLAN
Not applicable.

ALTERNATIVES
None.
FISCAL IMPACT
There is no fiscal impact as a result of amending a position title and adding a position to SVCE’s Conflict of Interest Code.

ATTACHMENT
1. Resolution 2021-09 Amending the Authority’s Conflict of Interest Code to Amend Title of Manager of Regulatory and Legislative Affairs to Principal Policy Analyst and Add Senior Financial Analyst Position
RESOLUTION NO. 2021-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY’S CONFLICT OF INTEREST CODE TO AMEND TITLE OF MANAGER OF REGULATORY AND LEGISLATIVE AFFAIRS TO PRINCIPAL POLICY ANALYST AND ADD SENIOR FINANCIAL ANALYST 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 2020-41; 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 amending the title of Manager of Regulatory and Legislative Affairs to Principal Policy Analyst and adding the position of Senior Financial Analyst.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2020-41 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 14th day of April 2021, by the following vote:

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<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<td>City of Campbell</td>
<td>Director Gibbons</td>
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<td>Director Willey</td>
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<td>City of Gilroy</td>
<td>Director Hilton</td>
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<td>City of Los Altos</td>
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<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
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<td>Town of Los Gatos</td>
<td>Director Rennie</td>
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<td>City of Milpitas</td>
<td>Director Chua</td>
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<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
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<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
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<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
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<td>County of Santa Clara</td>
<td>Director Ellenberg</td>
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<td>City of Saratoga</td>
<td>Director Walia</td>
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<td>City of Sunnyvale</td>
<td>Director Larsson</td>
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Chair

ATTEST:

Clerk
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.
**SILICON VALLEY CLEAN ENERGY AUTHORITY**  
**CONFLICT OF INTEREST CODE**  
**APPENDIX "A"**

### DESIGNATED POSITIONS

<table>
<thead>
<tr>
<th>Designated Position</th>
<th>Assigned Disclosure Category</th>
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<tr>
<td>Member of Board of Directors</td>
<td>1</td>
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<tr>
<td>Alternate Member of Board of Directors</td>
<td>1</td>
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<tr>
<td>Chief Executive Officer</td>
<td>1</td>
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<tr>
<td>Chief Financial Officer &amp; Director of Administrative Services</td>
<td>1</td>
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<tr>
<td>Finance and Administration Committee Member</td>
<td>2</td>
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<tr>
<td>General Counsel</td>
<td>1</td>
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<tr>
<td>Account Services Manager</td>
<td>2</td>
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<tr>
<td>Administrative Services Manager</td>
<td>2</td>
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<tr>
<td>Communications Manager</td>
<td>2</td>
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<tr>
<td>Director of Account Services &amp; Community Relations</td>
<td>2</td>
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<tr>
<td>Director of Decarbonization &amp; Grid Innovation Programs</td>
<td>2</td>
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<tr>
<td>Director of Power Resources</td>
<td>1</td>
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<tr>
<td>Director of Regulatory &amp; Legislative Policy</td>
<td>2</td>
</tr>
<tr>
<td>Management Analyst</td>
<td>2</td>
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<tr>
<td>Manager of Decarbonization &amp; Grid Innovation Programs</td>
<td>2</td>
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<tr>
<td><strong>Manager of Regulatory &amp; Legislative Affairs</strong></td>
<td><strong>2</strong></td>
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<tr>
<td>Senior Government Affairs Manager</td>
<td>2</td>
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<tr>
<td>Senior Regulatory Analyst</td>
<td>2</td>
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<tr>
<td>Power Analyst</td>
<td>1</td>
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<tr>
<td>Power Resources Manager</td>
<td>1</td>
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</table>
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 1f: Receive Quarterly Decarbonization and Grid Innovation Programs Update

From: Girish Balachandran, CEO

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

Date: 4/14/2021

RECOMMENDATION
Staff recommends the Board accept the Q1 2021 Update of the Decarbonization Strategy & Programs Roadmap.

BACKGROUND
To achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable and reliable electricity and innovative programs for the community, SVCE established a decarbonization strategy and programs roadmap (abbreviated “Roadmap”). In December 2018, the Board approved the Roadmap, and since that time, staff have been working on implementation.

ANALYSIS & DISCUSSION
Attachment 1 is the most recent quarterly update, covering January through March of 2021. The quarterly update includes bulleted highlights and a table with a summary of updates and next steps for each initiative.

STRATEGIC PLAN
This item supports SVCE’s 2020-2021 Strategic Plan Goal 9 is to “coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment”, to support the achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030.

FISCAL IMPACT
Accepting the Q1 2021 Update of the Decarbonization Strategy & Programs Roadmap has no fiscal impact.

ATTACHMENTS
1. Decarbonization Strategy & Programs Roadmap – Q1 2021 Update
Decarbonization Strategy & Programs Roadmap
Q1 2021 Update
April 14, 2021 BOD Meeting

Highlights:

- **2021 Spare the Air Leadership Award for the Peninsula-Silicon Valley Reach Code Initiative:** On March 26, Silicon Valley Clean Energy and Peninsula Clean Energy were awarded the 2021 Spare the Air Leadership Award for the Peninsula-Silicon Valley Reach Code Initiative. The award is presented by Acterra and sponsored by the Bay Area Air Quality Management District. This is a tremendous regional honor that we are very proud to accept on behalf of our member agencies and their leadership to consider and pass reach codes for many of our local communities. Please find the latest video about this initiative [here](#), as well as the prerecorded acceptance speech from SVCE and PCE [here](#).

- **GridShift: EV Charging Pilot Launches Low-Emissions Events:** In fall 2020, as part of the Innovation Onramp program, SVCE launched a new electric vehicle (EV) charging pilot program with software company ev.energy. The mobile application allows EV drivers to automatically charge their vehicle with the cheapest, greenest energy available. In March of this year, a new feature was introduced to reward customers who charge their EVs during the lowest-carbon hours. Low-carbon events are off-peak hours when the power grid has abundant renewable energy that needs to be consumed. Through the app, the power generation forecasts will be used to notify participants to plug in their EV before a low-carbon event to automatically charge using this low-carbon energy. Participants in at least 8 low-carbon events will receive a $20 bill credit. The pilot will run through Spring 2021, at which time, SVCE will evaluate whether to scale the pilot to a full program.

- **Lights On Silicon Valley:** As a response to PG&E Public Safety Power Shutoffs in 2019, SVCE sought novel ways to promote local energy resilience and selected Sunrun to manage the program. Lights On Silicon Valley will develop a network of customer-sited solar and battery systems that can provide resilience in the case of an outage and will also benefit the grid by exporting extra energy when emissions and costs on the statewide system are high. This program offers single-family residents a $1,250 rebate for helping SVCE avoid relying on fossil fuel power sources during these peak times. At least 20% of the systems will be installed to support multifamily residents, primarily at affordable housing properties, with a stretch goal of 50%. Lights On Silicon Valley opened to customers on March 26th and is being co-promoted by SVCE and Sunrun. [https://www.svcleanenergy.org/lights-on-sv/](https://www.svcleanenergy.org/lights-on-sv/)
<table>
<thead>
<tr>
<th>Sector</th>
<th>Program</th>
<th>Q1 2021 Activities</th>
<th>Q2 2021 Outlook</th>
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<tr>
<td>Power Supply</td>
<td>C&amp;I Clean Power Offerings</td>
<td>* Identified need to reanalyze financial viability of EcoInvest product for pilot customer due to Jan 1 rate change and transition to B-rates March 1.</td>
<td>* Perform analysis with B-rate revenue model and, if financially viable, execute contract with pilot customer</td>
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<td>* Executed Letter of Intent with pilot customer for ‘GreenPrime 24x7’ carbon free offering and conducted project management meeting for product development</td>
<td>* Detailed design work with pilot customer team for GreenPrime 24/7 carbon-free offering</td>
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<td>* Engaged and signed NDA with new pilot customer for potential GreenPrime Direct</td>
<td>* Exploratory conversations with newly identified customer regarding product preferences/needs</td>
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<td>Built Environment</td>
<td>Reach Codes</td>
<td>* 11 cities have passed Reach Codes</td>
<td>* Support post-implementation tool/training development for city staff</td>
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<td>* Technical support platform served 30 customers to date</td>
<td>* Ongoing technical support</td>
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<td>* Three dedicated Contractor trainings delivered</td>
<td>* Assist the two remaining member agencies as desired</td>
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<td>All-Electric Showcase Grants</td>
<td>* Previously finalized the Building Decarb Joint Action Plan, which did not identify incentives at the time of new construction as a priority for accelerating building decarbonization. Therefore, this program is closed.</td>
<td>* N/A</td>
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<td>FutureFit Heat Pump Water</td>
<td>* Phase 1 (Air District co-funded program) closed to new enrollments, first draft of EM&amp;V report received.</td>
<td>* Phase 1 – Complete analysis of HPWH phase 1 EM&amp;V and receive final report</td>
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<td>Heaters</td>
<td>* 100 systems installed/operational, 100% program goal</td>
<td>* Phase 2 – continue to promote program</td>
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<td>* Phase 2 (approved by Board in 2020) launched July 2020 and currently has 207 reservations processed, 57 project completions</td>
<td>* Begin with early phases of planning a phase 3 using learnings from phase 1 EM&amp;V</td>
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<td>Project Area</td>
<td>Goals</td>
<td>Achievements</td>
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<td><strong>Streamlining Community-Wide Electrification</strong></td>
<td>Benchmark and streamline member agency’s permitting and inspection processes to identify barriers and opportunities to electrification</td>
<td>• Finalizing Baseline Assessment and “Best Practices Guide for Streamlining Electrification Permitting”</td>
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<td>• Hold a follow-up private roundtable discussion with initial stakeholder group to share final findings of the best practices and solicit input on how to implement</td>
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<td>• Hold a general webinar on the Best Practices Guide with CA related groups</td>
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<td>• Share findings from Baseline Assessment with BOD and related city staff</td>
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<td><strong>Building Decarb Joint Action Plan</strong></td>
<td>Develop a joint action plan with member agencies to prioritize strategies and programs to advance building decarbonization</td>
<td>• (COMPLETED)</td>
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<td>• (COMPLETED)</td>
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<td><strong>Resilience at Community Facilities</strong></td>
<td>Increase the individual and collective capacity of SVCE and our member agencies to reduce adverse impacts of power outages.</td>
<td>• Combined the previously approved Critical Community Facilities program with the newly approved and now launched Community Resilience program</td>
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<td>• 3 capex grants approved (Monte Sereno, Saratoga, Milpitas); 1 capex grant application in progress (Sunnyvale), 2 planning grant applications in process (Morgan Hill, Cupertino)</td>
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<td>• Draft solutions report complete</td>
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<td>• Draft vulnerability assessment complete</td>
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<td>• Decision support tool in progress</td>
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<td>• Execute member agency capital project grant agreements on a rolling basis.</td>
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<td>• Conduct stakeholder engagement</td>
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<td>• Finalize roadmap</td>
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<td><strong>FutureFit Fundamentals</strong></td>
<td>Provide financial relief to contractors by expanding their knowledge of electrification technologies</td>
<td>• Contracted with Redwood Energy for primary instruction, Karen Nelson for project management, and Derek May for videography</td>
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<td>• Edited 3 of 5 modules to rough draft form, reviewed and commented by team.</td>
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<td>• One of 3 modules in final form.</td>
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<td>• Adjusted content and filmed roughly 20 hours of content</td>
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<td>• Film remaining gaps in content March 25 and 26</td>
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<td>• Finish editing existing content</td>
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<td>• Contract for incentive administration services for installation incentive component</td>
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<td>• Initial limited launch in May 2021 of full online curriculum</td>
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<td>Program</td>
<td>Progress and Goals</td>
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<td><strong>CRCR Bill Relief</strong>&lt;br&gt;Provide immediate bill relief to residential CARE/FERA customers, and to qualifying small business customers</td>
<td>• Over $3.4M was applied directly to customer bills (vs initial budget of $3.5M)&lt;br&gt;• Over 9k small businesses contacted; Over 3k small businesses applied and received credit;&lt;br&gt;• Draft EM&amp;V report received from ADM</td>
<td>• Review draft EM&amp;V report and finalize with ADM</td>
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<td><strong>FutureFit Homes &amp; Buildings</strong>&lt;br&gt;Provide comprehensive assistance to SVCE customers in navigating and accessing the many existing and forthcoming, non-SVCE led energy programs providing financial assistance for building decarbonization and energy efficiency.</td>
<td>• Outlined program design schedule as part of new analyst’s work plan.&lt;br&gt;• Hosted first 2 design review sessions with cross-functional team.&lt;br&gt;• Started to track external incentives provided by regional and state programs.</td>
<td>• Hosting final 2 design review meetings&lt;br&gt;• Finalizing scope of program design</td>
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<td><strong>Regional Coordination</strong>&lt;br&gt;SVCE will initiate regular regional stakeholder convenings to coordinate program alignment across building decarbonization workstreams.</td>
<td>• No planned activities in Q1</td>
<td>• Coordination &amp; design efforts to ramp up&lt;br&gt;• Initiate stakeholder engagement</td>
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<td><strong>Accessible Financing</strong>&lt;br&gt;Assess feasibility of financing mechanisms to unlock equitable financing for energy efficiency and electrification across the region, particularly for low-income communities.</td>
<td>• No planned activities in Q1</td>
<td>• Beginning to track external programs focused on underserved customer groups as part of equity framework development and FutureFit Homes &amp; Buildings.</td>
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<tr>
<td><strong>Local Policy to Decarbonize Existing Buildings</strong>&lt;br&gt;Assess and support potential policy levers Member Agencies can explore to mitigate emissions from existing buildings.</td>
<td>• Work to begin in FY22</td>
<td>• Work to begin in FY22</td>
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<td><strong>Feasibility Assessment for Natural Gas Phase Out By 2045</strong>&lt;br&gt;Carry out a feasibility assessment to identify technical, legal and economic barriers and opportunities for phasing out natural gas service by 2045, in the SVCE service territory.</td>
<td>• Work to begin in FY22</td>
<td>• Work to begin in FY22</td>
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<td>Mobility</td>
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<td><strong>EV Infrastructure Strategy &amp; Plan</strong>&lt;br&gt;Develop a near-to mid-term strategy for EV infrastructure and a set of program implementation plans</td>
<td>• (COMPLETED)</td>
<td>• (COMPLETED)</td>
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<td><strong>California Electric Vehicle Infrastructure Project (CALeVIP)</strong>&lt;br&gt;Work with California Energy Commission to launch a regional CALeVIP project</td>
<td>• Reviewed applications with program administrator&lt;br&gt;• Resolved application issues&lt;br&gt;• Began to inform funding recipients&lt;br&gt;• Evaluated application trends, with focus on multifamily uptake</td>
<td>• Finalize application review and inform all funding recipients&lt;br&gt;• Track progress of projects</td>
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<td><strong>Priority Zone DCFC</strong>&lt;br&gt;Competitive application to receive an additional incentive (on top of CALeVIP) for DCFC in “priority zones” that support nearby SVCE-designated multifamily housing clusters</td>
<td>• Waited for CALeVIP data to be available to see if selected Priority Zone DCFC projects will receive funding&lt;br&gt;• Considered program next steps using CALeVIP data and program goals</td>
<td>• Confirm final CALeVIP funding decisions&lt;br&gt;• Decide on program next steps and implement</td>
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<tr>
<td><strong>MUD Technical Assistance</strong>&lt;br&gt;Technical assistance and help applying for pertinent CALeVIP rebates for charging at multifamily housing properties</td>
<td>• Continued outreach to prioritized commercial and MUD properties&lt;br&gt;• 21 program participants&lt;br&gt;• Supported participants with BAAQMD Charge! applications</td>
<td>• Conduct on-going outreach&lt;br&gt;• Develop updated customer target list&lt;br&gt;• Continue to develop site assessments</td>
<td></td>
</tr>
<tr>
<td><strong>S/M Workplace Charging Rebates</strong>&lt;br&gt;Technical assistance and help applying for pertinent CALeVIP rebates for charging at small and medium workplace properties</td>
<td>• Due to synergies in program efforts, decided to merge with MO4: MUD Technical Assistance</td>
<td>• Merged with MO4, above</td>
<td></td>
</tr>
<tr>
<td><strong>Fleet Electrification Grants</strong>&lt;br&gt;Competitive application for SVCE’s fleet electrification planning support and funding for site upgrades. Targeting a broad set of fleet types, to create widely applicable fleet electrification planning templates</td>
<td>• No further development work&lt;br&gt;• Participated in a few calls on other relevant fleet programs in the region</td>
<td>• Track other programs also supporting fleets to inform final SVCE program design&lt;br&gt;• May move forward with solicitation for consultant to support program depending on bandwidth and other priorities</td>
<td></td>
</tr>
<tr>
<td><strong>Silicon Valley Transportation Electrification Clearinghouse (SVTEC)</strong></td>
<td><strong>Energy Efficiency &amp; Grid Integration</strong></td>
<td><strong>Education &amp; Outreach</strong></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Regional group of key stakeholders focused on information sharing, solving critical issues and attracting external funding to the SVCE community in support of EV infrastructure deployment.</td>
<td><strong>Virtual Power Plant</strong> Support “virtual power plants” made up of cloud-based aggregations of customer-sited resources to support grid integration and monetize value from connected, controllable loads.</td>
<td><strong>Customer Resource Center (eHub)</strong> Develop online customer resource center to enable engagement, education and action related to clean electricity, EVs and home electrification.</td>
<td></td>
</tr>
</tbody>
</table>
| • Held the fifth quarterly meeting in December  
• Continue to hold meetings with EVSE companies to develop permitting and interconnection initiatives  
• Planned April meeting (Governor’s Office GoBiz) and June meeting (CARB Chair and CPUC Commissioner to lead panel discussion) | • By way of background, SVCE joined EBCE, PCE and Silicon Valley Power in the joint issuance of an RFP for resource adequacy from behind-the-meter solar and storage systems in Q4 2019. Staff executed a contract with Sunrun in Q3 2020.  
• Worked with Sunrun to complete final software development work on their end and revisit marketing approach  
• Program launched | • Developed and launched a paid advertising campaign which includes digital and out of home advertisement on bus shelters and Volta EV chargers  
• Finalizing promotional video to include within ad campaign  
• Launched an earned revenue promotion with the Solar+Battery Assistant in which customers can get $1,000 off a main service panel upgrade when installing a battery or solar+battery system  
• Delivered email campaigns focused on: |
| • Transition to a rolling application  
• Evaluation applications and develop case studies | • Continue some co-marketing support  
• Track program participation and installs  
• Evaluating additional VPP program scale-up options to support 2021 summer readiness | • Continue tracking engagement metrics  
• Metrics Jan. 1 - Mar. 31 - 20,482 Unique eHub Engagements  
  o 3,556 unique visits to the SVCE eHub webpages  
  o 681 unique visits to the EV Assistant tool  
  o 1,654 unique visits to the Solar+Battery Assistant tool along with 54 new installation leads  
  o 14,591 unique visits to the Appliances Assistant tool |
<table>
<thead>
<tr>
<th><strong>Community Engagement Grants</strong></th>
<th><strong>Innovation Partners</strong></th>
<th><strong>IN2: Innovation Onramp</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner with local organizations in hard-to-reach customer segments to promote SVCE offerings and programs</td>
<td>Engage with key strategic partners to participate in the local innovation ecosystem and provide a voice for SVCE customers and the decarb mission</td>
<td>Provide small grants to support innovation through pilot projects with external partners</td>
</tr>
</tbody>
</table>
| • Future launch date TBD; on-hold due to COVID-19 | • No planned activities for Q1 | • Issued fourth call for applications in Q1 for a “seed” round with smaller grant levels  
• Ongoing management of pilots |
| Note: Engagements are driven largely by email campaigns delivered within the quarter. Distribution of metrics will vary. | • No planned activities for Q2 | • Finalize all negotiations for fourth cohort of pilots resulting from Spring 2021 application cycle  
• Prepare for fifth call for applications for fall 2021  
• Ongoing management of pilots |
At the March 26, 2021 Executive Committee meeting, the committee received a report from CEO Balachandran on priorities and issue spotting and a preliminary draft of GHG emissions inventory.

CEO Balachandran and General Counsel Greg Stepanicich presented an update on California Community Power (CC Power) Policies, which included a focus on main topics identified from labor and environmental organizations who sent letters and spoke at CC Power’s board meetings. Information was provided on the formation of an Ad Hoc Policy Development Committee to focus on a second draft of policies, meet with labor and environmental groups, survey best practices of other load serving entities, determine project conditions to the Long-Duration Storage (LDS) project, and anticipate a two-path approach, with project conditions for the LDS project and development of broader CC Power policies. An update will be provided at the next Executive Committee following the April 21, 2021 CC Power Board meeting.

The committee received a presentation from Director of Decarbonization and Grid Innovation Programs Aimee Bailey on Innovation Programs Impact Metrics, and reviewed and discussed a presentation on Power Prepay with CFO Amrit Singh.

Materials from the March 26, 2021 meeting can be found here: SVCE Executive Committee Meeting Materials, 3/26/21

The next meeting of the Executive Committee will be April 23, 2021 at 2:30 p.m.; materials will be posted no later than 72 hours in advance of the meeting.
The Finance and Administration Committee met March 23, 2021 and selected me as Chair and Alternate Director Mekechuk as Vice Chair of the committee. CEO Balachandran discussed SVCE’s priorities and issue spotting, and CFO Amrit Singh provided an overview of the committee’s role and primary task areas.

The Committee received a presentation on Power Prepay from CFO Singh, who covered an overview of the power prepay structure, update on next steps, and a status update on the municipal conduit. The committee had no concerns about moving forward. This item will be on the regular calendar for action at our April 14, 2021 board meeting.

Meeting materials from the March 23, 2021 meeting can be found here: [SVCE Finance and Administration Committee Meeting, 3/23/21](#)

The next meeting of the Committee will be in May; materials will be posted no later than 72 hours in advance of the meeting.
No report as the Audit Committee has not met since March 3, 2021.

The next meeting of the Audit Committee will be August 18, 2021, 9:00 a.m. Materials will be posted not less than 72 hours prior to the meeting.
The Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee met April 1, 2021 and selected me to serve as Chair and Director Martinez Beltran to serve as Vice Chair of the committee.

The committee received a review of SVCE’s 2021 Policy Platform and Ad Hoc Committee focus areas, an overview of the legislative process from Jennifer Tannehill of Aaron Read & Associates, LLC, and discussed priority bills for SVCE: SB 67, SB 68, SB 612, SB 30, SB 31, SB 32, AB 987 and AB 1088.

Following an in-depth discussion, the committee (with one member absent) voted to support SB 67 with the following amendments:

1. CCAs are allowed cost recovery through an exit fee.
2. Large hydro and renewable resources are counted towards targets.
3. CCAs and all LSEs are not obligated to procure if bill leads to a material increase in rates.

A summary of the priority bills and SVCE positions is detailed in Attachment 1.

The next meeting of the committee will be in May; a report from the meeting will be provided on the consent calendar.

ATTACHMENTS
1. SVCE Priority Bills
## Attachment 1: SVCE Priority Bills

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Bill Author</th>
<th>Bill Summary</th>
<th>SVCE Position</th>
<th>Suggested Amendments (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 30</td>
<td>Cortese</td>
<td>Prohibits design and construction of state facilities connected to natural gas after Jan 1, 2022. Also requires a plan to make all state facilities carbon neutral by 2035.</td>
<td>Support</td>
<td>n/a</td>
</tr>
<tr>
<td>SB 31</td>
<td>Cortese</td>
<td>Directs the CEC to identify and implement building decarbonization programs. Authorizes the CEC to use federal Covid relief funds for building decarbonization programs. Requires that EPIC funds be made available for building decarbonization programs.</td>
<td>Support</td>
<td>n/a</td>
</tr>
<tr>
<td>SB 32</td>
<td>Cortese</td>
<td>Requires cities and counties to update their general plans to account for how they will decarbonize their building stock.</td>
<td>Watch</td>
<td>n/a</td>
</tr>
<tr>
<td>SB 67</td>
<td>Becker</td>
<td>Establishes the following new annual procurement requirements for clean energy (renewables and other zero-carbon sources): (1) 85% clean energy in 2030; (2) 90% clean energy in 2035; (3) A path to 100% clean energy in 2045.</td>
<td>Support with Amendments</td>
<td>(1) CCAs are allowed cost recovery through an exit fee (2) Large hydro and renewable resources are counted towards targets (3) CCAs and all LSEs are not obligated to procure if bill leads to a material increase in rates</td>
</tr>
<tr>
<td>SB 68</td>
<td>Becker</td>
<td>Establishes the following new requirements for the CEC, CPUC and IOUs to encourage building electrification: (1) CEC: Develop a guide for building electrification and set aside funding for building electrification projects within its EPIC R&amp;D Program; (2) CPUC: Establish a timeframe of &lt;10 days for IOUs to complete electrical service upgrades; (3) IOUs: Annually report on electrical service timelines and other metrics as of January 2023, and costs of implementing this bill would be covered by all ratepayers.</td>
<td>Support</td>
<td>n/a</td>
</tr>
<tr>
<td>AB 987</td>
<td>Low</td>
<td>Enacts a notification timeline in which the utilities will notify county and city officials, local emergency services, and consumers of a de-energization event. Imposes a $250 penalty on the utility, which will be paid to the affected consumer, for PSPS events. This penalty will be imposed for each day this criteria is not met. Requires the utility to regularly maintain a list of “medical baseline” customers for each city and provide backup generation</td>
<td>Watch</td>
<td>n/a</td>
</tr>
<tr>
<td>Bill Number</td>
<td>Bill Author</td>
<td>Bill Summary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
<td>--------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AB 1088</td>
<td>Mayes</td>
<td>Establishes the California Procurement Authority, operational in 2024, as a central procurement entity to serve as the default Provider Of Last Resort (POLR) in certain situations. The entity would serve as the default provider should an electrical corporation elect to no longer procure electricity on their behalf or otherwise fail to serve those customers. The CPUC would be required to develop a public process for establishing the framework for the entity beginning in 2023.</td>
<td>Watch</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SVCE Position</th>
<th>Suggested Amendments (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n/a</td>
</tr>
</tbody>
</table>
Staff Report – Item 1k

Item 1k: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 4/14/2021

Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held its second board meeting on Wednesday, March 17, 2021.

Attached is a report from Interim General Manager Jim Shetler; materials from this meeting can be found here on the CC Power website: [CC Power Meeting, 3/17/21](#).

The next meeting of the board will be April 21, 2021 at 1:00 p.m.; meeting materials can be found on the CC Power website: [https://cacommunitypower.org/meetings/](https://cacommunitypower.org/meetings/).

**ATTACHMENT:**

CA Community Power Summary from Interim General Manager Jim Shetler, March
The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, 3/17/21, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: https://cacomunitypower.org

Highlights of the meeting included the following:

- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the 2/17/21 Regular Board Meeting
  - Contract with Adirondack Power Consulting, LLC for Interim General Manager Services
  - Contract with Braun Blaising Smith Wynne, P.C. for Interim General Counsel Services
  - Contract with Pisenti & Brinker, LLP to Audit the CC Power Financial Statements.

- **Ad hoc Committee Report – Selection of General Manager and General Counsel**
  The ad hoc Committee reported out on its discussions regarding the process for the selection of the next Interim General Manager and for the General Counsel. The Committee reviewed the draft job description for the General Manager position and the proposed process for selection that would result in a recommendation to the Board by June 2021. The Board provided consensus concurrence on the recommendations. The ad hoc Committee provided its recommendations on the solicitation process for a contract for General Counsel services that would result in a recommendation to the Board by May 2021. The Board unanimously approved the resolution for this solicitation.

- **Ad hoc Committee Report – CC Power Policy Development**
  The ad hoc Committee overviewed its draft policy document, which is included in the Board packet at the above noted website. Comments were received from several parties, including representatives from labor and environmental groups. The commentors were appreciative of the efforts to date by the Board and staff to develop policies for the agency and felt they were generally headed in the right direction. However, they each had proposals for improving on the draft policies on labor and environmental from their perspectives. The Board then discussed the current draft document in light of the comments and also the need to ensure that the development of policies did not impact the current LDS project effort. Based upon its discussions, the Board offered the following guidance to the ad hoc Committee:
• Bifurcate the development of generic policies for CC Power from the procurement conditions developed for the LDS Project, with the priority on the LDS Project first.

• Review the RFO conditions that were developed for the current LDS Project and were the basis for the proposals that have been received. Solicit input from the project oversight committee chair. Identify the minimum changes that would be needed in project conditions that could incorporate the interests discussed, while maintaining progress on the timeline to continue with this effort.

• Survey industry counterparts to determine best practices in the area of labor and environmental policies. Solicit input from member counsel.

• Meet with the labor and environmental commentors to seek clarification and better understanding of their concerns and recommendations that the ad hoc Committee could then use to inform its internal discussions on revising the draft policy proposal.

• Provide a status update of progress on the above items and potential recommendations for the LDS Project at the April Board meeting.

• Interim General Manager’s Report - Mr. Shetler provided an update on the administrative efforts for agency formation, the status of the LDS Project effort, and potential agenda items for upcoming Board meetings. The slides for this update are included at the website noted above.

• Discussion on Individual Member Items – The Board had a general discussion on issues that CC Power should be considering for opportunities in the future, which included:
  • Evaluating a central procurement role for that may be mandated, with costs collected from other LSEs, rather than being on the receiving end of charges from investor-owned utilities.
  • Development of offshore wind projects.
  • Small scale battery projects that could be strategically sited to support grid reliability needs.

Staff will monitor these items and update the Board as these opportunities develop.

• Board Workshop – Ascend Consulting provided an informative overview on considerations for valuing and locating potential LDS projects. The slides for this presentation are included at the website noted above.

Please feel free to contact me if you have any questions on this report.
Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 4/14/2021

REPORT

Board Orientation Sessions Complete
SVCE staff conducted the last session of new board member orientation on Friday, March 19th. Over the course of two months and three meetings, board members received info on: an overview of SVCE, power supply and regulatory and legislative policy, customers, programs, and finance and administration. Recordings and presentations from these sessions can be found on the SVCE Website (noted as Special Meetings): SVCE Board Meetings

Twelve new Directors/Alternates attended at least one of these sessions. For any board members who are interested in more information from staff on any of the topics discussed, please reach out to me or Board Clerk Andrea Pizano.

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

1) Univision: Advertising services, not to exceed $20,000
2) Municipal Resource Group: Organizational Team Training Services, not to exceed $17,075
3) NewGen Strategies & Solutions, Task Order: (ERRA) Proceedings – 2020 ERRA Compliance, not to exceed $14,413
4) NewGen Strategies & Solutions, Task Order: (ERRA) Proceedings – 2022 ERRA Forecast, not to exceed $14,413
5) NewGen Strategies & Solutions, Task Order: NewGen General Regulatory Consulting, not to exceed $5,000
6) NewGen Strategies & Solutions, Amendment: Advice and expert testimony, not to exceed $123,546
7) Nathan Associates, Amendment: SVCE Decision Analysis Support, time extended to 12/31/2021
8) TRC Engineers, Inc., Amendment: Streamlining Community-Wide Electrification Program, time extended to 5/31/2021
9) Pivotal: Student Intern Staffing Services, not to exceed $3,750
10) M.Cubed: Regulatory Technical Analysis for PG&E 2020 ERRA Compliance and 2022 PG&E ERRA Forecast Proceedings, not to exceed $12,500
CEO Power Supply Agreements Executed

<table>
<thead>
<tr>
<th>Counterparty Name</th>
<th>Execution/Effective 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>Western Area Power Administration</td>
<td>2/23/2021</td>
<td>Purchase</td>
<td>Non-Renewable Carbon Free</td>
<td>1/1/2025</td>
<td>12/31/2054</td>
<td>NA</td>
</tr>
<tr>
<td>Angiola East, LLC</td>
<td>3/10/2021</td>
<td>Purchase</td>
<td>Renewable Energy/PCC-1</td>
<td>3/31/2023</td>
<td>3/30/2038</td>
<td>$35,000,000.00</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, executive, and legislative meetings;
- Long-Duration Storage Super-JPA and RFO: Updates to various CCAs, CPUC, CAISO and legislative staff
- Presentation to Monte Sereno City Council on Residential TOU Rate Transition, March 16th
- CC Power Board Meeting, March 17th, report included on the Consent Calendar
- Presentation to Clean Energy Alliance Board regarding CC Power, March 25th

Staff Presentations
- March 5th: Energy Services Lead Zoe Elizabeth: American Institute of Architects Los Angeles’ Committee on the Environment, 1.5°C Symposium on Climate Change, Reimagining the Future of Resiliency panel
- March 11th: Dir. of Decarbonization and Grid Innovation Programs Aimee Bailey: Peninsula Clean Energy Advisory Committee
- March 24th: Dir. Regulatory and Legislative Policy Melicia Charles: The Climate Center Webinar, Power Local – Community Energy Systems for Sustainability, Reliability and Equity
- March 24th: Dir. of Power Resources Monica Padilla: Energy Storage USA 2021 Virtual Summit, How Far Off Are We from Viable Long-Duration Storage? Panel

ATTACHMENTS
1. Power Supply Update, April 2021
2. Decarb & Grid Innovation Programs Update, April 2021
3. Account Services & Community Relations Update, April 2021
4. Regulatory and Legislative Update, April 2021
5. Agenda Planning Document, April 2021–July 2021
6. SVCE Director Requests Update
Power Supply Update

April 2021
Renewable Projects

Executed Power Purchase Agreements

- 9 PPAs
  - New: Angela PPA executed March 2021
  - 42% of 2024 load
  - 40-50 MW geothermal
  - 454 MW Solar w/ 132.5 MW storage (498 MWh)
  - 74% Solar + 26% Geo

On-track to exceed SB350 Long-term RPS Procurement Mandates

$1B+ worth of Renewable Contracts
# SVCE Long-term Executed PPAs

<table>
<thead>
<tr>
<th>Project/Technology</th>
<th>Project/Technology</th>
<th>Approximate % of load in 2024</th>
<th>Term (years)</th>
<th>Lifetime Nominal contract cost (M$)</th>
<th>Average Annual Cost (M$)</th>
<th>Annual Cost as % of Power Supply Cost</th>
<th>Board Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slate</td>
<td>New Solar + Storage</td>
<td>6.7%</td>
<td>17</td>
<td>$198</td>
<td>$12</td>
<td>5%</td>
<td>Oct-18</td>
</tr>
<tr>
<td>2Big Beau</td>
<td>New Solar + Storage</td>
<td>5.8%</td>
<td>20</td>
<td>$196</td>
<td>$10</td>
<td>4%</td>
<td>Oct-18</td>
</tr>
<tr>
<td>3Ormat Casa Diablo</td>
<td>New Geothermal</td>
<td>1.4%</td>
<td>10</td>
<td>$43</td>
<td>$4</td>
<td>2%</td>
<td>Feb-20</td>
</tr>
<tr>
<td>4Coso</td>
<td>Existing Geothermal</td>
<td>9.6%</td>
<td>15</td>
<td>$331</td>
<td>$22</td>
<td>9%</td>
<td>Mar-20</td>
</tr>
<tr>
<td>5Rabbitbrush</td>
<td>New Solar + Storage</td>
<td>3.0%</td>
<td>15</td>
<td>$64</td>
<td>$4</td>
<td>2%</td>
<td>Apr-20</td>
</tr>
<tr>
<td>6Yellow Pine</td>
<td>New Solar + Storage</td>
<td>4.1%</td>
<td>20</td>
<td>$128</td>
<td>$6</td>
<td>3%</td>
<td>May-20</td>
</tr>
<tr>
<td>7Aratina</td>
<td>New Solar + Storage</td>
<td>6.6%</td>
<td>20</td>
<td>$174</td>
<td>$9</td>
<td>4%</td>
<td>Jun-20</td>
</tr>
<tr>
<td>8Atlas</td>
<td>New Solar</td>
<td>3.8%</td>
<td>10</td>
<td>$27</td>
<td>$3</td>
<td>1%</td>
<td>Jan-21</td>
</tr>
<tr>
<td>9Angela</td>
<td>New Solar + Storage</td>
<td>1.4%</td>
<td>15</td>
<td>$35</td>
<td>$2</td>
<td>1%</td>
<td>Mar-21</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>42%</strong></td>
<td></td>
<td><strong>$1,196</strong></td>
<td><strong>$72</strong></td>
<td><strong>30%</strong></td>
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</tbody>
</table>

Power Supply Update, April 2021
# Power Purchase Agreements (PPA) - Status

<table>
<thead>
<tr>
<th>PPA</th>
<th>City</th>
<th>County</th>
<th>State</th>
<th>Contract Term</th>
<th>Technology</th>
<th>Nameplate Capacity (MW)</th>
<th>Battery Nameplate Capacity (MW)</th>
<th>Battery Discharge (MWh)</th>
<th>Permitting</th>
<th>Financing</th>
<th>Guaranteed Construction Start Date</th>
<th>Guaranteed Commercial Operation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slate</td>
<td>Lemoore</td>
<td>Kings</td>
<td>CA</td>
<td>17</td>
<td>Solar + Storage</td>
<td>93</td>
<td>46.5</td>
<td>186</td>
<td>Completed</td>
<td>Completed</td>
<td>Completed</td>
<td>06/30/21</td>
</tr>
<tr>
<td>Big Beau</td>
<td>Rosamond</td>
<td>Kern</td>
<td>CA</td>
<td>20</td>
<td>Solar + Storage</td>
<td>70</td>
<td>22</td>
<td>88</td>
<td>Completed</td>
<td>In process Q4 2021</td>
<td>07/01/21 12/01/21</td>
<td></td>
</tr>
<tr>
<td>Ormat</td>
<td>Mammoth Lakes</td>
<td>Mono</td>
<td>CA</td>
<td>10</td>
<td>Geothermal</td>
<td>7</td>
<td>-</td>
<td>-</td>
<td>4/27/21</td>
<td>Completed</td>
<td>Completed</td>
<td>09/30/21 12/31/21</td>
</tr>
<tr>
<td>Coso</td>
<td>Inyokern</td>
<td>Inyo</td>
<td>CA</td>
<td>15</td>
<td>Geothermal</td>
<td>33.3</td>
<td>-</td>
<td>-</td>
<td>Completed</td>
<td>Completed</td>
<td>Completed</td>
<td>01/01/22</td>
</tr>
<tr>
<td>Rabbitbrush</td>
<td>Rosamond</td>
<td>Kern</td>
<td>CA</td>
<td>15</td>
<td>Solar + Storage</td>
<td>40</td>
<td>8</td>
<td>20</td>
<td>4/27/21</td>
<td>Seeking</td>
<td>Completed</td>
<td>08/18/21 06/30/22</td>
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<tr>
<td>Yellow Pine</td>
<td>Unincorporated</td>
<td>Clark</td>
<td>NV</td>
<td>20</td>
<td>Solar + Storage</td>
<td>50</td>
<td>26</td>
<td>104</td>
<td>10/1/21</td>
<td>Completed</td>
<td>Completed</td>
<td>03/01/22 12/01/22</td>
</tr>
<tr>
<td>Atlas</td>
<td>Salome</td>
<td>La Paz</td>
<td>AZ</td>
<td>10</td>
<td>Solar</td>
<td>50</td>
<td>-</td>
<td>-</td>
<td>12/31/21</td>
<td>Seeking</td>
<td>12/31/21</td>
<td>12/31/22</td>
</tr>
<tr>
<td>Aratina</td>
<td>Boron</td>
<td>Kern</td>
<td>CA</td>
<td>20</td>
<td>Solar + Storage</td>
<td>80</td>
<td>20</td>
<td>60</td>
<td>6/30/21</td>
<td>In process Q4 2021</td>
<td>11/01/22 06/30/23</td>
<td></td>
</tr>
<tr>
<td>Angela</td>
<td>Allensworth</td>
<td>Tulare</td>
<td>CA</td>
<td>15</td>
<td>Solar + Storage</td>
<td>20</td>
<td>10</td>
<td>40</td>
<td>Completed</td>
<td>Seeking</td>
<td>5/31/22</td>
<td>3/31/23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Sub Total</th>
<th>443.3</th>
<th>132.5</th>
<th>498</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geothermal Total</td>
<td></td>
<td>40.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solar + Storage Total</td>
<td></td>
<td>353</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solar Total</td>
<td></td>
<td>50</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# RPS Under SB100 and SB350 Long-term Contracting

## Requirement per Compliance Period

<table>
<thead>
<tr>
<th>State Mandated RPS per Compliance Period - % of Retail Sales</th>
<th>CP#4 2021-2024</th>
<th>CP#5 2025-2027</th>
<th>CP#6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>40%</td>
<td>50%</td>
<td>57%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</th>
<th>CP#4 2021-2024</th>
<th>CP#5 2025-2027</th>
<th>CP#6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</th>
<th>CP#4 2021-2024</th>
<th>CP#5 2025-2027</th>
<th>CP#6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (per Table 2)</th>
<th>CP#4 2021-2024</th>
<th>CP#5 2025-2027</th>
<th>CP#6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>27.6%</td>
<td>41%</td>
<td>38%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Open Position relative to State Mandate (Row #3) +Above/ (-) Short</th>
<th>CP#4 2021-2024</th>
<th>CP#5 2025-2027</th>
<th>CP#6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>+1.6%</td>
<td>+8%</td>
<td>+1%</td>
</tr>
</tbody>
</table>
## SVCE IRP Long-term Contracting Targets per Compliance Period

<table>
<thead>
<tr>
<th></th>
<th>CP#4 2021-2024</th>
<th>CP #5 2025-2027</th>
<th>CP #6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Mandated % of Retail Sales with RPS Long-term Contracts</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>SVCE IRP Preferred Portfolio % of Retail Sales with RPS Long-term Contracts</td>
<td>31%</td>
<td>38%</td>
<td>42%</td>
</tr>
<tr>
<td>SVCE IRP Alternative Portfolio % of Retail Sales with RPS Long-term Contracts</td>
<td>31%</td>
<td>45%</td>
<td>55%</td>
</tr>
</tbody>
</table>
Board to consider approving San Luis West, LLC power purchase agreement in April 2021
Decarb & Grid Innovation Programs Update

April 2021
1. Customer Relief & Community Resilience (1 of 5)

Staff has begun work on three new programs approved by the SVCE Board in May 2020:

<table>
<thead>
<tr>
<th>Program</th>
<th>Est $</th>
<th>$ spent by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Customer Relief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1a) $100 bill credit to all residential CARE/FERA customers</td>
<td>$2.5M</td>
<td>September 2020</td>
</tr>
<tr>
<td>1b) $250 bill credit to qualifying/responding small business customers</td>
<td>$1.0M</td>
<td>September 2020</td>
</tr>
<tr>
<td>2. Workforce Relief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2a) Workforce Electrification Training with $500 Stipend</td>
<td>$1.0M</td>
<td>August 2021</td>
</tr>
<tr>
<td>2b) Workforce Home Electrification Installation</td>
<td>$0.5M</td>
<td>December 2021</td>
</tr>
<tr>
<td>3. Community Resiliency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3a) Resiliency Infrastructure Planning Support</td>
<td>$1.0M</td>
<td>December 2021</td>
</tr>
<tr>
<td>3b) Resiliency Infrastructure Capital Project Support</td>
<td>$4.0M</td>
<td>December 2022</td>
</tr>
<tr>
<td></td>
<td>~$10M</td>
<td></td>
</tr>
</tbody>
</table>
1. Customer Relief & Community Resilience (2 of 5)

Customer Relief

Residential
• 26,853 Residential CARE/FERA customers received $100 credits as of 9/30

Small Commercial
• 3,139 local small businesses awarded $250 bill credits as of 10/07

EM&V
• Evaluation process is ongoing with ADM
1. Customer Relief & Community Resilience (3 of 5)

Workforce Relief

Future Fundamentals – Contractor Training
• Primary content recorded, currently being edited
• Supplemental content partially recorded, remaining scheduled
• Partnered with Redwood Energy and Workforce Institute
• Initial online asynchronous curriculum going live in May '21
1. Customer Relief & Community Resilience (4 of 5)

Community Resiliency – Regional Planning

• Held eight stakeholder outreach interviews
• Drafted vulnerability assessment and solutions assessment
• Began development of the decision support tool
## 1. Customer Relief & Community Resilience (5 of 5)

**Community Resiliency – Jurisdiction Grants**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Allocation</th>
<th>Funds Requested</th>
<th>Funds Approved</th>
<th>Funds Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunnyvale</td>
<td>$1,327,680</td>
<td>$700,702</td>
<td>$700,702</td>
<td>$700,702</td>
</tr>
<tr>
<td>Milpitas</td>
<td>$700,702</td>
<td></td>
<td>$700,702</td>
<td></td>
</tr>
<tr>
<td>Mountain View</td>
<td>$636,365</td>
<td></td>
<td>$636,365</td>
<td></td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>$412,751</td>
<td></td>
<td>$412,751</td>
<td></td>
</tr>
<tr>
<td>Gilroy</td>
<td>$314,031</td>
<td></td>
<td>$314,031</td>
<td></td>
</tr>
<tr>
<td>Cupertino</td>
<td>$255,798</td>
<td>$42,900</td>
<td>$42,900</td>
<td></td>
</tr>
<tr>
<td>Morgan Hill</td>
<td>$243,241</td>
<td></td>
<td>$243,241</td>
<td></td>
</tr>
<tr>
<td>Campbell</td>
<td>$237,566</td>
<td></td>
<td>$237,566</td>
<td></td>
</tr>
<tr>
<td>Los Gatos</td>
<td>$213,842</td>
<td></td>
<td>$213,842</td>
<td></td>
</tr>
<tr>
<td>Los Altos</td>
<td>$149,521</td>
<td></td>
<td>$149,521</td>
<td></td>
</tr>
<tr>
<td>Saratoga</td>
<td>$139,444</td>
<td>$139,444</td>
<td>$139,444</td>
<td></td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>$50,582</td>
<td></td>
<td>$50,582</td>
<td></td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>$18,475</td>
<td>$18,475</td>
<td>$18,475</td>
<td></td>
</tr>
</tbody>
</table>

*Italics indicate preliminary approval, agreement not yet signed. Highlights are new this quarter.*
2. Reach Code Initiative (1 of 2)

- **Buildings**
  - **Eleven cities have adopted Reach Codes**
  - Technical support platform available for electrification at [www.AllElectricDesign.org](http://www.AllElectricDesign.org), currently 30 participants
  - County of Santa Clara initial interest in resiliency
    - County Legal team made introductions to building officials
  - City of Gilroy planning study session for June or July

- **EVs**
  - **Eight member agencies adopted EV reach codes**
  - Morgan Hill council briefed about adding EV considerations to existing reach code.
  - Sunnyvale currently drafting proposed code
2. 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 Electric (1 + 2 + 2A)</th>
<th>Mostly Electric (1 + 2A)</th>
<th>All Electric (1 only)</th>
<th>Higher than CalGREEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain View</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 23</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Morgan Hill</td>
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<td></td>
<td></td>
<td>Begins on pg. 45</td>
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<td></td>
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<tr>
<td>Milpitas</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 1132</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Monte Sereno</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 3</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Saratoga</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 33</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Los Gatos</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Begins on pg. 93</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
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<tr>
<td>Cupertino</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Ordinance</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Los Altos Hills</td>
<td>Approved</td>
<td></td>
<td></td>
<td>Ordinance</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Campbell</td>
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<td></td>
<td></td>
<td>Begins on pg. 41</td>
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<td>X</td>
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<tr>
<td>Los Altos</td>
<td>Approved</td>
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<td>Ordinance</td>
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<tr>
<td>Sunnyvale</td>
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<td></td>
<td>Ordinance</td>
<td></td>
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<tr>
<td>Santa Clara County</td>
<td>Staff Proposal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Gilroy</td>
<td>Study Session</td>
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<td></td>
<td></td>
<td></td>
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<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

Additional information on reach codes can be found at: [https://www.svcleanenergy.org/reach-codes/](https://www.svcleanenergy.org/reach-codes/)
3. FutureFit Home Program

Phase 1 & 2 focus on Heat Pump Water Heaters

Phase 1 - Co-funded by Air District grant is closed
• **102 Completed.** One remaining reservation
• EM&V draft report is available from ADM
  • Finalizing EM&V report March '21

Phase 2 - launched August 24, 2020
• **207 Applications. 57 Completed installations, 3 CARE**
• More HPWH units are eligible
• Continues incentive for service panel upgrade
4. Streamlining Community-Wide Electrification

- **Purpose**: Review member agency’s permitting and inspection processes and identify barriers and opportunities
- 1) Baseline Assessment and 2) Best Practices Guide
  - Finalizing Baseline Assessment and Best Practices Guide
  - Extended contract with TRC until end of May
  - Will be holding two presentations to share Best Practices Guide
    - Private roundtable discussion with stakeholders who participated in the first roundtable
    - 1-hour public webinar
5. Lights On Silicon Valley

- **Program now live**!
- Partnership with Sunrun that will lead to resilience for thousands of SVCE customers (at single- and multi-family homes) by installing solar+storage systems
- Batteries form "virtual power plant" (VPP) to provide energy to the grid when not in use for back-up power
- Customers receive $1,250 up-front rebate for enrolling in the VPP program
- Interested customers can sign up online at: svcleanenergy.org/lights-on-sv/
6. EV Programs (1 of 3)

California Electric Vehicle Infrastructure Project (CALeVIP)

• Local $55M, two-county project opened in December 2020
• SVCE territory had $6M from SVCE and $6M co-funding from California Energy Commission
• **Immense interest** – SVCE territory received $24M in DC fast charger applications and $8M in level 2 charger applications
• Some applicants starting to hear back, others still being processed – more info will be shared soon
• Funded sites will result in **over 80 new DC fast chargers** and **over 1,000 new level 2 chargers** across SVCE’s communities

[calevip.org/incentive-project/peninsula-silicon-valley](calevip.org/incentive-project/peninsula-silicon-valley)
6. EV Programs (2 of 3)

FutureFit Assist: EV Charging

- Participation summary:
  - 556 sites/owners have received information
  - 133 direct conversations
  - 21 active participants, including three member agencies—Sunnyvale, Saratoga and Gilroy

- Concierge support to multifamily and small/medium business to install EV charging – education through installs

- SVCE will continue to adapt this offering based on lessons learned

- Apply at: [https://svcleanenergy.org/ev-charging-assist/](https://svcleanenergy.org/ev-charging-assist/)
6. EV Programs (3 of 3)

- **Silicon Valley Transportation Electrification Clearinghouse** resources online at [svcleanenergy.org/svtec/](http://svcleanenergy.org/svtec/). Working group actively engaged on streamlining interconnection process.

- June meet will feature leaders from CARB and CPUC

- A few sites selected for SVCE's **Priority Zone DC Fast Charging** incentives – waiting for information on CALeVIP selections. Considering next phase of program.
7. Customer Resource Center - eHub

- **Launched a paid ad campaign** which includes digital, social, bus shelter and Volta ads to drive traffic to eHub and increase awareness of actions to make an impact.

- Delivered **over 93,300 customer emails introducing the Solar+Battery Assistant and Battery Assistant** along with providing education on the benefits home battery storage paired with solar.

- **Concluded the instant rebate promotion for light bulbs and smart power strips** through the Appliances Assistant; 237 light bulbs and 63 smart power strips were purchased during the promotion.
8. Innovation Programs (1 of 2)

- **Spring 2021 call for proposals for seed grants closed April 2.** Focus area: building decarbonization. Staff is currently evaluating responses.

- Outthink working in partnership with the City of Gilroy to implement e-bike pilot; Onboarded a fellow and four participants from the community for the pilot.

- Span.IO smart panel pilot: Continued preparation for initial 3-5 demonstration installations, developing case study framework and marketing language.

- Electron has provided the first draft of a Business Requirements Document that details several products that potentially could be offered under an SVCE local energy marketplace.
8. Innovation Programs (2 of 2)

Extensible Energy/Community Energy Labs (Solar Resilient Schools)

• This pilot tests how advanced controls and a software platform developed by Community Energy Labs can optimize load shapes in schools to enable more cost effective battery storage installations

• Selected 10 potential schools and began outreach to identify top three candidates to run pilot
9. Other

• SVCE & PCE won the BAAQMD and Acterra **2021 Spare the Air Leadership Award** for the Peninsula-Silicon Valley reach code effort!

• Two Innovation Onramp pilot partners – Ecology Action and Evmatch – presented on March 25 at BAAQMD's EV Coordinating Council meeting on challenges and solutions to multifamily EV charging.
1. Outreach Events & Sponsorships

SVCE is supporting and engaging in virtual events, meetings and conferences allowing us to continue sharing information and resources with the community and broader industry stakeholders.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 6 – July 11</td>
<td>12:00 – 4:00 PM</td>
<td>Beauty and the Beast California Wildflowers and Climate Change exhibit – sponsored</td>
<td>Los Altos History Museum</td>
</tr>
<tr>
<td>March 16</td>
<td>7:00 – 8:00 PM</td>
<td>Time-Of-Use Transition Presentation to Monte Sereno City Council – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>March 26</td>
<td>5:00 – 8:00 PM</td>
<td>Acterra Promise to Our Planet – attended and received award</td>
<td>Virtual</td>
</tr>
<tr>
<td>April 8</td>
<td>5:30 – 6:30 PM</td>
<td>Time-Of-Use Presentation at Morgan Hill Town Hall – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>April 11</td>
<td>4:00 – 6:00 PM</td>
<td>Young American Policy Advocates (YAPA) 'Spill the Beans' Sustainability event – presentation</td>
<td>Virtual</td>
</tr>
<tr>
<td>April 17</td>
<td>1:00 – 4:00 PM</td>
<td>Sustainable Tech for Environmental Minds Conference – presenting</td>
<td>Virtual</td>
</tr>
</tbody>
</table>
### 1. Outreach Events & Sponsorships (Continued)

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 21</td>
<td>5:30 – 6:30 PM</td>
<td>BayREN Everything You Should Know About Home Energy in 30 Minutes (Event in Spanish) – <em>attending and providing resources</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 22</td>
<td>5:30 – 6:30 PM</td>
<td>BayREN Everything You Should Know About Home Energy in 30 Minutes (Event in English) – <em>presenting and providing resources</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 24</td>
<td>NA</td>
<td>Cupertino 2021 Earth &amp; Arbor Day Festivities - sponsorship &amp; virtual participation through video</td>
<td>Virtual</td>
</tr>
<tr>
<td>April 24</td>
<td>11:00 AM – 12:00 PM</td>
<td>Sunnyvale EV 101: An Introduction to Owning Electric Vehicles - <em>presenting</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 24</td>
<td>4:00 – 5:00 PM</td>
<td>Drive Clean Bay Area Drive-Clean-A-Thon – <em>sponsor and attending</em></td>
<td>Virtual</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>96.28%</td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>96.31%</td>
<td>96.28%</td>
</tr>
</tbody>
</table>
3. Member Agency Working Group Update

The recent MAWG meeting was held virtually on March 25, 2021 and was attended by 12 different agencies with a total of 20 participants.

The following agenda items were presented and discussed:

- Local Government’s Options to Eliminating Gas
- Reach Code Program Evaluation
- Data Hive Pilot
- MAWG Representative for SVTEC
-ESCO Discussion
- Input on Potential eHub Promotion
- SB 1383 Status
- Streamlining Community-Wide Electrification Program Update
4. Time-of-Use Transition Update

- In June 2021, many PG&E and Silicon Valley Clean Energy customers not currently on a Time-of-Use rate plan will be automatically transitioned to a Time-of-Use (peak pricing 4 p.m. – 9 p.m. every day) rate.
- **When** you use electricity is as important as **how much** you use
  - Electricity rates will be lower 19 hours a day
  - Encourages use when electricity is cheaper/cleaner
  - TOU rates affect both generation (SVCE) and T&D (PG&E)
4. Time-of-Use Transition Update

• Transition mandated by California Public Utilities Commission to help improve how electricity is used on the grid, and support California’s shift toward clean energy

• **Bill Protection:**
  - CPUC requires utilities offer bill protection for the first 12 months
  - Allows customers to try new TOU rate risk-free
  - If a customer pays more than they would have on their former rate plan, PG&E & SVCE pays the difference
4. Time-of-Use Customer Communication

- Notifications sent 90 and 30 days prior, plus welcome transition letter
- 90-day notices include a tailored, annual estimate of the new TOU rate impact, and alternative rates *(these were sent late-Feb. through Mar.*)
- Customers may decline the transition and choose another rate plan through PG&E
  - Customers can use the [PG&E Rate Comparison Tool](https://www.pge.com) to figure out which rate plan is best for them
4. Time-of-Use Communications (Continued)

- Additional communications by SVCE:
  - Social media and Nextdoor posts about transition and energy saving tips (*ongoing*)
  - Digital toolkits sent to member agencies
  - SVCE newsletter stories
  - Regional press release (*sent Feb. 22*) with San Jose and PG&E
  - Advertising and outreach collaboration with San Jose Clean Energy
  - SVCE Time-of-Use webpage with FAQs and energy saving tips: [https://www.svcleanenergy.org/time-of-use](https://www.svcleanenergy.org/time-of-use)
5. Latest SVCE News

• SV Clean Energy Receives Clean Financial Audit, Press Release, 03-19-21

6. Media

• Long-term storage gets a closer look with the growth of renewables, decarbonization push, The American Public Power Association, 03-15-21
• All-Electric Polestar 2 Hits the Road, NBC Bay Area, 03-22-21
• The Problem With Exceptional Buildings, Architect Magazine, 03-31-21
SVCE Legislative and Regulatory Update

April 14, 2021
Policy Updates

• Regulatory Update
  • Exit Fee (PCIA)
  • Reliability/GHG Reduction Planning (Integrated Resource Planning)
  • Reliability (Resource Adequacy)

• Legislative Update – Priority Bills
  • SB 612 Overview and Status
Exit Fee: PCIA

CPUC Decision Addressing Legacy Energy Resources

• April 2020: CPUC issued a proposed decision addressing access to legacy energy resources which that help reduce the PCIA. The decision does the following:
  • Removes the “cap” and “trigger” mechanism which address PCIA uncollected balances and should help reduce volatility in PCIA rates.
  • Authorizes new processes for renewable contracts subject to the PCIA.
  • Approves a process for increasing transparency of investor-owned utilities’ RA resources.
  • Does not allow for legacy resource allocations, that help reduce the PCIA, beyond 2023.

• This decision addresses the same issues we are trying to address in SB 612 (slides 9 -11).
  • The proposed decision doesn’t provide full access to legacy resources that is provided in SB 612.

• Next Steps: CalCCA and other parties will provide feedback on the decision in late April. The proposed decision is scheduled to be voted on by the CPUC on May 6th at the earliest.
Reliability/GHG Reduction Planning (Integrated Resource Planning)

Focus on “keeping the lights on”: The Governor ordered an analysis to determine cause of August 2020 blackouts
  • Analysis recommended short-term, mid-term and long-term energy procurement targets to avoid blackouts in the future

Short-term procurement for Summer 2021
  • March 2021: The CPUC directed the IOUs to procure additional electricity to meet demand in Summer 2021
    • The CPUC also directed the IOUs to expand their “Critical Peak Pricing” programs which offer special rates to encourage customers to conserve during peak times and encouraged CCAs to do the same
  • Next Steps:
    • April 6, 2021: IOUs held a public workshop to discuss implementation of CPP programs and share information with CCAs.

Mid-term procurement for 2023 - 2026
  • February 2021: The CPUC issued a proposal recommending an additional 7,500 MW to be procured from 2023 to 2026
  • March/April 2021: CalCCA and other stakeholders provided feedback on the ruling.
  • Next Steps:
    • Q2 2021: CPUC will issue a decision establishing mid-term procurement targets is expected.
Reliability (Resource Adequacy)

• Resource Adequacy Reform
  • CPUC is currently revisiting its rules to ensure grid reliability and considering changes to reliability (Resource Adequacy) requirements
    • Workshops were held in February to discuss proposals for reforming the resource adequacy model.
    • Revised proposals submitted in February and March.

• Next steps:
  • May 2021: A proposed decision on RA reform is expected.
Renewable Portfolio Standard Procurement Plan

2020 RPS Procurement Plan
• February 2021: SVCE filed its final plan
• March 2021: CPUC approved the SVCE plan

2021 RPS Procurement Plan
• March 2021: the CPUC opened a new proceeding which proposed timeline in which the 2021 RPS Plan would be due on June 1, 2021.
• Next Steps:
  • Parties will file comments on the proposed timeline
Legislative Update – Priority Bills
SB 612 (Portantino)

• SB 612 ensures fair access to legacy energy resources to be introduced

• The Problem:
  • CCA customers share cost responsibility with IOU customers for legacy resources purchased prior to the customer’s transition to CCA service.
    • However, only IOU customers have the right to access the benefits of these resources, such as renewable energy and GHG - free energy.
    • CCA customers continue to pay the costs of these resources via the PCIA.
  
• In 2017, the CPUC began to address portfolio management and portfolio optimization issues within the PCIA.
  • CalCCA, SCE and Commercial Energy came to a consensus solution to address the inequities.
    • This issue is still pending resolution at the CPUC.
  
• CalCCA sponsored a bill that reflects the consensus solution with SCE and Commercial Energy.
SB 612 Requirements

• The bill addresses current inequities in current structure, by:

  1. Providing IOU, CCA, and direct access customers equal right to receive legacy resource products that were procured on their behalf in proportion to their load share if they pay the full cost of those products.

  2. Requiring the CPUC to recognize the value of GHG-free energy and any new products, in the same way value is recognized for renewable energy and other products.

  3. Requiring IOUs to offer any remaining excess legacy resource products not taken by IOU, CCA, or direct access customers to the wholesale market in an annual solicitation.

  4. Requiring each IOU to transparently solicit interest from legacy resource contract holders in re-negotiating, buying out, or otherwise reducing costs from these contracts.
SB 612 Status

• Senate to hear the bill in April

• SVCE staff is working with CalCCA to get support letters for the bill from legislators, cities and counties.
Our Memo

Benefits to Community

Competition

Local Investment

GHG Reduction
Community Choice Energy - single most effective and tangible action our communities can take to combat climate change.

A True Choice
More than one choice of electricity in cooler and products.

Competition
Nurturing the local energy market with local Choice Energy Services

Local Investment
Nurturing start-up to keep fitting the local energy programs and promote local clean energy infrastructure

Legislative and Regulatory Update, April 2021
<table>
<thead>
<tr>
<th>APRIL 2021</th>
<th>MAY 2021</th>
<th>JUNE 2021</th>
<th>JULY 2021</th>
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<tbody>
<tr>
<td><strong>Board of Directors, April 14:</strong></td>
<td><strong>Board of Directors, May 12:</strong>&lt;br&gt;- Consent&lt;br&gt;- Minutes&lt;br&gt;- March 2021 Treasurer Report&lt;br&gt;- Scheduling Coordination Agreement - Supply Resources&lt;br&gt;- CC Power Report&lt;br&gt;- Regular Calendar&lt;br&gt;- Promotion (ASCR/DGI) - Tentative (in development)&lt;br&gt;- NEM Approval&lt;br&gt;- Power Supply Agreement</td>
<td><strong>Board of Directors, June 9:</strong>&lt;br&gt;- Consent&lt;br&gt;- Minutes&lt;br&gt;- April 2021 Treasurer Report&lt;br&gt;- Regular Calendar&lt;br&gt;- Strategic Plan Update&lt;br&gt;- 2022 Budget Kick-off&lt;br&gt;- Alternative Plan - IRP</td>
<td><strong>Board of Directors: CANCELLED</strong></td>
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<tr>
<td><strong>Executive Committee, April: April 23</strong>&lt;br&gt;- CC Power Policies Update</td>
<td><strong>Executive Committee, May: May 28</strong>&lt;br&gt;- 75% RPS Discussion</td>
<td><strong>Executive Committee, June: June 25</strong></td>
<td><strong>Executive Committee: CANCELLED</strong></td>
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<tr>
<td>Date</td>
<td>Meeting Where Requested</td>
<td>Request/Comment</td>
<td>Comments for Board Report</td>
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<td>------------------------------------------------------------------------------------------</td>
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<tr>
<td>3/10/2021</td>
<td>Board Meeting</td>
<td>Address Bruce Karney’s questions regarding delinquent accounts in a presentation or memo to the board</td>
<td>Attached is a memo to the board addressing the questions from Bruce Karney on 3/10/21</td>
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<td>Account Services &amp; Comm</td>
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<tr>
<td>3/10/2021</td>
<td>Board Meeting</td>
<td>Bruce Karney questions during public comment on delinquent accounts</td>
<td>Staff had a meeting with Mr. Karney to address his questions</td>
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<td>Account Services &amp; Comm</td>
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<td>3/3/2021</td>
<td>Audit Committee</td>
<td>SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)</td>
<td>Staff will consider this when looking at overall risk mitigation</td>
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<td>Finance &amp; Admin</td>
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<tr>
<td>8/28/2020</td>
<td>Executive Committee</td>
<td>Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)</td>
<td>Purchasing Policy does not currently have a formal duration limit; will update Purchasing policy pending discussion with new CFO</td>
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<td>Finance &amp; Admin</td>
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<tr>
<td>6/10/2020</td>
<td>BOD Meeting</td>
<td>Look into demand-side management programs with a vendor diagnostic solution (Dir. Sinks)</td>
<td>SVCE entered into a pilot agreement at the beginning of 2021 evaluating a technology-agnostic approach. This pilot is scheduled to conclude by the end of summer.</td>
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<td>Decarb and Grid Innov.</td>
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<tr>
<td>4/8/2020</td>
<td>BOD Meeting</td>
<td>Include foodnotes in Power Content Label to clarify nuclear power for SVCE (if shown)</td>
<td>Nuclear will first appear on SVCE PCL in 2021; design process for the PCL will begin in July</td>
</tr>
</tbody>
</table>
To: SVCE Board of Directors  
Re: Arrearage Questions from March 10 BOD Meeting

At SVCE’s March BOD meeting, Bruce Karney raised the following questions for follow-up with SVCE staff. SVCE staff has followed up with Bruce with the answers below. BOD members indicated that they were also interested in hearing answers to the questions.

1) **Is it true that non bill-paying customers are ‘lost’ to PG&E?**

   Prior to March 2020, SVCE sent delinquent notices to customers with balances outstanding for more than 90 days if the balance was greater than $100. If the customer failed to remedy this situation in the following two billing periods, they were returned to PG&E service. The overall number of such returns to PG&E service was on the order of 150/month (approximately 0.5% of SVCE residential customers annually). Since the beginning of COVID, SVCE has suspended returns to PG&E service for non-payment.

2) **Does PG&E have the right to mandate shut-offs? If customers are shut off, does SVCE take the hit?**

   Historically, PG&E has had the ability to disconnect non-paying customers. SVCE does not have this ability. In the event PG&E disconnected a customer, any payment subsequently received from the customer is paid pro-rata to PG&E and SVCE for business customers, and first to PG&E for residential customers. Since the beginning of COVID, PG&E has suspended customer disconnections for non-payment, and all customer payments (commercial and residential) are applied on a pro-rata basis to PG&E and SVCE. It is expected that PG&E will end its moratorium on service disconnections at the end of June 2021.

3) **What happens to the deposit that a customer makes when launching electric service with PG&E?**

   SVCE is not involved in the holding or processing of customer deposits. The deposit is held by PG&E for the first 12 months of a customer’s service and is then applied to the customer’s account if they have been staying current on payments - or is subsequently applied to the account once the customer stops service. PG&E stopped collecting deposits in March of last year, shortly before COVID Consumer Protections went into effect.
Staff Report – Item 3

Item 3: Approve Participation in the California Community Choice Financing Authority Joint Powers Authority

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO / Director of Administration
Greg Stepanich, General Counsel

Date: 4/14/2021

RECOMMENDATION
Staff recommends that the Board of Directors approve the California Community Choice Financing Authority (CCCFA) Joint Powers Agreement (JPA) and authorize the CEO to execute this Agreement thereby enabling SVCE to become one of the founding members of the CCCFA.

COMMITTEE REVIEW
The CFO / Director of Administrative Services gave a presentation to the Finance and Administration Committee at its meeting on March 23, 2021 and gave a similar presentation to the Executive Committee at its meeting on March 26, 2021 on an overview of power prepayment transactions and the reason for joining CCCFA to facilitate power prepayment transactions. The committees asked several questions to better understand the power prepayment transactions. The purpose of the presentation was to increase the committee members understanding of the power prepayment transaction. The committees were informed that staff will likely seek approval of joining the CCCFA at the April 2021 Board meeting pending completion of the JPA agreement that the staff was working with other founding member CCAs.

BACKGROUND
The following timeline displays the progress of energy prepayment developments at SVCE.

---

SVCE along with Central Coast Community Energy (3CE), East Bay Community Energy (EBCE), and Marin Clean Energy (MCE) are the founding members of the CCCFA.
The goal of the prepayment transaction is to reduce the cost of power purchases by about 8 to 12 percent on quantities delivered under the prepay structure with minimal risk to SVCE. As explained in detail in the next section, the prepay structure enables publicly owned utilities including CCAs to effectively arbitrage the difference between tax-exempt and taxable debt to fund the reduction in the cost of power purchases.

Prepayment transactions have been used since the 1990s for natural gas transactions. Over 90 municipal prepayment transactions totaling over $50 billion have been completed in the US, with over 95% of them for natural gas. As shown in the table below, there have been eleven prepayments totaling over $5.7 billion completed in California.
Prepayment transactions are codified in the US Tax law, and Congress enacted legislation specifically allowing for such transactions as part of the National Energy Policy Act of 2005.

SVCE is working in partnership with East Bay Community Energy (EBCE) to structure its first prepayment transaction. As summarized in the table below, SVCE and EBCE have hired a seasoned team of professionals to help guide, negotiate, and structure the transactions.

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<td>Northern Ca Gas Auth No. 1</td>
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<td>SMUD</td>
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<td>9/2007</td>
<td>897,360</td>
<td>Long Beach Bond Fin Auth</td>
<td>Nat. Gas</td>
<td>City of Long Beach</td>
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<td>10/2007</td>
<td>251,605</td>
<td>Long Beach Bond Fin. Auth</td>
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<td>City of Long Beach</td>
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<td>8/2009</td>
<td>901,620</td>
<td>M-S-R Energy Authority</td>
<td>Nat. Gas</td>
<td>M/D/Redding/SVP</td>
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<td>10/2009</td>
<td>514,160</td>
<td>So Ca Pub Power Auth (Windy Flats)</td>
<td>Elec (Wind)</td>
<td>LADWP, Mult. MOUs</td>
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<td>2010/11</td>
<td>394,700</td>
<td>So Ca Pub Power (Milford 1 &amp; 2)</td>
<td>Elec (Wind)</td>
<td>LADWP, Mult. MOUs</td>
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<td>12/2018</td>
<td>539,615</td>
<td>Northern Ca Energy Auth</td>
<td>Gas/Elec</td>
<td>SMUD</td>
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<tr>
<td>Total</td>
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<td>5,717,815</td>
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</table>

At this point, staff is not seeking approval to enter in a prepayment transaction. Staff is only seeking approval to become a founding member of the CCCFA, a separate JPA entity that will issue tax-exempt municipal bonds. Becoming a member of the CCCFA is a preparatory step that will enable SVCE to later use the CCCFA to enter in a prepayment transaction if it is in its interest to do so. Staff will seek a separate Board approval before entering in a prepayment transaction.
**ANALYSIS & DISCUSSION**

**Structural Overview of Power Prepay**

First, let us review the structure of the prepayment transactions as illustrated in the diagram below.

SVCE has existing Power Purchase Agreements (PPA) or other carbon free energy transactions with an existing counterparty. The counterparty provides energy and any associated renewable credits to SVCE, and SVCE pays the counterparty the contract price. Under the prepayment structure:

1. SVCE novates or assigns the PPA contract to Morgan Stanley at the full contract price. Now, the PPA counterparty will provide energy and any associated renewable credits to Morgan Stanley, and Morgan Stanley will pay the contract price to the PPA counterparty.
2. SVCE, along with other founding member CCAs, create the California Community Choice Financing Authority, a separate legal entity that can issue tax-exempt municipal bonds.
3. CCCFA issues non-recourse tax-exempt bonds. In other words, bonds that are not secured or guaranteed by SVCE or CCCFA. These bonds are guaranteed by Morgan Stanley.
4. CCCFA uses the proceeds from the bonds, net of all prepay transactions fees, and pays Morgan Stanley the present value of the cost of energy and any renewable credits that Morgan Stanley will deliver to CCCFA over the 30-year term of the transaction under a prepaid power agreement.
5. SVCE and CCCFA execute a power supply agreement. Under this agreement, SVCE pays CCCFA the initial PPA contract price less a discount as the CCCFA delivers to SVCE the energy and renewable credits that it receives from Morgan Stanley.
6. The CCCFA uses payments received from SVCE to pay interest and principal payments to the Bond holders.

Under the prepayment structure, SVCE receives the same energy and renewable credits from the PPA counterparty (although indirectly via Morgan Stanley and then CCCFA) but for a lower price. The source of the savings or lower price is the difference between taxable and tax-exempt debt. To raise capital by issuing debt, Morgan Stanley would have to issue taxable debt, which generally have higher interest rates than tax-exempt debt. As a public agency, CCCFA can issue tax-exempt debt. When CCCFA provides the bond proceeds to Morgan Stanley as prepayment for energy that Morgan Stanley will deliver over the term of the transaction, Morgan Stanley is able to access the capital it needs at a lower cost. In return, on a negotiated basis, Morgan Stanley flows the savings to SVCE by lowering the price SVCE pays for the energy and renewable credits.
By using this prepayment structure, SVCE expects to reduce the cost of energy purchases that are delivered under this structure by about eight to twelve percent a year, which equates to about $1.25 million to $1.7 million per year. These are estimated numbers and the actual savings will depend on the market conditions that will drive the spread between taxable and tax-exempt debt as well as on the notional dollar value of the transaction.

The risks to SVCE are minimal as the debt will not be on SVCE’s balance sheet, and if for any reason the structure falls apart, the original PPAs will revert to SVCE and the loss to SVCE will be the staff time invested in the project. The initial consultant and attorney fees are all contingent upon execution of the transaction and will be financed from the bond proceeds. These fees, excluding underwriting fees, are estimated to about $1.5 million between both SVCE and EBCE.

**CCCFA JPA Agreement**

Now let’s evaluate the proposed JPA Agreement, which creates a new public agency called California Community Choice Financing Authority (CCCFA). Its initial Founding Members are SVCE, 3CE, EBCE, and MCE if the agreement is approved by their respective Boards of Directors. Other Public CCAs can later join the JPA as associate members. With two-thirds approval of the JPA’s Boards of Directors, the associate members can be elevated to become a founding member. The JPA agreement will become effective when at least three founding members execute the agreement.

The purpose of the CCCFA is to undertake financings, for example, issuance of tax-exempt municipal bonds or refinancings and enter into agreements that are necessary to facilitate its members energy prepayment transactions. The CCCFA can only undertake financings or refinancings in connection with energy prepayment transactions on behalf of one or more of its members.

The liability firewall of the JPA structure will apply here. As a member, SVCE will not be liable for the debts, liabilities, or obligations of CCCFA. Any Bonds issued by CCCFA will not constitute debts, liabilities, or obligations of the members. The bonds issued by CCCFA will also not constitute general obligations of CCCFA but will be solely payable from the moneys pledged from the energy prepayment transactions for which the Bonds were issued.

Any member, including SVCE, will take on legal obligations with respect to each energy prepayment transaction it enters with CCCFA. The SVCE Board of Directors must first approve the energy prepayment transaction agreements. The energy prepayment agreements will define the legal obligations of the parties. The SVCE Board will have the opportunity to fully consider the benefits, obligations, and risks of each prepayment transaction prior to its execution.

The JPA Agreement provides that CCCFA will be governed by a Board of Directors that will consist of one Director representing each founding member. The director will be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each founding member and shall be appointed by and serve at the pleasure of the founding member that the Director represents and may be removed as Director by such founding member at any time.

The only costs imposed by the JPA Agreement on the members are general and administrative. Each member will pay an equal share of general and administrative costs as determined by the CCCFA Board. The general and administrative costs will not include any costs that relate solely to any prepayment project agreement. The costs for prepayment projects will be allocated solely to the member undertaking such project.

A member can withdraw from CCCFA. The process involves filing a copy of a resolution from the withdrawing member’s governing body expressing its desire to withdraw and paying its share of the general and administrative costs then due. If the withdrawing member is participating in prepayment project, then the member remains obligated to the costs of the project as specified in the applicable prepayment project.
agreements. The only restriction to withdrawing is if as a result the CCCFA will have fewer than three founding members or result in dissolution while it has outstanding bonds.

By entering in the CCCFA JPA Agreement, SVCE will have the opportunity but not the obligation to participate in energy prepayment projects. The costs of entry are not substantial as the staffing of this JPA will be limited.

**STRATEGIC PLAN**
The approval of the CCCFA Joint Powers Agreement will further Goals #5, #6, and #13 of the SVCE Strategic Plan.
Goal #5: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner
Goal #6: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.
Goal #13: Commit to maintaining a strong financial position.

**FISCAL IMPACT**
The CCCFA’s expected annual cost are about $100,000. With the four initial founding members, SVCE’s share of costs are expected to be about $25,000 a year.

**ATTACHMENTS**
1. Resolution 2021-10 Approving the California Community Choice Financing Authority Joint Powers Agreement and Authorizing Its Execution by the Chief Executive Officer
2. California Community Choice Financing Authority Joint Powers Agreement
RESOLUTION NO. 2021-10

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT AND AUTHORIZING ITS EXECUTION BY THE CHIEF EXECUTIVE OFFICER

WHEREAS, the Silicon Valley Clean Energy Authority ("SVCE"), acting pursuant to Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “JPA Law”), may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS, SVCE and Central Coast Community Energy, East Bay Community Energy, and Marin Clean Energy desire to create and establish a joint exercise of powers agency pursuant to the JPA Law, such joint exercise of powers agency to be known as the California Community Choice Financing Authority (the “CCCFA”) or by such other name as specified in the JPA Agreement (defined below) as executed and delivered, for the purpose of establishing an entity to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members; and

WHEREAS, SVCE is a community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code of the State of California (the “Public Utilities Code”), that is a public agency, as such term is defined in the JPA Law, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes; and

WHEREAS, there has been prepared and submitted to this meeting a form of Joint Powers Agreement (such Joint Powers Agreement, in the form presented to this meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the “JPA Agreement”), which JPA Agreement creates and establishes the CCCFA; and

WHEREAS, under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of SVCE or any representative of SVCE serving on the governing body of SVCE; and

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

Section 1. The form of JPA Agreement on file with the Clerk of SVCE is hereby approved. The Chief Executive Officer of SVCE (the “Authorized Officer”) is hereby authorized and directed, on behalf of SVCE, to execute and deliver the JPA Agreement substantially in the approved form, with such changes as the Authorized Officer executing such
document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The formation of the CCCFA pursuant to the JPA Agreement is hereby authorized and approved.

Section 3. The officers, employees and agents of SVCE are hereby authorized and directed, jointly and severally, to execute and deliver any and all documents, agreements and instruments and to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of the JPA Agreement and this Resolution.

Section 4. All actions heretofore taken by the officers, employees and agents of SVCE with respect to the matters set forth above are hereby approved, confirmed and ratified.

ADOPTED AND APPROVED this 14th day of April 2021, by the following vote:

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<td>City of Sunnyvale</td>
<td>Director Larsson</td>
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Chair

ATTEST:

Clerk
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY
JOINT POWERS AGREEMENT

This Joint Powers Agreement (this “Agreement”) is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to herein as the “Members” and those parties initially executing this Agreement are referred to as the “Founding Members”), creating a separate joint powers agency, which is named “California Community Choice Financing Authority” (“CCCFA”).

WITNESSETH

WHEREAS, each Member is a “community choice aggregator,” as that term is defined in Section 331.1 of the Public Utilities Code of the State of California (the “Public Utilities Code”), having duly adopted, established and implemented a community choice aggregation program pursuant to Section 366.2 of the Public Utilities Code, with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs; and

WHEREAS, each Member is a “public agency,” as that term is defined in Section 6500 of the Government Code of the State of California (the “Government Code”); and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, being Section 6500 and following (the “Act”), authorizes a joint exercise by two or more public agencies of any power which is common to each of them and the creation of an entity that is separate from the parties to the joint exercise of powers agreement; and

WHEREAS, it is to the mutual benefit of the Members and in the public interest that an agency by the name of the California Community Choice Financing Authority be created, by which the Members jointly exercise for their common benefit and for the purposes specified herein certain powers that they have in common or are otherwise provided for by applicable law, including but not limited to (i) the acquisition and operation of power supplies, resource adequacy and renewable attributes, and (ii) the provision of other energy services or programs which may be of benefit to one or more Members; and

WHEREAS, the Act conveys upon joint exercise of powers authorities certain additional powers, including but not limited to the power to issue revenue bonds and incur other evidences of indebtedness for such purposes as are specified in the Act; and

WHEREAS, CCCFA’s purpose is to assist Members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined herein) and entering into related contracts with Members.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:
Article I.  DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01  “Act” means Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 et seq.), as supplemented and amended from time to time, including without limitation the Marks-Roos Local Bond Pooling Act of 1985.

Section 1.02  “Agreement” means this Joint Powers Agreement, as it may be supplemented and amended from time to time in accordance with the terms hereof.

Section 1.03  “Associate Member” means any Public CCA Agency that is a signatory to this Agreement and that has met the requirements of Section 3.02 below to become an Associate Member. The term “Associate Member” shall, however, exclude any Associate Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below.

Section 1.04  “Board” means the Board of Directors of CCCFA as established by this Agreement.

Section 1.05  “Bonds” means bonds, notes, commercial paper, installment purchase, lease purchase and similar agreements and certificates of participation therein, and any other evidences of indebtedness.

Section 1.06  “CCCFA” means the California Community Choice Financing Authority, the Joint Powers Authority established by this Agreement.


Section 1.08  “Member” means a Founding Member or an Associate Member.

Section 1.09  “Prepayment Project” means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA’s approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

Section 1.10  “Prepayment Project Agreement” means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

Section 1.11  “Public CCA Agency” means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

Section 1.12  “Founding Member” means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term “Founding Member” shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast


Article II. FORMATION OF AUTHORITY

Section 2.01 Creation of CCCFA. Pursuant to the Act, there is hereby created a public entity, to be known as the “California Community Choice Financing Authority,” which shall be a public entity separate and apart from its Members. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.

Section 2.02 Purpose. This Agreement is made, and CCCFA is being established, pursuant to the Act to provide for the joint exercise of powers common to the parties hereto to assist the Members in financing or refinancing energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members, including by undertaking, financing or refinancing Prepayment Projects on behalf of one or more of the Members and/or CCCFA, all as further described in Section 2.03 hereof. CCCFA will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance or incurrence of Bonds to finance or refinance Prepayment Projects on behalf of one or more of the Members and/or CCCFA in accordance with the Act. CCCFA is not being formed for the purposes of providing municipal services within the meaning of Section 6503.6 or Section 6503.8 of the Act.

Section 2.03 Powers. CCCFA, in its own name, shall have any and all power to undertake Prepayment Projects on behalf of one or more of the Members and/or CCCFA, and to finance or refinance such Prepayment Projects through the sale and issuance or incurring of Bonds for the purposes set forth in Section 2.02 hereof. CCCFA is empowered to exercise any and all common powers of the Members, and any other powers provided to it by any applicable laws, beneficial for the issuance or incurrence from time to time of such Bonds pursuant to Article VII hereof. Without limiting the generality of the foregoing, CCCFA, in its own name, shall have the power:

(a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;
(b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);
(c) to employ agents and employees;
(d) to acquire, manage, maintain or operate any building, works or improvements;
(e) to acquire, hold, lease or dispose of property;
(f) to incur debts (including without limitation through the issuance or incurrence of Bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);
(g) to sue and be sued in its own name;
(h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;
(i) to receive, collect, invest and disburse moneys;
(j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
(k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;
(l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;
(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of this Agreement.
Such powers shall be exercised by CCCFA subject only to such restrictions upon the manner of exercising such power as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers, as provided in Section 6509 of the Act, and, should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy in the exercise of similar powers; provided, however, that nothing herein shall limit the powers of CCCFA under Article 4 of the Act.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred, as further described in Article VII hereof. Such Bonds shall not constitute debts, liabilities or obligations of the Members.

Any of the Prepayment Projects acquired, financed or refinanced by CCCFA shall be operated by a Member or CCCFA for and on behalf of CCCFA, either directly or pursuant to contract or agreement with a third party designated by the applicable Member or Members and approved by CCCFA. None of the Members or CCCFA shall have liability for the breach, negligence or willful misconduct of any such third party.

**Article III. MEMBERSHIP**

**Section 3.01 Founding Members.** A Public CCA Agency will be qualified to join as a Founding Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as parties to this Agreement and become Founding Members, and existing Associate Members may be elevated to Founding Members, upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as a Founding Member of CCCFA; (2) the approval at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as a Founding Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become a Founding Member for all purposes of this Agreement.

**Section 3.02 Associate Members.** A Public CCA Agency will be qualified to join as an Associate Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as Associate Members of CCCFA upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as an Associate Member of CCCFA; (2) the approval at a regular or special meeting of the Board by a majority vote of the Directors in attendance, provided a quorum is established and maintained, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as an Associate Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any.

**Section 3.03 Cost Allocations.**

(a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined
by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Agreement.

(b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Agreement relating to such Prepayment Project.

Section 3.04 Withdrawal or Exclusion of Member.

(a) Any Member may withdraw from CCCFA upon the following conditions:

(i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;

(ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Agreement; and

(iii) Prior to the Board accepting the Member’s filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCPFA shall not constitute debt, liabilities or obligations of any Member.

(iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

(b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member’s resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Agreement or other program agreement.

(c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Agreement, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project

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Agreement or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director (if such Member is a Founding Member) or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Prepayment Project Agreement or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member’s exclusion. No such termination shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

(d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.04 below.

Section 3.05 Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to CCCFA by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of such purpose. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by such Member and CCCFA at the time of making such advance. It is mutually understood and agreed that no Member is under any obligation to make advances or contributions to CCCFA to provide for the costs and expenses of administration of CCCFA, even though any Member, in its sole discretion, may do so. Any Founding Member may allow the use of personnel, equipment or property in lieu of other contributions or advances to CCCFA.

Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA

Section 4.01 Board. CCCFA shall be administered by a Board which shall consist of one Director representing each Founding Member. Such Board shall be the governing body of this CCCFA, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents, and may be removed as Director by such Founding Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Founding Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Founding Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State, the State Controller, the applicable county clerk and local agency formation commissions.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CCCFA subject to delegation of authority from the Board as permitted in the bylaws and any applicable laws.
**Section 4.05 Director Compensation.** Compensation for work performed by Directors, including alternates, on behalf of CCCFA shall be borne by the Founding Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

**Section 4.06 Board Officers.** At its first meeting in each calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair, each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary, a Treasurer, and a Controller, each of whom may, but need not, be selected from among the Directors.

(a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board’s directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.

(b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and Controller, neither of whom needs to be a Director. Except where a certified public accountant has been designated as Treasurer of CCCFA, the Board shall appoint the same qualified person to act as both the Treasurer and Controller. Where a certified public accountant has been designated as Treasurer of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Controller shall cause an independent audit to be made in compliance with Section 6505 of the Government Code. The Treasurer shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer, the amount of receipts since the last such report, and the amount paid out since the first such report.

(c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

**Section 4.07 Management of CCCFA.** The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CCCFA. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

**Section 4.08 Other Officers and Employees.** The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such
employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CCCFA shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Section 4.10 Fiscal Year. Unless changed by resolution of the Board, the fiscal year of CCCFA shall be the period from January 1 of each year to and including the following December 31.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.), and as augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Each Founding Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be required and sufficient to constitute action, provided a quorum is established and maintained.

(a) Special Voting Requirements as specified in this Agreement:

   (i) Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.

   (ii) Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

   (iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member’s governing body.
(iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

Section 5.07 Rules and Regulations. CCCFA may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

Article VI. PREPAYMENT PROJECTS

Section 6.01 Prepayment Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to approve the application of any Member for the undertaking, financing, or refinancing of any Prepayment Projects within the purpose and power of CCCFA and to adopt guidelines for their implementation.

Section 6.02 Prepayment Project Agreement. The costs and other expenses of each Prepayment Project, including without limitation applicable administrative costs of CCCFA with respect to the Prepayment Project, shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Agreement relating to such Prepayment Project, which will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

In addition to the other powers conferred on CCCFA by this Agreement, CCCFA shall have the power to issue, incur, sell and deliver Bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects. The terms and conditions of the issuance or incurrence of any such bonds or indebtedness shall be set forth in a resolution, indenture trust agreement, or other instrument pursuant to which the Bonds are issued or incurred, as required by law and as approved by the Board. CCCFA’s debts, liabilities and obligations with respect to Bonds issued or incurred under this Agreement and contracts or obligations entered into to carry out the purposes for which Bonds are issued or incurred, shall not constitute a debt, liability or obligation of any of the Members.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Prepayment Project Agreement such Member enters into pursuant to this Agreement.

Section 8.02 Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.
Article IX.  TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01  Term and Termination.  This Agreement shall become effective when at least three Founding Members execute this Agreement.  This Agreement shall continue in full force and effect until terminated as provided in this Article; provided, however, this Agreement cannot be terminated while either (a) any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.  This Agreement may be terminated by a two-thirds (2/3) vote of the entire Board that is approved by resolution of each Founding Member’s governing body; provided, however, that this Agreement and CCCFA shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CCCFA.  In any event, CCCFA shall cause all records regarding its formation, existence, the Prepayment Projects, any Bonds issued or incurred by it and proceedings pertaining to its termination to be retained for at least six years (or as otherwise required by law) following termination of CCCFA or final payment of any Bonds issued or incurred by CCCFA, whichever is later.

Section 9.02  Liquidation; Distribution.  Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CCCFA as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CCCFA, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CCCFA for the purpose of concluding and dissolving the business affairs of CCCFA.  Notwithstanding the foregoing, no dissolution of CCCFA shall be permitted while either (a) any Bonds of CCCFA remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.

ARTICLE X.  ACCOUNTS AND REPORTS

Section 10.01  Establishment and Administration of Funds.  CCCFA is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, including without limitation Section 6505 of the Government Code.  CCCFA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CCCFA securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CCCFA shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02  Annual Audits and Audit Reports.  The Controller shall cause an annual independent audit of the accounts and records of CCCFA to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member not later than 270 days after the close of the fiscal year or fiscal years under examination.  CCCFA will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI.  GENERAL PROVISIONS

Section 11.01  Conflict of Interest Policy.  CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California.  Counsel to CCCFA for financing matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.
**Section 11.02 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither a Member nor CCCFA may assign any right or obligation under this Agreement without the consent of all other Members.

**Section 11.03 Amendments.** Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of the entire Board. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Founding Members pursuant to each Founding Member’s applicable approval process, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of all Founding Members pursuant to each Founding Member’s applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least thirty (30) days prior to the date upon which the Board votes on such amendments. Each Member hereby agrees to take any actions necessary on its part to approve any amendment adopted pursuant to this Section 11.03, and if any Member fails to perform any such actions, such Member shall be deemed to have submitted a resolution of withdrawal pursuant to the provisions of Section 3.04 hereof.

Notwithstanding the foregoing, this Agreement shall not terminate while any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

**Section 11.04 Indemnification and Insurance.** To the fullest extent permitted by law, CCCFA shall defend, indemnify, and hold harmless the Members and each Director, alternate, officer, employee and agent from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CCCFA under this Agreement to the extent not otherwise provided under a Prepayment Project Agreement. CCCFA shall acquire such insurance coverage as the Board deems necessary and appropriate to protect the interests of CCCFA and the Members.

**Section 11.05 Waiver of Personal Liability.** No member, director, commissioner, officer, agent or employee of CCCFA or the Members, respectively, past, present or future, shall be individually or personally liable for the observance or performance of any terms, conditions or provisions hereof or for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of CCCFA or the actions undertaken pursuant to this Agreement; provided, however, that nothing herein shall relieve any such person from the performance of any official duty provided hereby or by applicable provision of law.

**Section 11.06 Limitation of Rights.** All of the covenants, agreements, terms and conditions in this Agreement to be observed or performed by or on behalf of CCCFA or the Members shall be for the sole and exclusive benefit of CCCFA and the Members, whether so expressed or not, and nothing contained herein, express or implied, is intended to or shall give any other person other than CCCFA and the Members any legal or equitable right, remedy or claim hereunder.

**Section 11.07 Notices.** The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service of process on behalf of CCCFA. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member, and separately to the Director appointed by such Founding Member, to their respective addresses on file with CCCFA.
Section 11.08 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.09 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.10 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.12 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board. In the event such mediation fails to settle a dispute, the parties may pursue any remedies provided by law.

[Signature Page Follows]
IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

Date: __________________________

(Seal)

Member Name: __________________________

Attest: __________________________

Address: __________________________

______________________________

______________________________

______________________________

(Seal)

Member Name: __________________________

Attest: __________________________

Address: __________________________

______________________________

______________________________

______________________________

(Seal)

Member Name: __________________________

Attest: __________________________

Address: __________________________

______________________________

______________________________

______________________________

(Seal)

Member Name: __________________________

Attest: __________________________

Address: __________________________

______________________________
Staff Report – Item 4

Item 4: Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with San Luis West Solar, LLC for Renewable Solar PV Supply (PCC1) and Energy Storage in Substantial Form and Any Necessary Ancillary Agreements and Documents

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources

Date: 4/14/2021

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) in substantial form and any necessary ancillary agreements and documents as follows:

San Luis West Solar, LLC (“San Luis West”)

- 62.5 megawatt (MW) of Solar photovoltaic (PV) supply with 15.625 MW of lithium-ion energy storage (four-hour duration) qualifying as Portfolio Category Content One (PCC1) renewable resource;
- 15-Year term PPA with expected delivery from December 1, 2023 through November 30, 2038; and
- Total amount not-to-exceed $74,000,000.

Execution of the San Luis West PPA will help SVCE meet its clean energy goals, Renewable Portfolio Standard (RPS) and long-term procurement requirements.

BACKGROUND

In spring of 2020, Silicon Valley Clean Energy (SVCE) and Central Coast Community Energy (“3CE”) issued its third Joint Request for Offers (Joint RFO) for long-term clean resources. The goal of the Joint RFO was to secure enough renewable energy through long-term PPAs to meet SVCE’s Renewable Portfolio Standard (RPS) and carbon-free objectives as identified in SVCE’s 2020 Integrated Resource Plan (IRP), while also complying with California’s RPS mandates under Senate Bill 100 (“SB 100”) which sets a 60% RPS by 2030 and 100% clean energy goal by 2045 and 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) RPS eligibility criteria with deliveries starting before 2024 and a minimum PPA term of 10 years.

The RFO closed on June 15, 2020 with twenty-four developers proposing 36 new or existing projects. Six projects were shortlisted, after conducting quantitative and qualitative analyses. This is the second of the six shortlisted projects being brought to the Board for approval. SVCE’s current RPS in 2024 is estimated at 42 percent. With the addition of San Luis West, SVCE’s RPS increases to 46 percent. If SVCE were to finalize negotiations and execute the remaining four shortlisted projects, the RPS in 2024 will be 60 percent.

Table 1 is a summary of all executed PPAs along with the proposed San Luis West Solar and Storage PPA.

---

DISCUSSION/ANALYSIS:
San Luis West Solar, LLC’s parent company, Origis Energy, provides solar and energy storage development, financing, engineering, procurement and construction (EPC) and operations, maintenance and asset management. Origis Energy has developed over 2,000 MW of solar and energy storage capacity in the United States.

San Luis West is a solar plus storage project. It will be in located in Fresno County, delivering PCC1 (Bucket 1) eligible renewable solar PV energy. SVCE’s share of the PV is 62.5 MW and the energy storage component will be a 15.625 MW Lithium-ion battery, with a storage discharge duration of 4 hours.

**Project Summary**

<table>
<thead>
<tr>
<th>Counterparty</th>
<th>San Luis West Solar, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent Company</td>
<td>Origis Energy</td>
</tr>
<tr>
<td>Delivery Term</td>
<td>15 years</td>
</tr>
<tr>
<td></td>
<td>December 1, 2023 through November 30, 2038</td>
</tr>
<tr>
<td>Project Name</td>
<td>San Luis West Solar + Storage</td>
</tr>
<tr>
<td>Contract Capacity</td>
<td>62.5 MW Solar PV plus 15.625 MW Energy Storage (Li-ion Battery) 4-hour Discharge Duration</td>
</tr>
<tr>
<td>Location</td>
<td>Fresno County</td>
</tr>
<tr>
<td>Percentage of Retail Load Served</td>
<td>~4%</td>
</tr>
</tbody>
</table>
Project Value and Merits
San Luis West is expected to generate enough clean energy to meet approximately 4.0 percent of SVCE’s energy needs providing PCC1 renewable resources which 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 & Integrated Resource Plan
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 27.6% RPS in CP4 from long-term resources. San Luis West is expected to come on-line at the end of 2023, thus providing a little more than one year of PCC1 energy in CP4. With the inclusion of the San Luis West PPA, SVCE’s long-term RPS is 28.8% in CP4, which is above California’s mandated long-term RPS requirement of 26%. Table 2 shows SVCE’s progress towards meeting the long-term RPS goals and mandates.

<table>
<thead>
<tr>
<th>Table 2: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Row</strong></td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>1. State Mandated RPS per Compliance Period - % of Retail Sales</td>
</tr>
<tr>
<td>2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
</tr>
<tr>
<td>3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2 + Row 1)</td>
</tr>
<tr>
<td>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (per Table 2)</td>
</tr>
<tr>
<td>5. SVCE: RPS Achieved with San Luis West Solar + Storage</td>
</tr>
<tr>
<td>6. Open Position relative to State Mandate (Row #3) +Above/ (-) Short</td>
</tr>
</tbody>
</table>

SVCE’s Board-approved the 2021-2030 Integrated Resource Plan (“IRP”) in August 2020; following is a link to the staff report (Item 4): [SVCE August 12, 2020 Board Meeting](#). The IRP identifies a preferred path (“Preferred Plan”) to cost-effectively achieve greenhouse gas emission reduction targets while ensuring for a reliable grid. Included in the IRP and SVCE’s strategic plan are annual RPS targets set currently at 50 to 52% growing to 60% in 2030 in line with California’s RPS mandates. The IRP also sets aggressive long-term PPA procurement targets of at least five percent (5%) above the state mandated requirement. This is prudent to ensure compliance given project development, termination and/or energy production performance risk.

Additionally, recognizing a potential lack of reliable and cost-effective sources of carbon-free large-hydroelectric energy in the future, the IRP identifies an Alternative Portfolio Plan which provides a path of 100% carbon-free through less hydroelectricity and much more aggressive RPS of 75% by 2030. The Alternative Portfolio Plan also sets even more aggressive long-term procurement targets since meeting the
more aggressive RPS cost effectively will require more long-term PPAs. Staff’s plan is to return to the Board in summer of 2021 with the merits of establishing the Alternative Portfolio Plan as SVCE’s preferred plan.

Table 3 is a summary of the various long-term procurement targets relative to mandates and SVCE’s position with the inclusion of San Luis West.

Table 3: SVCE IRP Long-term Contracting Targets per Compliance Period

<table>
<thead>
<tr>
<th></th>
<th>CP#4 2021-2024</th>
<th>CP #5 2025-2027</th>
<th>CP #6 2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Mandated % of Retail Sales with RPS Long-term Contracts</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>SVCE’s Long-term RPS with Existing and Proposed PPAs</td>
<td>28.8%</td>
<td>45%</td>
<td>42%</td>
</tr>
<tr>
<td>SVCE IRP Preferred Portfolio % of Retail Sales with RPS Long-term Contracts</td>
<td>31%</td>
<td>38%</td>
<td>42%</td>
</tr>
<tr>
<td>SVCE IRP Alternative Portfolio % of Retail Sales with RPS Long-term Contracts</td>
<td>31%</td>
<td>45%</td>
<td>55%</td>
</tr>
</tbody>
</table>

SVCE expects to achieve all state mandated long-term RPS targets. For CP#4, SVCE current position falls short of the over-procurement targets set in the IRP for both the Preferred and Alternative Portfolios. Should staff be successful in its negotiations of the remaining shortlisted projects and the Board approves the PPAs, then the target long-term RPS of 31% in CP#4 will be met. For CP#5 and CP#6, SVCE is on track to achieve the Board-approved long-term procurement targets.

Figure 1 illustrates SVCE’s progress towards meeting the Board-approved and stated mandated annual RPS targets. Figure 2 illustrates SVCE’s progress towards meeting its 100% clean energy goals through 2030.
STRATEGIC PLAN
SVCE’s Strategic Plan, Goal #5 directs staff to acquire clean and reliable electricity in a cost-effective, equitable and sustainable manner. The Strategic Plan further directs staff to annually achieve a 100% clean energy portfolio and to procure sufficient long-term RPS resources to exceed minimum long-term procurement mandates by 5% per compliance period. Execution of the San Luis West PPA helps SVCE achieve Goal #5.

ALTERNATIVE
The Joint RFO selection criteria considered all submitted offers against quantitative and qualitative criteria. The San Luis West solar plus storage project was selected as part of this competitive process. 3CE and SVCE have conducted and completed good faith negotiations with this developer over the last ten to twelve months, all with the intent to execute the attached PPA.

Alternatives to the staff recommendation is to reject the San Luis West PPA or direct staff to re-negotiate specific contract terms with the suppliers. 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 financial impact of adding the San Luis West PPA to SVCE’s portfolio of supply resources is a decrease in expected supply cost since procuring long-term and bundled resources such as San Luis West are significantly less expensive than procuring short-term renewable products.

The fiscal impact of the SVCE/San Luis West, LLC PPA will not exceed $74,000,000 over the term of the PPA. All costs associated with the PPA will be included in the budget beginning in fiscal year 2023-2024.

ATTACHMENTS
1. SVCE/San Luis West, LLC SVCE Power Purchase Agreement (Redacted version)
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** San Luis West Solar, LLC, a Delaware limited liability company

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

**Description of Facility:** A 125 MW solar photovoltaic generating facility combined with a co-located 31.25 MW/125 MWh (at 4 hour discharge) battery energy storage system and associated facilities located in Fresno County, California, as further described in Exhibit A.

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>9/1/2021</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>6/1/2021</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>12/31/2022</td>
</tr>
<tr>
<td>Network Upgrades Completed</td>
<td>12/31/2023</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>1/6/2023</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>12/23/2023</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>10/1/2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>12/1/2023</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>
<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>
</tbody>
</table>
Guaranteed Capacity: MW

Storage Contract Capacity: MW

Storage Contract Output: MWh

Storage Facility Loss Factor: 

Guaranteed Storage Availability: 

Maximum storage facility cycles per year: 

Delivery Point: Facility PNode

Contract Price

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
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<tbody>
<tr>
<td>1 – 15</td>
<td>/MWh (flat) with no escalation</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>/kW-mo. (flat) with no escalation</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:

Performance Security:
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Exhibit R  Metering Diagram
RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of ________, 2021 (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 for such period.

"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; and with respect to Seller, it includes Seller’s Ultimate Parent and such Ultimate Parent’s Affiliates. 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 those ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing consistent with the Operating Restrictions, Prudent Operating Practice, and the requirements and limitations set forth in this Agreement. Ancillary Services do not include Tax Credits.

“Approved Forecast Vendor” means AWS Truepower, DNV-GL, or any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

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

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

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

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

“Buyer” 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:
(c) did not submit a Self-Schedule or an Energy Supply Bid for the MWh subject to
the reduction;

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

(e) 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, Buyer’s Scheduling Coordinator or CAISO, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction shall be in accordance with the Operating Procedures and the CAISO Tariff; and (b) if, during a period when the Storage Facility is instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable Charging Notice, then the Charging Notice shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. 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.

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

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

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

“**Commercial Operation Delay Damages**” has the meaning set forth in Section 16.2.

“**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(a).

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“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 the dollar amount that equals the amount of the Development Security.

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

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

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

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

“Dedicated Interconnection Capacity for Facility” has the meaning set forth in Exhibit A.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to

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

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

“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 Restrictions and the CAISO Tariff. If the Storage Facility is instructed to discharge in a manner that would result in the total amount of Facility Energy exceeding the interconnection capacity limit for the Facility at the Delivery Point (but not less than the Dedicated Interconnection Capacity For Facility), then the Discharging Notice shall be deemed to be automatically adjusted to reduce the amount of total Facility Energy to the interconnection capacity limit, until such time as Buyer, the Scheduling Coordinator, or CAISO issues a new or modified Discharging Notice. 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 either the Generating Facility and the Delivery Point, or the Storage Facility and the Delivery Point, as applicable, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

“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 or combination of meters, including the Generating Facility Meter(s) and Storage Facility Meter(s), 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 during 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 a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations 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 environmental benefits associated with the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

“Generating Facility Meter” means the CAISO Approved meter(s) that measure the PV Energy. The Generating Facility Meter shall be programmed, in accordance with the CAISO Tariff, to correct for direct path transmission losses between the Generating Facility Meter and the Delivery Point (not including any losses from other facilities that share the common Delivery Point with this Facility).

“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 environmental attributes associated with 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”

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.
“Guarantor” means, with respect to Seller, (a) a Person that is reasonably acceptable to Buyer, or (b) 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) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least $5,000,000, (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) 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(a).

“Indemnified Group” has the meaning set forth in Section 16.1(a).

“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 for four (4) continuous hours, 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 Fitch 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.

“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 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, e.g., Contract Years 1 and 2, Contract Years 2 and 3, etc.

“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.

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

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

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

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale 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 Station Use, 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 Commercial Operation Date.
“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy was less than the Qualifying Capacity of the Facility for such month.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during the Delivery Term during which there is an RA Shortfall Amount.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity, Storage Contract 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 S&P Global 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 8.9.

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

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

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

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

“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 four (4) 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 maximum dependable operating capacity (in MW) of the Storage Facility to discharge electric energy for four (4) consecutive hours, which is 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.

“Storage Facility Meter” means the bi-directional meter or meters, 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 in accordance with any applicable requirements of CAISO, WREGIS or this Agreement.
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, 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 .

“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 January 4, 2021, 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 work or provision in respect of which such examples are provided;

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

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

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

(k) 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 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 applicable 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 Guaranteed Commercial Operation Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date or Guaranteed Commercial Operation 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 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.

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 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,

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, 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 occurring
after the RA Guarantee Date, Seller shall pay to Buyer the RA Deficiency Amount as liquidated
damages or provide Replacement RA, in each case, as the sole 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 the product of (i) the RA Shortfall Amount, and (ii) 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. Seller must promptly notify Buyer and the CEC of any changes to
the information included in Seller’s application for CEC Certification and Verification for the
Facility.
3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

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

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery 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.

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 [COMPLETION REDACTED] (“Compliance Expenditure Cap”). Seller’s 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 within the sixty (60) day evaluation period, it 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 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.

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, 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) hourly 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 hourly 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.

(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, (ii) Storage Capacity or (iii) hourly expected Energy, 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, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. 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 (or such longer period as may be reasonably necessary to implement the requested method). 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 or electronic feed to Buyer (or in another mutually-agreed format).

(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 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 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 Restrictions), 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 during the Delivery Term seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to the Storage Facility 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 Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority, 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 Restrictions. 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 Restrictions.
Buyer shall be responsible for all CAISO costs, penalties and charges that result from Seller’s compliance with the automatic adjustments of Charging Notices and Discharging Notices established in the definitions of those terms unless the Parties agree otherwise and if Seller is required to reduce deliveries of PV Energy as necessary to avoid exceeding the interconnection capacity limit at the Delivery Point or inadvertent grid charging of the Storage Facility, to the extent consistent with this Agreement, all such reduced Facility Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy.

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) **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, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability.**

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than [missing data] (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. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement 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.

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.

4.12 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity available or allocable to the Facility for all purposes under the Interconnection Agreement that is no less than the Dedicated Interconnection Capacity for the Facility during the Test Energy period and throughout the Delivery Term.

**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 Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.
ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall materially 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.

(a) 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 from the Facility to the Delivery Point, as applicable. Seller shall measure the PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Seller will also provide any additional meters required by CAISO (e.g., auxiliary meters), WREGIS, or this Agreement and all meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost.

(b) Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Generating Facility and a single CAISO resource ID dedicated exclusively to the Storage Facility. Seller shall not (i) obtain a single CAISO resource ID for the Facility or (ii) obtain additional CAISO resource IDs for the Generating Facility, the Storage Facility, or the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional
CAISO resource IDs incurred by Seller shall be reimbursed by Buyer; provided, that Seller shall not be required to make any changes that will jeopardize any Tax Credits.

(c) Metering shall be consistent with the requirements of this Agreement, the CAISO Tariff, and to the extent applicable, WREGIS, and to the extent not inconsistent with the foregoing, 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. As of the Effective Date, the Facility is intended to be configured and metered as a solar photovoltaic electricity generating facility that is co-located and AC-coupled with an electrochemical battery energy storage facility. Seller shall not modify the configuration of this Facility (e.g., change to a hybrid or DC-coupled configuration), or the metering, without the prior written consent of Buyer, not to be unreasonably withheld.

(d) 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 Facility Energy, the amount of PV Energy, the amount of Charging Energy, the amount of Discharging Energy, the amount of Replacement RA delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data
from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice 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 prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon 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 Ten Thousand Dollars ($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. 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 G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) 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 of Guaranty 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):

1. 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;

2. 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

3. 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 made as specified and 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), upon successful completion of such transmission, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day; 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 or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) 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. 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.

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.

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;

(ii) the failure by Seller to achieve Commercial Operation \[\text{blank}\] 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, \[\text{blank}\];

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(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;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(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 and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. 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 **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 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. FOLLOWING THE OCCURRENCE OF THE COMMERCIAL OPERATION DATE, 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 REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in 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) Seller will be responsible for obtaining (or causing to be obtained) all permits necessary to construct and operate the Facility.

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 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.

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**"). 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. 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 by Seller, 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, unless otherwise agreed by the parties to such agreement:

(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.

14.3 **Buyer Assignment.** Notwithstanding anything to the contrary Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer (“Prepayment Assignee”) of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Prepayment Assignee’s timely payment of amounts due under the PPA, at any time upon not less than thirty (30) days’ notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in form and substance reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Prepayment Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Prepayment Assignee and Buyer.
ARTICLE 15
DISPUTE RESOLUTION

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

15.2 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 San Francisco County, California.

15.3 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 Indemnifying 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 [insert amount]. 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 [insert amount] per occurrence and in the aggregate.

(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 [insert amount] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [insert amount] policy limit will apply to each employee.

(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 [insert amount] per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, 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 [insert amount] per occurrence and in the aggregate. Such insurance shall include coverage for bodily injury and property damage, including clean-up costs and defense costs, resulting from sudden & accidental 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 is bound by Law or contract or 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 of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract; Service Contract.**

(a) 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.

(b) Each Party intends this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986.

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.

<table>
<thead>
<tr>
<th>SAN LUIS WEST SOLAR, LLC</th>
<th>SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>Name:</td>
<td>Name:</td>
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<td>Title:</td>
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</tbody>
</table>
EXHIBIT A

FACILITY DESCRIPTION

Site Name: San Luis West Solar

Site includes all or some of the following APNs: APN 078-130-23, APN 078-060-39, APN 078-060-80, APN 078-060-86, APN 078-060-85 and APN 085-050-01S

County: Fresno

CEQA Lead Agency: Fresno County Department of Public Works and Planning

Facility: Solar photovoltaic electricity generating facility that is co-located and AC-coupled with an electrochemical battery energy storage facility in accordance with Section 7.1.

Type of Generating Facility: Solar photovoltaic electricity generating facility

Operating Characteristics of Generating Facility: As-generated, inverter-based, solar photovoltaic

Type of Storage Facility: AC-coupled 4-hour lithium-ion battery energy storage facility

Operating Characteristics of Storage Facility:

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

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

Dedicated Interconnection Capacity for Facility: MW

Delivery Point: See Exhibit R

Facility Meter: See Exhibit R

Generating Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

Facility Interconnection Point: Gates Substation (230kV)

Participating Transmission Owner: Pacific Gas & Electric (PG&E)
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) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility or the Guaranteed Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when (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 at least

   (b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. 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) a Force Majeure Event occurs; or

   (b) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or

   (c) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date; or

   (d) 

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a), 4(b), and 4(d) 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; provided, however, that only with respect to a Force Majeure Event related to COVID-19, the day-for-day extensions shall not exceed . Notwithstanding anything to the contrary, no extension under the Development Cure Period shall
be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than [redacted] after Seller became aware of such delay, except that in the case of a delay occurring within [redacted] of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within [redacted] of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take 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 [redacted] 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 the product of (i) [redacted] and (ii) [redacted].

   (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 [redacted] 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].
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 Over

(d) Excess Settlement Interval Deliveries.

(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. 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 Facilty 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 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 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

Exhibit D - 1
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. Gantt chart schedule showing progress on achieving each of the Milestones.
5. Description of any material planned changes to the Facility or the site.
6. Summary of activities during the previous calendar quarter or month, as applicable.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. If applicable, prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.
## EXHIBIT F-1

### FORM OF AVERAGE EXPECTED ENERGY REPORT

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2

FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT

The following table is 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 – [Insert applicable month]

|                | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|----------------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1          |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2          |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3          |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4          |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5          |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

Day 29

Day 30

Day 31
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[
[(A - B) \times (C - D)]
\]

where:

\[A = \text{the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh}\]

\[B = \text{the Adjusted Energy Production amount for the Performance Measurement Period, in MWh}\]

\[C = \text{the Renewable Rate for the Contract Year, in $/MWh}\]

\[D = \text{the Renewable Rate for the Contract Year, in $/MWh}\]

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

“Lost Output” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

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 within thirty (30) days of such Notice.
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 a nameplate capacity of no less than [ ] of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a 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, 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
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]  
this _______ day of _____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]  

By: ________________________________  
Printed Name: ______________________  
Title: ______________________________
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 four (4) 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: ________________________________

Printed Name: _______________________

Title: _______________________________
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: ______________________________

Printed Name: _____________________

Title: ______________________________
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, a California joint powers authority
333 W. El Camino Real, Suite 330
Sunnyvale, CA 94087
Attn: Girish Balachandran, CEO

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. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date ] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in
connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States Dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [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. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

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

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority, a California joint powers 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 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 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 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 L - 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
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.

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 San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force.
and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[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 [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

**Unit Information**

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

**Month** | Unit CAISO NQC (MW) | Unit Contract Quantity (MW)

| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |


1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: __________________________
Printed Name: ______________________
Title: ______________________________
Date: ______________________________
## EXHIBIT N

**NOTICES**

<table>
<thead>
<tr>
<th>San Luis West Solar, LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 800 Brickell Avenue, Suite 1000</td>
<td>Street: 333 W. El Camino Real, Suite 330</td>
</tr>
<tr>
<td>City: Miami, FL 33131</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn: Management Team</td>
<td>Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: (786) 693-2624</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Email: <a href="mailto:OrigisManagement@origisenergy.com">OrigisManagement@origisenergy.com</a></td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a> and <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

With a copy to:

| Street: 800 Brickell Avenue, Suite 1000 | Street: 333 W. El Camino Real, Suite 330          |
| City: Miami, FL 33131                   | City: Sunnyvale, California Zip: 94087            |
| Attn: Alfredo Gracian                  | Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources |
| Phone: (786) 693-2624                  | Phone: (408) 721-5301                            |
| Email: [alfredo.gracian@origisenergy.com](mailto:alfredo.gracian@origisenergy.com) | Email: girish@svcleanenergy.org and monica.padilla@svcleanenergy.org |

<table>
<thead>
<tr>
<th><strong>Reference Numbers:</strong></th>
<th><strong>Reference Numbers:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Duns: N/A</td>
<td>Duns: [redacted]</td>
</tr>
<tr>
<td>Federal Tax ID Number: [redacted]</td>
<td>Federal Tax ID Number: [redacted]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Invoices:</strong></th>
<th><strong>Invoices:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Accounts Payable</td>
<td>Attn: Power Supply Group</td>
</tr>
<tr>
<td>Phone: (305) 979-3852</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:ap@origisenergy.com">ap@origisenergy.com</a></td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Scheduling:</strong></th>
<th><strong>Scheduling:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: ZGlobal</td>
<td>Attn: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Phone: (916) 221-4327</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:eric@zglobal.biz">eric@zglobal.biz</a></td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
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</table>

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<thead>
<tr>
<th><strong>Confirmations:</strong></th>
<th><strong>Confirmations:</strong></th>
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</thead>
<tbody>
<tr>
<td>Attn: Monica Padilla, Director of Power Resources</td>
<td>Attn: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Phone: (408) 721-5301</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
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</table>

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<tr>
<th><strong>Payments:</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Attn: Account Receivables</td>
<td>Attn: Finance Group</td>
</tr>
<tr>
<td>Phone: (848) 213-5374</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile: (786) 221-4237</td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:ar@origisenergy.com">ar@origisenergy.com</a></td>
<td>Email: <a href="mailto:SVCEpowersettlements@svcleanenergy.org">SVCEpowersettlements@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

Exhibit N - 1
<table>
<thead>
<tr>
<th>San Luis West Solar, LLC (“Seller”)</th>
<th>Silicon Valley Clean Energy Authority (“Buyer”)</th>
</tr>
</thead>
<tbody>
<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>With additional Notices of an Event of Default to:</td>
</tr>
<tr>
<td>Attn: Samir Verstyn</td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td>Phone: (646) 467-3966</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:samir.verstyn@origisenergy.com">samir.verstyn@origisenergy.com</a></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></td>
<td>With a copy to: <a href="mailto:josh.teigiser@origisenergy.com">josh.teigiser@origisenergy.com</a></td>
</tr>
<tr>
<td><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn: Josh Teigiser</td>
<td>Attn: Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: (310) 407-9796</td>
<td>Phone: (408) 721-5301 x1009</td>
</tr>
<tr>
<td>Facsimile: (786) 221-4237</td>
<td>Email: <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:josh.teigiser@origisenergy.com">josh.teigiser@origisenergy.com</a></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 twice per Contract Year, upon no less than ten (10) Business Days’ prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the 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 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 Contract 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 (net electrical energy input to the Storage Facility, as measured in MWh by the Storage Facility Meters);
(3) discharging energy (net electrical energy output from the Storage Facility, as measured in 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 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. The SCT results will be deemed accepted if Buyer does not respond within ten (10) Business Days after receipt of the report.

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 to automatically replace or supplement this Exhibit O, as applicable.

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

STORAGE 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 or that results in unavailability of less than all of the Storage Facility will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the Storage Facility is 50% unavailable for 50% of an hour (but fully available the other 50% of the hour), it will be considered to be unavailable for 25% of the hour.

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 bid 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 [REDACTED], then:

(iii) If the Monthly Storage Availability is less than [REDACTED] then:
EXHIBIT Q
OPERATING RESTRICTIONS

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

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>1. Storage Contract Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Maximum Stored Energy Level</td>
<td></td>
<td></td>
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<tr>
<td>3. Minimum Stored Energy Level</td>
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<tr>
<td>4. Maximum Charging Capacity</td>
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<td>5. Minimum Charging Capacity</td>
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<td>6. Maximum Discharging Capacity</td>
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<tr>
<td>7. Minimum Discharging Capacity</td>
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<tr>
<td>8. Maximum State of Charge (SOC) during Charging</td>
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<tr>
<td>9. Minimum State of Charge (SOC) during Discharging</td>
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</tr>
<tr>
<td>10. Annual Average State of Charge Range (SOC)</td>
<td></td>
<td>Measured during each Contract Year</td>
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<tr>
<td>11. 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 discharge hours Not to exceed the stated value Measured during each Contract Year</td>
</tr>
<tr>
<td>12. Daily Dispatch Limits</td>
<td></td>
<td>One (1) cycle is equal to 1 kWh throughput per kWh calculated by the product</td>
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<tr>
<td></td>
<td></td>
<td>of the Storage Contract Capacity and discharge hours Not to exceed the stated value</td>
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<tr>
<td>13.</td>
<td>Ramp rate</td>
<td>0 - 1200 MW/min</td>
</tr>
<tr>
<td>14.</td>
<td>Charging energy source</td>
<td>The Storage Facility will only be charged by the Generating Facility</td>
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Seller will not be liable for noncompliance with any Charging Notice, Discharging Notice, or other instruction to the extent it conflicts with the Operating Restrictions.
Silicon Valley Clean Energy
Board of Directors Meeting

April 14, 2021

Appendix A

Power Resource Contracts Executed by CEO
Appendix A

.Contract 20-SNR-02459

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CONTRACT FOR ELECTRIC SERVICE
BASE RESOURCE
WITH

SILICON VALLEY CLEAN ENERGY AUTHORITY
UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SIERRA NEVADA REGION

CONTRACT FOR ELECTRIC SERVICE
BASE RESOURCE
WITH

SILICON VALLEY CLEAN ENERGY AUTHORITY

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Resolution/Certificate

General Power Contract Provisions

Exhibit A – Base Resource Percentage and Point(s) of Delivery
Exhibit B – Exchange Program
Exhibit C – Regulation and Reserves
Exhibit D – Rate Schedule
1. **PREAMBLE:** This Contract is made this 23rd day of February, 202, pursuant to the Acts of Congress approved June 17, 1902, (32 Stat. 388); August 26, 1937, (50 Stat. 844); August 4, 1939, (53 Stat. 1187); and August 4, 1977, (91 Stat. 565); and Acts amendatory or supplementary to the foregoing Acts; between the UNITED STATES OF AMERICA (United States), acting by and through the Administrator, Western Area Power Administration, Department of Energy, hereinafter called WAPA, represented by the officer executing this Contract, or a duly appointed successor, hereinafter called the Contracting Officer; and SILICON VALLEY CLEAN ENERGY AUTHORITY, a Community Choice Aggregator, organized and existing under the laws of the State of California, hereinafter called the Contractor or SVCE, its successors and assigns; each sometimes hereinafter individually called the Party, and both sometimes hereinafter collectively called the Parties.

2. **EXPLANATORY RECITALS:**

2.1 WAPA markets the surplus generation from, and operates a high-voltage transmission system as a part of, the Central Valley Project (CVP).
2.2 WAPA and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), have agreed to work together to efficiently serve Project Use and Preference Customer loads.

2.3 On August 15, 2017, WAPA’s final 2025 Power Marketing Plan (Marketing Plan) was published in the Federal Register (82 FR 38675). The Marketing Plan sets forth how WAPA’s Sierra Nevada Region will market the power generated from the CVP and Washoe Project.

2.4 On June 17, 2019, WAPA’s Notice of Final 2025 Resource Pool Allocations was published in the Federal Register (84 FR 28039), and SVCE received an allocation.

2.5 SVCE desires to purchase and WAPA is willing to provide a percentage of the Base Resource consistent with the Marketing Plan and the terms and conditions of this Contract.

2.6 Under the Marketing Plan, WAPA requires that its Customers schedule power in accordance with applicable operating requirements, including those of the balancing authority area operator and WAPA’s sub-balancing authority area requirements.

2.7 WAPA markets power to Federal Preference Customers at the lowest possible rates consistent with sound business principles pursuant to Section 1.1 of Delegation Order 00-037.00B.

3. **AGREEMENT:**

The Parties agree to the terms and conditions set forth herein.

Contract 20-SNR-02459
4. **EFFECTIVE DATE AND TERM OF CONTRACT:**

4.1 This Contract shall become effective on the date of execution and shall remain in effect until midnight of December 31, 2054, subject to prior termination as otherwise provided for herein.

4.2 SVCE may reduce its Base Resource percentage or terminate this Contract for any reason through June 30, 2024.

4.3 The date of initial service under this Contract is January 1, 2025.

5. **DEFINITION OF TERMS:**

As used herein, the following terms whether singular or plural, or used with or without initial capitalization, shall have the following meanings:

5.1 “Ancillary Services” means those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with Good Utility Practice.

5.2 “BANC” means the Balancing Authority of Northern California or its successor.

5.3 “Base Resource” means CVP and Washoe Project power (capacity and energy) output determined by WAPA to be available for Customers, including the Environmental Attributes, only after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, system losses, and certain ancillary services.
5.4 “Base Resource Operating Capability” means that portion of the Maximum Operating Capability that WAPA determines to be available to Customers in any hour.

5.5 “CAISO” means the California Independent System Operator or its successor.

5.6 “Capacity” means the electrical capability of a generator, transformer, transmission circuit or other equipment.

5.7 “Central Valley Project (CVP)” means the multipurpose Federal water development project extending from the Cascade Range in northern California to the plains along the Kern River, south of the City of Bakersfield.

5.8 “Custom Product” means a combination of products and services which may be made available by WAPA per Customer request.

5.9 “Customer” means an entity with a contract and receiving electric service from WAPA’s Sierra Nevada Region.

5.10 “Energy” means capacity measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatthours or megawatthours.

5.11 “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Base Resource, and its avoided emission of pollutants.
5.12 “FERC” means the Federal Energy Regulatory Commission or its successor.


5.14 “Full Load Service Customer” means a Customer that will have its entire load at its delivery point(s) met by WAPA, and its Portfolio Manager functions for those delivery point(s) performed by WAPA.

5.15 “Marketing Plan” means WAPA’s final 2025 Power Marketing Plan for the Sierra Nevada Region.

5.16 “Maximum Operating Capability” means the maximum electrical capability from CVP generation available to produce energy, capacity and/or provide ancillary services in any one or more hours.

5.17 “Minimum Base Resource” means the amount of Base Resource energy generated each hour as a result of CVP minimum water releases.

5.18 “NERC” means the North American Electric Reliability Corporation or its successor.

5.19 “Operating Reserves” means the combination of spinning and non-spinning reserves required to meet WECC, NERC, and operating requirements,
including those of the balancing authority area or WAPA’s sub-balancing authority area.

5.20 “Portfolio Manager” means an entity responsible for determining balanced hourly load and resource schedules for a Customer.

5.21 “Power” means capacity and energy.

5.22 “Preference” means the requirements of Reclamation Law that provide for preference in the sale of Federal power be given to certain entities, such as governments (state, Federal and Native American), municipalities and other public corporations or agencies, and cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (See, e.g., Reclamation Project Act of 1939, Section 9(c), 43 USC 485h(c)).

5.23 “Primary Marketing Area” means the area generally encompassing northern and central California, extending from the Cascade Range to the Tehachapi Mountains and west-central Nevada.

5.24 “Project Use” means power as defined by Reclamation Law and/or used to operate CVP and Washoe Project facilities.

5.25 “Rate” means the monetary charge or the formula for computing such a charge for any electric service provided by WAPA, including but not limited to charges for capacity (or demand), energy, or transmission service; however, it does not include leasing fees, service facility charges, or other types of facility use charges. A Rate will be set forth in a Rate Schedule or in a contract.
5.26  “Rate Adjustment” means a change in an existing Rate or Rates, or the establishment of a Rate or Rates for a new service. It does not include a change in Rate Schedule provisions or in contract terms, other than changes in the price per unit of service, nor does it include changes in the monetary charge pursuant to a formula stated in a Rate Schedule or a contract.

5.27  “Rate Adjustment Procedures” means those procedures for Rate Adjustments developed by WAPA, Department of Energy (DOE) or FERC which include DOE Order 00-037.00B, DOE Order RA 6120-2, 10 CFR 903, and 18 CFR 300, as may be amended.

5.28  “Rate Effective Date” means the first date of the billing period to which a Rate Schedule or Rate Schedule extension applies. WAPA will provide notice to the Customers of the Rate Effective Date.

5.29  “Rate Schedule” means a document identified such as a “Rate Schedule,” “Schedule of Rates,” or “Schedule Rate” which designates the Rate or Rates applicable to a class of service specified therein and may contain other terms and conditions relating to the service. On the effective date of this Contract, 18 CFR 300.1(b)(6) provides FERC may not approve a WAPA Rate Schedule for a period that exceeds five (5) years. The Rate Schedule shall include the Rate Effective Date and the effective period of the Rate Schedule.

5.30  “Regional Transmission Organization (RTO)” means an organization that meets the minimum characteristics and performs the minimum functions specified in FERC Order 2000, as that order may be amended or superseded.
5.31 “Regulation” means the service provided by generating units equipped and operating with automatic generation control which will enable such units to respond to direct control signals in an upward or downward direction to match, on a real-time basis, demand and resources, consistent with WECC, NERC, and the balancing authority area operator’s criteria.

5.32 “Scheduling Coordinator” means an entity that is responsible for providing hourly load and resource schedules to the balancing authority area operator or WAPA’s sub-balancing authority area, in accordance with a FERC-approved tariff or WAPA’s procedures and practices.

5.33 “Variable Resource Customer” means a Customer that is responsible for managing its own energy portfolio.

5.34 “Washoe Project” means the Federal water project located in the Lahontan Basin in west-central Nevada and east-central California.

5.35 “WECC” means the Western Electricity Coordinating Council or its successor.

### BASE RESOURCE ESTIMATES AND AVAILABILITY FORECAST:

6.1 At the beginning of each water year, WAPA will post to WAPA’s external website a five-year forecast of Base Resource Operating Capability estimated to be available, based on high, average, and low hydrological conditions. The forecast will contain the following information:

- 6.1.1 Maximum Operating Capability of the CVP for each month;
- 6.1.2 Energy required for estimated Project Use loads, First Preference Customers’ loads, and ancillary service requirements.
6.2 Each month, WAPA will post to WAPA's external website a monthly Base Resource forecast of Base Resource Operating Capability and energy estimated to be available for each month on a rolling twelve-month basis, based on high, average, and low hydrological conditions. The monthly forecast will contain the following information:

6.2.1 Maximum Operating Capability of the CVP for each month;
6.2.2 Energy required for estimated Project Use loads, First Preference Customers' loads, and ancillary service requirements.

6.3 WAPA shall make reasonable efforts, within its control, to ensure the forecasted Base Resource will be available.

7. **ELECTRIC SERVICE FURNISHED BY WAPA:**

7.1 SVCE will be entitled to receive a percentage of the Base Resource as set forth in Exhibit A.

7.2 The estimated amount of energy available to SVCE shall be determined by multiplying its Base Resource percentage by the total amount of Base Resource energy available during that period.

7.3 The minimum amount of energy SVCE will be required to schedule for each hour shall be determined by multiplying its Base Resource percentage by the Minimum Base Resource, unless otherwise agreed to by WAPA. However, if SVCE does not have sufficient load to take its percentage of the Minimum Base Resource, any excess energy shall be made available to WAPA for the Exchange Program as described later in this Contract under Section 10 and Exhibit B.
7.4 The maximum amount of energy SVCE may schedule in any hour shall be determined by multiplying its Base Resource percentage by the Base Resource Operating Capability. However, SVCE may schedule energy in excess of this maximum, if approved by WAPA, to accommodate purchases or exchanges from the Exchange Program.

7.5 SVCE will be entitled to the benefit of available regulation and operating reserves from the CVP in proportion to its Base Resource percentage. The method for calculating regulation and operating reserves is set forth in Exhibit C.

7.6 WAPA’s obligation to provide SVCE’s Base Resource is limited to the actual CVP generation available on a real-time basis. WAPA shall have no obligation to replace any Base Resource that is unavailable; for instance, Base Resource that is unavailable due to scheduled maintenance, system emergencies, forced outages, or other constraints. Any costs incurred by either Party as a result of deviations between actual and scheduled Base Resource energy shall be the responsibility of SVCE. WAPA will notify SVCE as soon as reasonably practicable of any situation that will impact the availability of the Base Resource, and will modify schedules accordingly, on a pro-rata basis.

7.7 Due to the variable nature of the Base Resource, WAPA may provide a Custom Product upon a Customer’s request. Any Custom Product will be the subject of a separate contractual arrangement.

8. DELIVERY ARRANGEMENTS:
8.1 WAPA will make SVCE’s Base Resource available at the generator bus or such other delivery point(s) on the CVP transmission system as the Parties will mutually agree, as specified in Exhibit A. WAPA reserves Network Integration
Transmission Service for the delivery of Base Resource on the CVP transmission system under its Open Access Transmission Tariff (OATT). The rates and terms of this service shall be in accordance with WAPA's then-current rate schedule and OATT.

8.2 If requested by WAPA, SVCE must provide written notification to WAPA by July 1, 2024, demonstrating that it has arranged for delivery of its Base Resource energy to its load. Such notification shall include both transmission and distribution level arrangements, as applicable. WAPA shall have no obligation to make Base Resource available to SVCE if delivery arrangements are not in effect. However, SVCE shall not be relieved of its obligation to pay its percentage share of the Base Resource during the time in which delivery arrangements are not in effect.

9. SCHEDULING PROCEDURES, BUSINESS PRACTICES AND PROTOCOLS:

9.1 All energy furnished by WAPA to SVCE will be provided on a scheduled basis. SVCE agrees to abide by the scheduling procedures, business practices and protocols of the applicable balancing authority area or WAPA’s sub-balancing authority area, as set forth on WAPA’s website. The Parties recognize that the scheduling procedures, business practices and protocols may require modification from time-to-time to reflect updated operating procedures that may become applicable to the Parties. In such event, WAPA will make such changes in accordance with Section 17 of this Contract.

9.2 Designation of Scheduling Coordinator (SC): If SVCE is required to have a Scheduling Coordinator; SVCE shall notify WAPA of its designated Scheduling Coordinator not less than ninety (90) days prior to the date of initial service under this Contract. In the event that SVCE’s Scheduling Coordinator arrangement
changes, SVCE shall notify WAPA in writing, not less than thirty (30) days prior
to the change, unless a shorter notification period is agreed to by WAPA.

9.3 If WAPA is SVCE’s Portfolio Manager, as set forth in a separate
Custom Product Contract, all scheduling activities and responsibilities will
be performed by WAPA on behalf of SVCE. At such time as WAPA is no
longer SVCE’s Portfolio Manager, then SVCE will be responsible for performance
of its duties under this Section 9.

9.4 WAPA will provide Customers with the opportunity to comment on
WAPA’s maintenance and operations plans. WAPA will facilitate Customer
meetings with the Bureau of Reclamation regarding cost and operation planning.

9.5 In the event that SVCE does not abide by the protocols, business
practices and procedures and WAPA incurs costs as a result, SVCE is
responsible for and shall pay such costs.

10. EXCHANGE PROGRAM:

10.1 WAPA will establish and manage an Exchange Program to allow all
Customers to fully and efficiently use their Base Resource percentage. The
Exchange Program is a mechanism to:

10.1.1 Make available to WAPA, for provision to other Customers, any
Base Resource energy a Customer cannot use on a pre-scheduled basis
due to insufficient load; and

10.1.2 Help mitigate the costs incurred by a Customer for the power it is
obligated to pay for, but may not be able to use. 27 ///

///
10.2 Under the Exchange Program, all Base Resource energy in excess of SVCE’s load will be retained by WAPA and offered by WAPA for sale to other Customers. SVCE may purchase energy from Exchange Program. While WAPA’s retention of excess Base Resource is mandatory, purchasing from the Exchange Program is voluntary.

10.3 The Exchange Program procedures are set forth in Exhibit B. WAPA may change the program and procedures of the Exchange Program in accordance with Section 17 of this Contract.

10.4 WAPA will also offer a seasonal Exchange Program. Under the seasonal Exchange Program, SVCE may elect to make available to WAPA that portion of its Base Resource percentage that it is unable to use due to insufficient load. SVCE, through WAPA, will be able to exchange its unusable Base Resource percentage with other Customers. Any Customer may submit a request to WAPA to exchange or purchase energy through the seasonal Exchange Program. Details of a seasonal exchange will be developed with the Customer upon request by that Customer.

10.5 Exchanges of the Base Resource between SVCE and others outside of the WAPA-managed Exchange Programs, or other WAPA-managed programs, are prohibited.

11. **INDEPENDENT SYSTEM OPERATOR OR REGIONAL TRANSMISSION ORGANIZATION:**

11.1 WAPA is a sub-balancing authority area within BANC. WAPA operates in conformance with its sub-balancing authority area and BANC’s balancing authority area protocols, business practices and procedures. In the event of
changes to any protocols, business practices and procedures, WAPA may make
any changes necessary to this Contract to conform to the operating and
scheduling protocols, business practices and procedures in accordance with
Section 17 of this Contract.

11.2 The Parties understand that, in the future, WAPA may also change its
operating configuration such as by: (1) joining an independent system operator or
RTO or (2) participating in future markets such as energy imbalance markets; or
(3) making system configurations to meet future operating requirements. In such
an event, if WAPA is required to conform to the protocols, business practices or
procedures, WAPA shall make changes to this Contract to conform to the terms
and conditions required by such events in accordance with Section 17 of this
Contract.

11.3 In the event that: 1) WAPA incurs costs from the balancing authority area,
WAPA’s sub-balancing authority area, CAISO, an RTO, or a different balancing
authority area for serving SVCE’s load; or 2) SVCE does not abide by the
protocols business practices, or procedures of the balancing authority area, an
RTO, or other balancing authority area operator that are applicable to WAPA and
WAPA incurs costs as a result, SVCE agrees to pay all such costs attributable to
SVCE.

12. **WAPA RATES:**

12.1 The Base Resource will be provided on a take-or-pay basis. SVCE will be
obligated to pay its Base Resource percentage share in accordance with the
Rate Schedule attached hereto, whether or not it takes or uses its full Base
Resource percentage. 28

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12.2 SVCE shall pay for the electric service furnished hereunder in accordance with the Rates, charges, and conditions set forth in the CVP Schedule of Rates applicable to the Base Resource, effective January 1, 2025, or any superseding Rate Schedule.

12.3 Rates applicable under this Contract shall be subject to change by WAPA in accordance with appropriate Rate Adjustment Procedures. If, at any time, WAPA announces that it has received approval of a Rate Schedule, or extension of an existing Rate Schedule applicable to this Contract, or if a Rate Adjustment Procedure is amended, WAPA will promptly notify SVCE thereof.

12.4 SVCE, by providing written notice to WAPA within ninety (90) days after the Rate Effective Date of a Rate Schedule or Rate Schedule extension applicable to this Contract, may elect to reduce its Base Resource percentage or terminate this Contract. SVCE shall designate a Base Resource percentage reduction or termination effective date that will be effective on the last day of the billing month not later than two (2) years after the Rate Effective Date. If the termination effective date is after the Rate Effective Date, the new or extended Rates shall apply for service taken by SVCE until the termination effective date. Once SVCE provides notice to terminate or reduce its Base Resource percentage, WAPA will begin the process to reallocate the Base Resource to other Preference Customers. SVCE may not revoke its notice to terminate or reduce its Base Resource unless WAPA provides written consent.

12.5 Rates shall become effective under this Contract on the Rate Effective Date stated in a Rate notice.
13. INTEGRATED RESOURCE PLAN:

13.1 In accordance with the Energy Policy Act of 1992, SVCE is required to meet the requirements of WAPA’s Energy Planning and Management Program (EPAMP). To fulfill the requirements of EPAMP, SVCE must develop and submit an integrated resource plan or alternative report, as applicable. Specific EPAMP requirements are set forth in the Federal Register at (64 FR 62604) and may be found on WAPA’s website. Failure to comply with WAPA’s EPAMP requirements may result in penalties as specified therein. SVCE understands that WAPA may re-evaluate its EPAMP requirements and change them from time-to-time as appropriate. Such changes will be subject to a public process and publication in the Federal Register.

13.2 Should the EPAMP requirements be eliminated, SVCE shall have no responsibilities under Section 13.1.

14. ADJUSTMENT OF BASE RESOURCE PERCENTAGE:

14.1 Prior to the date of initial service, WAPA may adjust SVCE’s Base Resource percentage, as set forth in Exhibit A herein, if WAPA determines that SVCE’s Base Resource percentage is greater than its actual usage, as specified in the Marketing Plan.

14.2 After the date of initial service, WAPA may adjust SVCE’s Base Resource percentage under any of the following conditions:

14.2.1 SVCE sells energy associated with its Base Resource percentage to another entity for resale by that entity;

14.2.2 SVCE uses the energy associated with its Base Resource percentage to serve loads outside of the Sierra Nevada Region’s Primary Marketing Area;
14.2.3 SVCE’s annual energy associated with its Base Resource percentage, is ten percent or more than its actual annual energy usage.

14.3 If WAPA determines that SVCE has met any of the conditions in Section 14.2 above, WAPA will take the following steps:

14.3.1 Notify SVCE of the nature of the concern;

14.3.2 Analyze SVCE’s usage of the energy associated with its Base Resource percentage and determine if an adjustment is necessary on a case-by-case basis, with due consideration of any circumstance that may have temporarily altered SVCE’s energy usage;

14.3.3 If an adjustment is determined to be necessary, provide a 90-day written notice of such adjustment; and

14.3.4 Reduce or rescind SVCE’s Base Resource percentage permanently on the effective date specified in the notice.

15. METERING AND POWER MEASUREMENT RESPONSIBILITIES:

SVCE shall be responsible for electric power metering equipment requirements and power measurement data associated with the use of WAPA power under this Contract as follows:

15.1 Unless previously installed and furnished by WAPA, SVCE shall furnish, install, operate, maintain, and replace, meters and associated metering equipment required for deliveries of WAPA power scheduled to each delivery point on the WAPA grid, the CAISO-controlled grid, a utility distribution company grid, or other electrical system, as may be applicable. Such meters shall comply with the all applicable meter requirements. For instance, meters on:

15.1.1 WAPA’s system must meet WAPA’s meter requirements;

15.1.2 CAISO’s system must meet CAISO’s meter requirements; and/or
15.1.3 Pacific Gas and Electric Company’s (PG&E) system must meet PG&E’s meter requirements.

15.2 SVCE shall measure power deliveries and provide certified settlement-quality metering data to WAPA as requested. It is generally contemplated that WAPA will require this data on a monthly basis.

15.3 If WAPA previously installed and furnished a meter to SVCE, WAPA shall be allowed unrestricted, unescorted access to its revenue meter equipment. SVCE shall provide a minimum of three (3) keys or the combination to SVCE’s existing locks. Alternatively, WAPA may provide a WAPA-owned padlock(s). Access shall include all gates and/or doors required to access the metering equipment.

15.4 Upon request by SVCE, to evidence receipt of the Environmental Attributes, WAPA shall timely provide meter data or other mutually agreed upon data to SVCE measuring the amount of CVP energy that is generated and delivered to SVCE. Upon mutual agreement of Customers, WAPA and Reclamation, such meters shall be modified or replaced to meet appropriate standards or requirements to convey CVP Environmental Attributes to Customers.

16. **CHANGES IN ORGANIZATIONAL STATUS:**

16.1 If SVCE changes its organizational status or otherwise changes its obligation to supply electric power to Preference loads, WAPA reserves the right to adjust WAPA’s power sales obligations under this Contract or to terminate this Contract, as WAPA deems appropriate. Changes in organizational status include but are not limited to:
16.1.1 Merging with another entity;
16.1.2 Acquiring or being acquired by another entity;
16.1.3 Creating a new entity from an existing one;
16.1.4 Joining or withdrawing from a member-based power supply organization; or
16.1.5 Adding or losing members from its membership organization.

16.2 For the purposes of this Section 16, a member is any Preference entity that is included in a membership, which has the responsibility of supplying power to the end-use consumer or Customer. Memberships include but are not limited to:

16.2.1 Municipality;
16.2.2 Cooperative;
16.2.3 Joint powers authority; or
16.2.4 Governmental agency.

16.3 For purposes of this Section 16, participation in a State promulgated direct access program shall not be deemed to be a change in a Customer’s organizational status or its obligation to supply electric power to Preference loads.

16.4 Prior to making an organizational change, SVCE may request an opinion from WAPA as to whether SVCE’s proposed organizational change will result in an adjustment of SVCE’s Base Resource percentage or termination under this Section 16. SVCE shall provide WAPA with all relevant documents and information regarding the proposed organizational change. Based on the documents and information furnished, WAPA will provide SVCE with an opinion.

///
16.5 In addition to the above, if the change in organizational status results in a proposed transfer of the Contract, or any portion thereof, Section 37 of the General Power Contract Provisions (GPCP), “Transfer of Interest in Contract,” generally requires the Customer to obtain prior written approval from WAPA’s Administrator. Organizational changes that typically propose transfer of the Contract, or a portion of the Contract, and require prior written approval from WAPA include, but are not limited, to:

16.5.1 Merging with another entity;
16.5.2 Acquiring or being acquired by another entity;
16.5.3 Joining an entity; and
16.5.4 Creating a new entity.

17. **PROTOCOLS, BUSINESS PRACTICES AND PROCEDURES:**

WAPA reserves the right to make changes to protocols, business practices and procedures, as needed. Prior to making any changes, WAPA will provide notice to SVCE and provide SVCE with an opportunity to comment on such changes. WAPA will consider any comments made by SVCE before making any changes, and shall provide a written response to the comments. After a final decision is made by WAPA, if SVCE is not satisfied with the decision, SVCE shall have thirty (30) days from the date of WAPA’s final decision to appeal the change to WAPA’s Administrator. WAPA will not implement a change that has been appealed until a final decision by the Administrator.

Notwithstanding the provisions within this Section 17, SVCE shall retain its right to pursue other legal remedies available to it.

18. **ENFORCEABILITY:**

It is not the intent of the Parties that this Contract confer any rights on third parties to enforce the provisions of this Contract except as required by law or express provision in
this Contract. Except as provided in this Section, this Contract may be enforced, or
caused to be enforced, only by WAPA or SVCE, or their successors or assigns.

19. **GENERAL POWER CONTRACT PROVISIONS:**
The GPCP, effective September 1, 2007, attached hereto, are hereby made a part of
this Contract, the same as if they had been expressly set forth herein; **Except**
Section 11 shall not be applicable to this Contract. In the event of a conflict between
the GPCP and the provisions in the body of this Contract, the Contract shall control.
The usage of the term “Contractor” in the GPCP shall mean SVCE. The usage of the
term “firm” in Articles 17 and 18 of the GPCP shall be deemed to be replaced with the
words “Base Resource.”

20. **CREDITWORTHINESS PROCEDURES:**
20.1 WAPA’s Creditworthiness Procedures apply to this Contract. WAPA may
periodically modify such procedures and any future modifications shall apply to
the Contract when adopted by WAPA.

20.2 SVCE’S credit will initially be reviewed in calendar year 2024.

21. **EXHIBITS MADE PART OF CONTRACT:**
Exhibit A (Base Resource Percentage and Point(s) of Delivery), Exhibit B (Exchange
Program), Exhibit C (Regulation and Reserves), and Exhibit D (Rate Schedule) existing
under this Contract may vary during the term hereof. Each of said exhibits shall
become a part of this Contract during the term fixed by its provisions. Exhibits A, B, C,
and D are attached hereto, and each shall be in force and effect in accordance with its
terms until respectively superseded by a subsequent exhibit.
22. **EXECUTION BY COUNTERPARTS:**

This Contract may be executed in any number of counterparts and, upon execution and delivery by each Party, the executed and delivered counterparts together shall have the same force and effect as an original instrument as if all Parties had signed the same instrument. Any signature page of this Contract may be detached by any counterpart of the Contract without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Contract identical in form hereto, by having attached to it one or more signature pages.

23. **ELECTRONIC SIGNATURES:**

The Parties agree that this Contract may be executed by handwritten signature or digitally signed using Adobe Sign or Adobe E-Signature. An electronic or digital signature is the same as a handwritten signature and shall be considered valid and acceptable.
IN WITNESS WHEREOF, the Parties have caused this Contract to be executed the day and year first above written.

WESTERN AREA POWER ADMINISTRATION

By: [Signature]
Name: Arun K. Sethi
Title: Vice President of Power Marketing for Sierra Nevada Region
Address: 114 Parkshore Drive
Folsom, CA 95630-4710

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: [Signature]
Name: Girish Balachandran
Title: Chief Executive Officer
Address: 333 W. El Camino Real, Suite 330
Sunnyvale, CA 94087

Contract 20-SNR-02459

Western Area Power Administration Sierra Nevada Region
SILICON VALLEY CLEAN ENERGY AUTHORITY

Resolution/Certificate
Silicon Valley Clean Energy Authority
Exhibit A to
Contract 20-SNR-02459

EXHIBIT A
(Base Resource Percentage and Point(s) of Delivery)

1. This Exhibit A, to be effective under and as part of Contract 20-SNR-02459 (Contract), shall become effective upon execution of the Contract; and shall remain in effect until either superseded by another Exhibit A or termination of the Contract.

4. SVCE’s Base Resource percentage may be adjusted by WAPA as specified in the Contract.

5. SVCE’s Base Resource percentage will be adjusted effective January 1, 2040, in accordance with the Marketing Plan, to establish the 2040 Resource Pool for new power allocations.

6. The point(s) of delivery on the CVP transmission system for SVCE’s Base Resource shall be either WAPA’s Tracy 230-kV or Tracy 500-kV or Cottonwood 230-kV Substations, or as requested by SVCE and approved by WAPA.

7. All power deliveries provided under this Contract shall be adjusted for the applicable transformation and transmission losses on the 230-kV system. Additional transformation and/or transmission losses shall be applied to deliveries at other than the 230-kV level.

8. This Exhibit A shall be replaced by WAPA as necessary under the terms and conditions set forth in the Contract, and a signature is not required by either Party.
EXHIBIT B
(Exchange Program)

1. This Exhibit B, to be effective under and as a part of Contract 20-SNR-02459 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit B or termination of the Contract.

2. SVCE is in agreement with the procedures set forth herein.

3. If necessary, WAPA retains the right to make subsequent revisions to Exhibit B after consultation with its Customers. At such time as WAPA promulgates a revision of this Exhibit B, SVCE shall have the option of either accepting the new revision to this Exhibit B or opting out of making purchases from the Exchange Program. If WAPA does not receive notice from SVCE opting out of making purchases from the Exchange Program within 30 days of SVCE’s receipt of a revised Exhibit B, SVCE may automatically continue to make purchases from the Exchange Program if already participating.

4. Exchange Program:
   4.1 WAPA has established separate an Exchange Program for the Full Load Service Customer group and the Variable Resource Customer group. A Customer cannot be in both the Full Load Service Customer group and the Variable Resource Customer group at the same time.

   4.2 The Exchange Program will take place on a pre-scheduled basis.

   4.3 Base Resource power in excess of a Customer’s load in any hour will be distributed by WAPA in the applicable Exchange Program group (Full Load Service or Variable Resource).

   4.4 A Customer may choose whether to make purchases from the Exchange Program for its group. Participation in making purchases from the Exchange Program requires a Customer to accept Exchange Program power if it has load in that hour. However, even if a Customer chooses not to participate in making purchases, if that Customer’s Base Resource amount exceeds its load in any hour, the excess will go into the Exchange Program for that Customer’s group for that hour, for use by participating Customers with load not met by Base Resource power in that hour. In other words, the retention of Base Resource in excess of a Customer’s load is mandatory, while participation in making purchases from the Exchange Program is voluntary.
4.5 If a Customer chooses not to make purchases from the Exchange Program, a written notice to that effect must be submitted to WAPA by November 1, 2024. Thereafter, a Customer must submit a written notice to WAPA at least one (1) month prior to changing its participation status; Except if a Customer has elected to make purchases from the Exchange Program and subsequently changes its participation status, the Customer must wait a minimum of one (1) year to again participate in the Exchange Program. Participation status will change on the first day of the month following the required notice period or the minimum one (1) year waiting period.

4.6 A Customer must use its Base Resource power prior to using any other source to meet its load, unless agreed to by WAPA in writing. A Customer participating in the Exchange Program must use Exchange Program power prior to any other source to meet its load, unless agreed to by WAPA in writing.

4.7 Each participating Customer in each group will receive an equal share in megawatts of that group’s Exchange Program power available for that hour, up to the Customer’s unmet load in that hour.

4.8 Any Exchange Program power that is excess to a Customer’s unmet load will go back to the Exchange Program for the group to which the Customer belongs, for that same hour. This power will be reallocated to participating Customers in that group on an equal basis until either that group’s Exchange Program has no remaining power in that hour, or no participating Customers in that group have unmet load in that hour.

4.9 If there is power remaining in the Full Load Service Exchange Program or the Variable Resource Exchange Program in any hour, and none of the participating Customers in that group have unmet load in that hour, the remaining power will go to the other group’s Exchange Program for that same hour.

4.10 If, in any hour, no participating Customers have unmet load but there is power remaining in either group’s Exchange Program, that power may be offered for sale by WAPA unless the amount of power is de minimis.

4.11 Customers’ power bills will be adjusted to reflect transactions into and out of the Exchange Program.
EXHIBIT C
(Regulation and Reserves)

1. This Exhibit C, to be effective under and as a part of Contract 20-SNR-02459 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit C or termination of the Contract.

2. Definitions of Terms:
   2.1 Contingency Reserve: An additional amount of operating reserves sufficient to reduce Area Control Error (ACE) to zero in ten minutes following loss of generating capacity, which would result from the most severe single contingency. Contingency Reserves will consist of Spinning and Nonspinning Reserves.

   2.2 Frequency Response Reserves: Spinning Reserves which provide the required Frequency Response needed for the reliable operation of an interconnection. The energy is provided by the generator’s governor’s response to a frequency deviation from scheduled system frequency.

   2.3 Nonspinning Reserve: That operating reserve not connected to the system but capable of serving demand within ten minutes, or interruptible load that can be removed from the system within ten minutes.

   2.4 Spinning Reserve: Unloaded generation which is synchronized and ready to serve additional demand.

3. WAPA’s Disposition of Contingency Reserves and Regulation:
   3.1 Contingency Reserves: WAPA will provide all Base Resource schedules with Contingency Reserves, including Spinning, Nonspinning, and Frequency Response Reserves. Contingency Reserves will be provided from CVP generation as available, or procured from other sources as necessary.

   3.2 Regulation: WAPA will not provide Regulation with Base Resource schedules. Any sales of Regulation by WAPA will be credited against the Power Revenue Requirement.
EXHIBIT D  
(Rate Schedule)

1. This Exhibit D, to be effective under and as a part of Contract 20-SNR-02459 (Contract), shall become effective upon execution of the Contract; and, shall remain in effect until superseded by another Exhibit D or termination of the Contract.

2. The CVP Schedule of Rates for Base Resource and First Preference Power (CV-F13) begins on page 2 of this Exhibit D.

3. This Exhibit D shall be replaced by WAPA as necessary under the terms and conditions set forth in the Rate Schedule, and a signature is not required by either Party.
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Angiola East, LLC, a Delaware limited liability company

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

Description of Facility: A 40 MW solar photovoltaic project plus a 20 MW/80 MWh co-located battery energy storage system project located in Tulare 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>12/31/2021</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>9/30/2021</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>Completed</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>5/31/2022</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>Completed</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>2/28/2023</td>
</tr>
<tr>
<td>Network Upgrades completed</td>
<td>2/28/2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>3/31/2023</td>
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</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>
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<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
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</table>

Angiola East, LLC
Guaranteed Capacity: 20 MW

Storage Contract Capacity: 10 MW at four hours of continuous discharge

Storage Contract Output: 40 MWh

Storage Facility Loss Factor: 0.85

Guaranteed Storage Availability: Ninety-seven percent (97%)

Contract Price

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
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The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
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</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
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</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 and Expected FCDS Date: 12/31/2022
☑ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security:

Performance Security:
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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of March 10, 2021 (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

"AC" means alternating current.

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

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

"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 Buyer’s Share of 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 Share” means [redacted].

“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, and if required by CAISO, WREGIS or this Agreement, PV Energy and Discharging 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.

“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) that the Generating Facility or Facility, as applicable, 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 Generating Facility or Facility, as applicable indicating that the planned operations of the Generating Facility or Facility, as applicable 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 Buyer’s Share of 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 (a) the Development Security amount required hereunder, [redacted].

“**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 Capacity**” means the sum of (a) the Guaranteed Capacity and (b) the Storage Contract Capacity.

“**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.
“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“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, as applicable. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Order” means any of the following:

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

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating 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.
“**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.

“**Dedicated Interconnection Capacity for Facility**” has the meaning set forth in Section 4.12.

“**Deemed Delivered Energy**” means Buyer’s Share of 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 (i) the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), or, if mutually agreed by the Parties, then (ii) the difference between (a) the total amount of Energy that the Generating Facility would have produced during such Buyer Curtailment Period, as calculated by Seller in a manner reasonably acceptable to Buyer using the best available data obtained through commercially reasonable methods and meteorological data at the Generating Facility during such Buyer Curtailment Period, and any adjustments necessary to accurately reflect the Generating Facility’s capacity to produce and deliver Energy to the Delivery Point, including applicable losses and manufacturers’ warranted power curves, subject to Buyer’s verification not to be unreasonably withheld, *minus* (b) the amount of Energy that the Generating Facility produced and delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference between the foregoing clauses (a) and (b) is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

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

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

“**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 Buyer’s Share of 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, or as otherwise required by CAISO, WREGIS or this Agreement. 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 (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

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

“Energy” means electrical energy generated by the Generating Facility.

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

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

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

“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 Buyer’s Share of 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 Buyer’s Share of 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(s) that will measure all Facility Energy, and to the extent required by CAISO, WREGIS or this Agreement, shall include separate metering for PV Energy and Discharging Energy.

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

“Fitch” means Fitch Ratings Ltd., or its successor.

“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 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 “Full Capacity Deliverability Status” as such term is defined 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 generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits,
reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., 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 Buyer’s Share of the total generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

“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 one hundred seventy percent (170%) of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

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

“Guarantor” means, with respect to Seller, (a) Samsung C&T America, Inc. or (b) 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 One Hundred Fifty Million Dollars ($150,000,000), (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.

“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 Buyer’s Share of 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 Buyer’s Share of the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained prior to and during the Delivery 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, BBB- or higher by Fitch 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, 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), 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 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, having a Credit Rating of at least 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 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 Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility’s PNode 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.

“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 has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth, together with its Affiliate(s) on consolidated basis, of not less than one hundred million dollars ($100,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the 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 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 Buyer’s Share of 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.

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

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

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, Buyer’s Share of the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy was less than Buyer’s Share of the Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during the Delivery Term during which there is an RA Shortfall Amount.

“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, and located within NP 15 or Greater Bay Area Local Capacity Area Resource.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and 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.

“Settlement Point” means Facility Pnode.

“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 Buyer’s Share of (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) 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 Buyer’s Share of the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to 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 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 Samsung C&T America, Inc.

“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 January 4, 2021, 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 work or provision in respect of which such examples are provided;

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;
(k) 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 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 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;
(e) Seller has received CEC Precertification of the Generating Facility or Facility, as applicable (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility or Facility, as applicable, 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, if any, including Daily Delay Damages, and Commercial Operation Delay Damages. Notwithstanding the above in the event Seller achieves Commercial Operation on or before Guaranteed Commercial Operation Date, any Daily Delay Damages paid and/or accrued shall be waived and relinquished by Buyer and returned to Seller at the time of Guaranteed Commercial Operation Date.

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

2.4 Remedial Action Plan. If Seller misses the Guaranteed Construction Start Date, misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or 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 of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, 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 all of Buyer’s Share 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 Buyer’s Share 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 Buyer’s Share 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 Buyer’s Share of 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 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 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.

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

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (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 seventy-five percent (75%) of the Renewable Rate (the “Test Energy Rate”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of Buyer’s Share of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all of Buyer’s Share of 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 occurring after the RA Guarantee Date, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole 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 the product of (i) the RA Shortfall Amount, and (ii) the price for CPM Soft Offer Cap as listed in Section 43.A.4.1.1 of the CAISO Tariff (or its successor); 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. 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 Generating Facility or Facility, as applicable, throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the RPS Eligibility Guidebook (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Generating Facility or Facility, as applicable.

3.10 Reserved.

3.11 RPS Standard Terms and Conditions.

(a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery of Facility Energy 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. As used in this provision, “Facility” means the Generating Facility or the Facility, as applicable.

(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.

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 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 facilitating charging of the Storage Facility from the CAISO 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.

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation (but without limiting Buyer’s obligation to pay amounts associated with the Storage Facility Loss Factor as expressly provided herein), Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Buyer’s Share of the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to Buyer’s Share of 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 Buyer’s Share of the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer’s designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the
requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 (“**Monthly Delivery Forecast**”).

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller
shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method 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 such excess MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by
the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Seller 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 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 then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy 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 Restrictions), 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) During the Delivery Term, 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 Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Delivery 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) During the Delivery Term, 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 Operational 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 three percent (3%) of the Installed PV Capacity and three percent (3%) of the Installed Battery Capacity, 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 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 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) **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 and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer’s Default or other failure to perform, Curtailment Periods, and Buyer Curtailment Periods (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability.**

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-seven percent (97%) (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. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any
WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement 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.

4.11 Green-E Certification. Subject to Section 3.12, Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that the Facility is Green-E eligible.

4.12 Dedicated Interconnection Capacity. During the Test Energy period and throughout the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility for all purposes under the Interconnection Agreement that (a) is no less than the Guaranteed Capacity for the Facility and (b) provides sufficient interconnection capacity and rights to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including delivery of PV Energy and Discharging Energy to the Delivery Point, and to allow Buyer’s dispatch rights of the Facility to be fully reflected in the CAISO’s market optimization and not result in CAISO market awards that are not physically feasible (collectively, (a) and (b), the “Dedicated Interconnection Capacity”). Seller shall hold Buyer harmless from any penalties, fines, imbalance energy charges, or other costs from CAISO or under this Agreement resulting from, and to the extent due to, Seller’s inability to provide the Dedicated Interconnection Capacity.

4.13 Facility Configuration. As of the Effective Date, the Facility is intended to be DC-coupled. Seller shall not modify the configuration of the Facility to be AC-coupled without the prior written consent of Buyer, which shall not be unreasonably withheld.

ARTICLE 5
TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product
to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6**

**MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer’s emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of 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 shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity pursuant to Section 4.12, and (ii) provide for separate metering of the Facility.
ARTICLE 7
METERING

7.1 Metering

(a) 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. Seller intends to obtain and maintain a single CAISO resource ID dedicated exclusively to the Generating Facility and a single CAISO resource ID dedicated exclusively to the Storage Facility.

(b) Metering will be in compliance with the applicable requirements of the CAISO, WREGIS, and this Agreement and, to the extent consistent with the foregoing, metering shall be as set forth in the initial Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer before the Commercial Operation Date. To the extent that Seller is required to make any changes to the initial metering configuration to comply with the applicable requirements of the CAISO, WREGIS, and this Agreement, such costs will be the sole responsibility of Seller.

(c) 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 Buyer’s Share of 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 and, if applicable, the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Buyer’s Share of 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. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment.
If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Subject to Section 11.7, Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit 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 8.89):

(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 or pandemic, including COVID-19; 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 except if such order is cause by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right 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, for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, subject to Section 3.7 and the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(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 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 during Delivery Term, 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;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days of 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, or the Remedial Action Plan does not reasonably demonstrate a plan for completing the Facility by the Guaranteed Commercial Operation Date;
(viii) 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, the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(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;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(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, 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 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 and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obliged 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.** Notwithstanding any other provision of this Agreement, Seller’s aggregate liability under or arising out of this Agreement for a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to
the Damage Payment.

**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 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 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.

13.4 **Prevailing Wage.** Seller shall comply with all 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. In addition, 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 Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will 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. In the event Seller seeks assignment of this Agreement, 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:

1. The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
2. Impediments to the cure plan or its development;
3. 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
4. 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

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forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

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

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (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 *Buyer Assignment*. Notwithstanding anything to the contrary Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer (“*Prepayment Assignee*”) of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to the Seller, which assignment shall be expressly subject to the Prepayment Assignee’s timely payment of amounts due under the PPA and the prior consent of Seller, which consent shall not be reasonably withheld, at any time upon not less than thirty (30) days’ notice by delivering a written request for such assignment, which request must include a proposed form of agreement reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Prepayment Assignee’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated.
thereby, subject only to the countersignature of Prepayment Assignee and Buyer. Notwithstanding such assignment, Buyer’s obligation to make payment under Article 8 shall remain in effect in the event the Prepayment Assignee fails to any payments under such assignment agreement to Seller.

ARTICLE 15
DISPUTE RESOLUTION

15.1 Governing Law, Jurisdiction, and Venue. 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. 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 or in 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 gross negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “Indemnifiable Losses”).

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

16.2 Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“Claim”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 Defense of Claims. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.
16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party’s rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, With a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars ($10,000,000). 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) **Employer’s Liability Insurance.** Employers’ Liability insurance shall be 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) **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 Seller (and Lender if any) as the loss payee.

(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 Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers’ compensation insurance and employers’ liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

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

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system
operator 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
Records Act (Government Code Section 6250 et seq.).

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

18.4 Disclosure to Lenders, Etc. Notwithstanding anything to the contrary in this
Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender
or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees,
so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound
by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press
release regarding the transactions contemplated by this Agreement unless both Parties have agreed
upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the
Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding
between Seller and Buyer with respect to the subject matter hereof and supersedes all prior
agreements relating to the subject matter hereof, which are of no further force or effect. The
Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by
reference. The headings used herein are for convenience and reference purposes only. In the event
of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit,
the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit
shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared
through the joint efforts of the Parties and shall not be construed against one Party or the other
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 of 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.

ANGIOLA EAST, LLC, a Delaware limited liability company

By: [Signature]
Name: Seung-gul Lee
Title: Authorized Signatory

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Angela Solar Project

Site includes all or some of the following APNs: See the site map below. A full and final listing of Site APNs and a map of the Site shall be provided by Seller to Buyer on or prior to the date on which Seller provides an executed Form of Construction Start Date Certificate to Buyer.

County: Tulare County, CA

CEQA Lead Agency: County of Tulare

Type of Generating Facility: Solar Photovoltaic

Operating Characteristics Buyer’s Share of Generating Facility: 20 MW as-available Solar Photovoltaic

Type of Storage Facility: Co-located electrochemical battery energy storage facility

Operating Characteristics of Buyer’s Share of Storage Facility:

- Maximum Stored Energy Level at COD (MWh): 40 MWh
- Maximum Charging Capacity at COD: 10 MW AC
- Maximum Discharging Capacity at COD: 10 MW AC

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: Facility Pnode

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

Facility P-node: S0479_7_N003. The Facility shall interconnect to Olive Switching Station 115kV.

Participating Transmission Owner: Pacific Gas and Electric Company
Project Site Map:

① 330-130-007
② 330-130-031
③ 330-130-006
④ 330-130-005
⑤ 330-100-026
⑥ 330-100-045
⑦ 330-100-046
⑧ 330-110-007
⑨ 330-110-013
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 either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller on or before the Executed Interconnection Agreement Milestone, Seller shall pay Daily Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Daily Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Daily Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestones. If Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall be entitled to collect all accrued Daily Delay Damages on the Guaranteed Commercial Operation Date and Buyer shall invoice Seller for all accrued Daily Delay Damages, and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the full amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Notwithstanding the above in the event Seller achieves Commercial Operation on or before Guaranteed Commercial Operation Date regardless of delayed Major Project Development Milestones, any Daily Delay Damages paid and/or accrued shall be waived and relinquished by Buyer and returned to Seller at the time of Guaranteed Commercial Operation Date.

2. **Commercial Operation of the Facility.** **Commercial Operation** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **COD Certificate**) 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, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. Buyer’s failure to respond to Seller’s Notice within five (5) Business Days shall be deemed approval of Seller’s COD Certificate. If Buyer disagrees that Commercial Operation has occurred following receipt of the Notice, it shall within such five (5) Business Day period, deliver to Seller a valid detailed
explanation as to why it believes that Commercial Operation has not occurred. Seller shall then remedy Buyer’s concern, if valid, and the Notice process of above shall repeat until Buyer has approved Seller’s COD Certificate or a deemed approval occurs. Upon Buyer’s approval or deemed approval, Buyer shall provide Seller with written acknowledgement of the COD upon request. The “Commercial Operation Date” shall be the later of (x) sixty (60) days before the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.

(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 until the Commercial Operation Date. Commercial Operation Delay Damages shall be paid in advance on a monthly basis by Seller to Buyers. 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 default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, 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 all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the Expected Construction Start Date, despite the exercise of commercially reasonable efforts by Seller; or

(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 the Guaranteed Commercial Operation Date, 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 one hundred eighty (180) days, for any reason, including a Force Majeure Event. Notwithstanding the foregoing, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall promptly 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.
EXHIBIT C

COMPENSATION

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

(a) **Renewable Rate.** For each MWh of Adjusted Facility Energy in each Settlement Period, Buyer shall pay Seller the Contract Price.

(b) **Deemed Delivered Energy.** For each Settlement Period, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy above the Curtailment Cap. There shall be no payment for Deemed Delivered Energy amounts below the Curtailment Cap.

(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.** Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap as provided above.

(f) **Storage Rate.** All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by current Storage Contract Capacity, as adjusted by the Availability Adjusted Storage Contract Capacity of the Storage Facility, 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 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. 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, 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, 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 except to the extent such Non-Availability Charges are caused by Buyer’s (as Scheduling Coordinator) failure to perform its must-offer requirements under Section 40.6 of the CAISO

Exhibit D - 1

Angiola East, LLC
Tariff or caused by Buyer’s other actions (as Scheduling Coordinator) in which case such Non-Availability Charges shall be the responsibility of Buyer and for Buyer’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller’s responsibility.

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

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

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

(g) **Master 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.

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law and reporting on small business activities pursuant to the Small Business Section of the RFP.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

AVERAGE EXPECTED ENERGY

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2

AVAILABLE CAPACITY

The following table is 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 – *[Insert applicable month]*

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
|       |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| [Insert additional rows for each day in the month] |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
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, in $/MWh, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.
- \( D \) = the 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.

“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 Performance Measurement Period, 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.
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 a nameplate capacity of no less than one hundred percent (100%) of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than one hundred percent (100%) of the Storage Contract Capacity.

4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than one hundred percent (100%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to no less than one hundred percent (100%) 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

Angiola East, LLC
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 four (4) 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 (a) and (b) is ___ MW AC and shall be the “Installed Capacity”.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this __________ day of __________ , 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: ________________________________

Date: ________________________________

Angiola East, LLC
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$[XXXXXXX]
Expiry Date:

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

Ladies and Gentlemen:

By the order of [insert name of Applicant] (“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 [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [insert date] 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

Exhibit K - 1

Angiola East, LLC
receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary’s account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of ____________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of ____________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

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

You are hereby directed to make payment of the requested amount 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

Angiola East, LLC
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 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

Exhibit L - 4

Angiola East, LLC
shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

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

GUARANTOR:

[Blank]

By: __________________________

Printed Name: ________________

Title: _________________________

BUYER:

[Blank]

By: __________________________

Printed Name: ________________

Title: _________________________

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>
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<th>Location</th>
<th>CAISO Resource ID</th>
<th>Unit SID</th>
<th>Priorated Percentage of Unit Factor</th>
<th>Resource Type</th>
<th>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</th>
<th>Path 26 (North or South)</th>
<th>LCR Area (if any)</th>
<th>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</th>
<th>Run Hour Restrictions</th>
<th>Delivery Period</th>
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<tr>
<th>Month</th>
<th>Unit CAISO NGC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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</tr>
<tr>
<td>December</td>
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</table>

1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ____________________________

Its: ____________________________

Date: ____________________________
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>Angiola East, LLC (&quot;Seller&quot;)</th>
<th>Silicon Valley Clean Energy Authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 5601 E Slauson Ave., Suite 101</td>
<td>Street: 333 W. El Camino Real, Suite 290</td>
</tr>
<tr>
<td>City: Commerce CA 90040</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn: Hun Kim, Regional Representative</td>
<td>Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: (323) 374-6317</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Email: <a href="mailto:hun27.kim@samsung.com">hun27.kim@samsung.com</a> <a href="mailto:renewable@samsung.com">renewable@samsung.com</a></td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a> and <a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
</tbody>
</table>

| **Invoices:**                | **Invoices:**                                |
| Attn: Hun Kim, Regional Representative | Attn: Power Supply Group |
| Phone: (323) 374-6317         | Phone: (408) 721-5301                         |
| Email: [hun27.kim@samsung.com](mailto:hun27.kim@samsung.com) renewable@samsung.com | Email: [SVCEpowersettlements@svcleanenergy.org](mailto:SVCEpowersettlements@svcleanenergy.org) |

| **Scheduling:**             | **Scheduling:**                              |
| Attn: ZGlobal               | Attn: Monica Padilla, Director of Power Resources |
| Phone: (916) 221-4327       | Phone: (408) 721-5301 x1009                   |
| Email: [eric@zglobal.biz](mailto:eric@zglobal.biz) | Email: [monica.padilla@svcleanenergy.org](mailto:monica.padilla@svcleanenergy.org) |

| **Confirmations:**          | **Confirmations:**                           |
| Attn: Monica Padilla, Director of Power Resources | Attn: Monica Padilla, Director of Power Resources |
| Phone: (408) 721-5301 x1009 | Phone: (408) 721-5301 x1009                   |
| Email: [monica.padilla@svcleanenergy.org](mailto:monica.padilla@svcleanenergy.org) | Email: [monica.padilla@svcleanenergy.org](mailto:monica.padilla@svcleanenergy.org) |

| **Payments:**               | **Payments:**                                |
| Attn: Hun Kim, Regional Representative | Attn: Finance Group |
| Phone: (323) 374-6317        | Phone: (408) 721-5301                         |
| Email: [hun27.kim@samsung.com](mailto:hun27.kim@samsung.com) renewable@samsung.com | Email: [SVCEpowersettlements@svcleanenergy.org](mailto:SVCEpowersettlements@svcleanenergy.org) |

---

Exhibit N - 1

Angiola East, LLC
Angiola East, LLC  
(“Seller”)                      Silicon Valley Clean Energy Authority  
(“Buyer”)                      

**With additional Notices of an Event of Default to:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Hun Kim, Regional Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone:</td>
<td>(323) 374-6317</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:hun27.kim@samsung.com">hun27.kim@samsung.com</a></td>
</tr>
<tr>
<td></td>
<td><a href="mailto:renewable@samsung.com">renewable@samsung.com</a></td>
</tr>
</tbody>
</table>

| With additional Notices of an Event of Default to: |
| Hall Energy Law PC                                    |
| Attn: Stephen Hall                                    |
| Phone: (503) 313-0755                                 |
| Email: steve@hallenergylaw.com                        |

**Emergency Contact:**

<table>
<thead>
<tr>
<th>Attn:</th>
<th>Hun Kim, Regional Representative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone:</td>
<td>(323) 374-6317</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:hun27.kim@samsung.com">hun27.kim@samsung.com</a></td>
</tr>
<tr>
<td></td>
<td><a href="mailto:renewable@samsung.com">renewable@samsung.com</a></td>
</tr>
</tbody>
</table>

| Emergency Contact: |
| Monica Padilla, Director of Power Resources |
| Phone: (408) 721-5301 x1009               |
| Email: monica.padilla@svcleanenergy.org   |
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 section I of Exhibit O) 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 either a 100% Stored Energy Level is achieved or the constant power charge rate starts to de-rate;

(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 either a 0% Stored Energy Level is achieved or the constant power charge rate starts to de-rate (the Energy discharged divided by four (4) will determine the new Storage Contract Capacity).

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:

Exhibit O - 3
(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 each of the first four hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.
EXHIBIT P

STORAGE 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.

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

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

The applicable “Availability Adjusted Storage Contract Capacity” is calculated by multiplying the Storage Contract Capacity by the Availability Adjustment ("Availability Adjustment" or “AA”), which is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

    \[ AA = 100\% \]

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:

    \[ AA = 100\% - [(97\% - \text{Monthly Storage Availability}) \times 2] \]

(iii) If the Monthly Storage Availability is less than 70%, then:

    \[ AA = 0 \]
EXHIBIT R

METERING DIAGRAM

This is an initial metering diagram. Seller shall provide updated metering diagram on or prior to the date on which Seller provides an executed Form of Construction Start Date Certificate to Buyer.