AGENDA

Call to Order

Roll Call

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 April 14, 2021, Board of Directors Meeting
1b) Approve Minutes of the April 19, 2021, Board of Directors Special Meeting
1c) Receive March 2021 Treasurer Report
1d) Authorize the Chief Executive Officer to Execute a Joint Scheduling Coordination Services Agreement Between Central Coast Community Energy, Silicon Valley Clean Energy Authority, and ZGlobal, Inc. to Provide Scheduling Coordination Services for Renewable Power Purchase Agreements, in Substantial Form and Any Necessary Ancillary Agreements and Documents
1e) Authorize the Chief Executive Officer to Execute Agreement with ev.energy for a Full-Scale GridShift: EV Charging Program
1f) Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule
1g) Authorize the Chief Executive Officer to Execute Agreement with Strategic Energy Innovations to Host Two Climate Corps Fellows for the 2021-2022 Fellowship Cycle
1h) Executive Committee Report
1i) Finance and Administration Committee Report
1j) Audit Committee Report
1k) Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report
1l) California Community Power Report

Regular Calendar

2) CEO Report (Discussion)
3) Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with TGP Energy Management, LLC for Renewable Wind Supply (PCC1) and Any Necessary Ancillary Agreements and
Documents and to Execute a 15-Year Power Purchase Agreement with Victory Pass I, LLC for Renewable Solar Supply (PCC1) and Battery Storage and Any Necessary Ancillary Agreements (Action)

4) Update to SVCE Net Energy Metering Policy (Discussion)

5) COVID-related Customer Debt and Delinquent Payment Policy (Discussion)

6) Work Location Policies and Transition Issues Related to Post-COVID (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Adjourn
SVCE GLOSSARY OF TERMS

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

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

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

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

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

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

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

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

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

DAC – Disadvantaged Community

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

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

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

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

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

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

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

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

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

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

**EV – Electric Vehicle**

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

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

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

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

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

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

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

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

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

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

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

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

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

**NRDC – Natural Resources Defense Council**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

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

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

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

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

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

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.
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).
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 7:00 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 7:12 p.m.)
Director Zach Hilton, City of Gilroy
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
Director Javed Ellahie, City of Monte Sereno
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 8:06 p.m.)
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.

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

Chair Abe-Koga introduced the item, thanked Bruce Karney and James Tuleya for their leadership, and virtually presented them with the Community Energy Hero Award.

Bruce Karney and James Tuleya provided brief comments of gratitude.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.
MOTION: Vice Chair Gibbons moved and Director Larsson seconded the motion to adopt Resolutions 2021-07 and 2021-08 commending Bruce Karney and James Tuleya for their promotion of Community Choice Energy in Santa Clara County and dedicated service representing community and customer interests.

The motion carried with Directors Willey and Martinez Beltran absent.

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

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

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

The motion carried by verbal roll call vote with Director Martinez Beltran absent.

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 SVCE Rate Schedules Effective March 18, 2021
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)

CEO Girish Balachandran provided a CEO report which included:
- reference to the items in the agenda packet including the Power Supply, Decarbonization Programs, Account Services, and Legislative and Regulatory updates;
- Board Clerk Andrea Pizano would be sending a poll out to the board of directors for their availability for a special meeting which would be called to approve a wind generation power purchase agreement in the next week;
- announced SVCE has started thinking about what things will be like post-COVID, and noted a discussion would be brought to the Executive Committee on how SVCE will be returning to work;
- played a video clip announcing SVCE received the Spare the Air Leadership award in partnership with Peninsula Clean Energy (PCE); and,
- announced Account Services Manager John Supp would be leaving the agency.

Director of Account Services and Community Relations Don Bray provided comments of gratitude to Account Services Manager Supp, who provided brief parting comments.
Director of Regulatory and Legislative Policy Melicia Charles presented a PowerPoint presentation on an SVCE Legislative and Regulatory update which included information on SB 612 and SB 67. Staff responded to board member questions.

Chair Abe-Koga opened public comment.

James Tuleya, resident of Sunnyvale and Community Energy Hero recipient, shared his appreciation to John Supp for his service.

Chair Abe-Koga closed public comment.

Chair Abe-Koga thanked staff for working with Senator Becker's office on his legislative bills, thanked John Supp for his leadership and service, and congratulated SVCE and PCE on their Spare the Air Leadership award.

3) **Approve Participation in the California Community Choice Financing Authority Joint Powers Authority (Action)**

CFO and Director of Administrative Services Amrit Singh introduced the item and Devin Brennan of Orrick and Michael Berwanger of PFM Financial Advisors LLC. CFO and Director of Administrative Services Singh presented a PowerPoint presentation which addressed the prepay timeline, overview of prepayment transactions, the prepay structure, information on the California Community Choice Financing Authority (CCCFA) and the joint powers authority agreement, and tentative prepay schedule. Staff and Michael Berwanger responded to board member questions.

Chair Abe-Koga opened public comment.

No speakers.

Chair Abe-Koga closed public comment.

MOTION: Director Chua moved and Vice Chair Gibbons seconded the motion to adopt Resolution 2021-10 approving the California Community Choice Financing Authority (CCCFA) Joint Powers Agreement (JPA) and authorizing the CEO to execute this agreement.

The motion carried unanimously by verbal roll call vote.

4) **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.

Director Ellahie requested the cost per MW for SVCE's power supply projects; Director of Power Resources Padilla noted Board Clerk Andrea Pizano could provide the information to board members under confidentiality.

Chair Abe-Koga opened public comment.

Bruce Karney commented he shared Director Ellahie's interest in knowing the cost per MW and cost per MWh for the battery side, but noted there was enough information in the table Director of Power Resources Padilla presented to indicate that this project is a low cost resource. Karney inquired why SVCE is getting a better price on this project than similar projects in the past.

Chair Abe-Koga closed public comment.
Director of Power Resources Padilla noted an open solicitation is run for all of SVCE’s projects, and SVCE receives a wide range of proposals and prices. Director of Power Resources Padilla commented she believes the type of developer, their experience, and where they are in the interconnection process is primarily driving pricing.

MOTION: Director Ellahie moved and Director Tyson seconded the motion to authorize the Chief Executive Officer (CEO) to execute the 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.

The motion carried unanimously by verbal roll call vote.

**Board Member Announcements and Direction on Future Agenda Items**
Vice Chair Gibbons thanked Communications Manager Pamela Leonard for her presentation at the neighborhood association.

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

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

The Board convened to closed session at 8:45 p.m.

**Report from Closed Session**
The Board returned from closed session at 10:04 p.m.

Chair Abe-Koga noted there was no report from closed session.

**Adjourn**
Chair Abe-Koga adjourned the meeting at 10:04 p.m.
Silicon Valley Clean Energy Authority  
Board of Directors Special Meeting  
Monday, April 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

Call to Order

Chair Abe-Koga called the meeting to order at 1:00 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  
Director Zach Hilton, City of Gilroy  
Director Neysa Fligor, City of Los Altos  
Alternate Director Lisa Schmidt, Town of Los Altos Hills  
Director Rob Rennie, Town of Los Gatos  
Director Evelyn Chua, City of Milpitas  
Director Javed Ellahie, City of Monte Sereno (arrived at 1:05 p.m.)  
Director Yvonne Martinez Beltran, City of Morgan Hill (arrived at 1:05 p.m.)  
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

No speakers.

Regular Calendar

1) Authorize the Chief Executive Officer to Execute a 20-Year Power Purchase Agreement with AES North American Development, LLC for Renewable Wind Supply (PCC1) and Any Necessary Ancillary Agreements and Documents (Action)

Director of Power Resources Monica Padilla introduced the item and Power Resources Manager Ian Williams who presented a PowerPoint presentation.
Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

MOTION: Director Rennie moved and Director Chua seconded the motion to authorize the Chief Executive Officer to execute the Power Purchase Agreement (PPA) in substantial form and any necessary ancillary agreements and documents as follows:

20-Year term PPA with AES North America Development, LLC (“Mountain View”) with expected delivery from January 1, 2023 through December 31, 2042 for 33.3 megawatt (MW) of wind energy qualifying as Portfolio Category Content One (PCC1) renewable resource and the total contract amount not-to-exceed $128,000,000.

The motion carried unanimously by verbal roll call vote.

**Board Member Announcements and Direction on Future Agenda Items**
None.

**Adjourn**

Chair Abe-Koga adjourned the meeting at 1:12 p.m.
TREASURER REPORT
Fiscal Year to Date
As of March 31, 2021
(Preliminary & Unaudited)
Issue Date: May 12, 2021

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Financial Highlights for the month of March 2021:

> SVCE operations resulted in a negative change in net position for the month of $9 million and year-to-date change in net position of negative $0.2 million.

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

> YTD operating margin of $8.3 million or 7% is below budget expectations of a 13% operating margin for the fiscal year to date.

> Power Supply costs are 1% above budget for the fiscal year year to date.

> SVCE is investing ~94.7% of available funds generating year-to-date investment income of $0.16 million

### Financial Statement Highlights ($ in 000’s)

#### Change in Net Position

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<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
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<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>2,637</td>
<td>2,405</td>
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<td>(2,913)</td>
<td>(8,974)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(172)</td>
<td>(6,025)</td>
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### Power Supply Costs

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<th>Jan</th>
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<th>Apr</th>
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<th>Aug</th>
<th>Sept</th>
<th>Total</th>
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<td>(19)</td>
<td>(49)</td>
<td>(46)</td>
<td>(53)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(315)</td>
<td></td>
</tr>
<tr>
<td>Capacity</td>
<td>2,271</td>
<td>1,853</td>
<td>1,934</td>
<td>2,274</td>
<td>2,245</td>
<td>2,206</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>12,782</td>
<td></td>
</tr>
<tr>
<td>CAISO Charges</td>
<td>548</td>
<td>704</td>
<td>357</td>
<td>823</td>
<td>(30)</td>
<td>(303)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,100</td>
<td></td>
</tr>
<tr>
<td>NEM Expense</td>
<td>(60)</td>
<td>(103)</td>
<td>(178)</td>
<td>(133)</td>
<td>(65)</td>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(505)</td>
<td></td>
</tr>
<tr>
<td>Charge/Credit (IST/Net Rev)</td>
<td>1,932</td>
<td>(471)</td>
<td>(287)</td>
<td>936</td>
<td>1,237</td>
<td>1,568</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>4,915</td>
<td></td>
</tr>
<tr>
<td><strong>Net Power Costs</strong></td>
<td>17,134</td>
<td>15,075</td>
<td>17,475</td>
<td>18,505</td>
<td>18,539</td>
<td>22,269</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>105,998</td>
<td>235,237</td>
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</tbody>
</table>

### Other

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Expenditures</td>
<td>182</td>
<td>-</td>
<td>-</td>
<td>49</td>
<td>0</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>280</td>
</tr>
<tr>
<td>Energy Programs</td>
<td>110</td>
<td>69</td>
<td>149</td>
<td>301</td>
<td>92</td>
<td>132</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>853</td>
</tr>
</tbody>
</table>

### Load Statistics - GWh

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Sales Actual</td>
<td>325</td>
<td>305</td>
<td>331</td>
<td>325</td>
<td>289</td>
<td>310</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,884</td>
</tr>
<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></td>
</tr>
</tbody>
</table>

Treasure Report, March 2021
**Other Statistics and Ratios**

<table>
<thead>
<tr>
<th>Item</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working Capital</td>
<td>$180,470,242</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>6.5</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>7%</td>
</tr>
<tr>
<td>Expense Coverage Days</td>
<td>244</td>
</tr>
<tr>
<td>Expense Coverage Days w/ LOC</td>
<td>293</td>
</tr>
<tr>
<td>Long-Term Debt</td>
<td>$0</td>
</tr>
<tr>
<td>Total Accounts</td>
<td>273,898</td>
</tr>
<tr>
<td>Opt-Out Accounts (Month)</td>
<td>66</td>
</tr>
<tr>
<td>Opt-Out Accounts (FYTD)</td>
<td>392</td>
</tr>
<tr>
<td>Opt-Up Accounts (Month)</td>
<td>(173)</td>
</tr>
<tr>
<td>Opt-Up Accounts (FYTD)</td>
<td>(201)</td>
</tr>
</tbody>
</table>

**YTD EXPENSES**

- Power Supply: 92.4%
- Personnel: 2.5%
- Contract Services: 4.0%
- Depreciation: 0.0%
- G & A: 1.1%

**Retail Sales - Month**

- Actual: 15.1
- Budget: 14.4
- FY19/20: 20.6

**Retail Sales - YTD**

- Actual: 114.3
- Budget: 120.3
- FY19/20: 136.9

**Controllable O&M - Month**

- Actual: 24.1
- Budget: 19.1
- FY19/20: 27.5

**Controllable O&M - YTD**

- Actual: 114.7
- Budget: 113.5
- FY19/20: 118.5
# SILICON VALLEY CLEAN ENERGY AUTHORITY

## STATEMENT OF NET POSITION

As of March 31, 2021

### ASSETS

**Current Assets**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>$178,161,377</td>
</tr>
<tr>
<td>Accounts Receivable, net of allowance</td>
<td>17,257,654</td>
</tr>
<tr>
<td>Accrued Revenue</td>
<td>8,638,317</td>
</tr>
<tr>
<td>Other Receivables</td>
<td>1,129,243</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>2,831,680</td>
</tr>
<tr>
<td>Deposits</td>
<td>625,013</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,500,000</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>213,143,284</strong></td>
</tr>
</tbody>
</table>

**Noncurrent assets**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital assets, net of depreciation</td>
<td>356,231</td>
</tr>
<tr>
<td>Deposits</td>
<td>145,130</td>
</tr>
<tr>
<td><strong>Total Noncurrent Assets</strong></td>
<td><strong>501,361</strong></td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>213,644,645</strong></td>
</tr>
</tbody>
</table>

### LIABILITIES

**Current Liabilities**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable</td>
<td>932,729</td>
</tr>
<tr>
<td>Accrued Cost of Electricity</td>
<td>30,327,769</td>
</tr>
<tr>
<td>Accrued Payroll &amp; Benefits</td>
<td>595,556</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>17,169</td>
</tr>
<tr>
<td>User Taxes and Energy Surcharges due to other gov'ts</td>
<td>799,819</td>
</tr>
<tr>
<td>Supplier Security Deposits</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>32,673,042</strong></td>
</tr>
</tbody>
</table>

### NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net investment in capital assets</td>
<td>356,231</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>4,500,000</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>176,115,372</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>$180,971,603</strong></td>
</tr>
<tr>
<td>Operating Revenues</td>
<td>Amount</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Electricity Sales, Net</td>
<td>$113,716,624</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>558,740</td>
</tr>
<tr>
<td>Other income</td>
<td>58,313</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>$114,333,677</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operating Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>105,998,696</td>
</tr>
<tr>
<td>Contract services</td>
<td>4,547,671</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>2,828,524</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>1,250,259</td>
</tr>
<tr>
<td>Depreciation</td>
<td>43,158</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>$114,668,308</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operating Income (Loss)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING INCOME (LOSS)</strong></td>
<td><strong>(334,631)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonoperating Revenues (Expenses)</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>164,016</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(1,170)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING REVENUES (EXPENSES)</strong></td>
<td><strong>162,846</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Change in Net Position</th>
<th>Amount</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>$180,971,603</td>
</tr>
</tbody>
</table>
### CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from customers</td>
<td>$139,992,972</td>
</tr>
<tr>
<td>Other operating receipts</td>
<td>5,832,734</td>
</tr>
<tr>
<td>Payments to suppliers for electricity</td>
<td>(115,045,385)</td>
</tr>
<tr>
<td>Payments for other goods and services</td>
<td>(6,776,206)</td>
</tr>
<tr>
<td>Payments for staff compensation and benefits</td>
<td>(2,646,140)</td>
</tr>
<tr>
<td>Tax and surcharge payments to other governments</td>
<td>(2,994,001)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>18,363,974</strong></td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance costs paid</td>
<td>(1,170)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition of capital assets</td>
<td>(290,178)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>164,016</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>18,236,642</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of year</td>
<td>164,424,735</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of period</strong></td>
<td><strong>$182,661,377</strong></td>
</tr>
</tbody>
</table>

### Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents (unrestricted)</td>
<td>$178,161,377</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,500,000</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents</strong></td>
<td><strong>$182,661,377</strong></td>
</tr>
</tbody>
</table>
### RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Income (loss)</td>
<td>$(334,631)</td>
</tr>
<tr>
<td><strong>Adjustments to reconcile operating income to net cash provided (used) by</strong></td>
<td></td>
</tr>
<tr>
<td>operating activities</td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>43,158</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>14,200,659</td>
</tr>
<tr>
<td>(Increase) decrease in energy settlements receivable</td>
<td>107,318</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>(921,243)</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>8,878,907</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>(241,134)</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>3,607,404</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>(390,427)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued payroll &amp; benefits</td>
<td>179,824</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>(7,142,763)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>7,169</td>
</tr>
<tr>
<td>Increase (decrease) in Energy settlements payable</td>
<td>725,695</td>
</tr>
<tr>
<td>Increase (decrease) in taxes and surcharges due to other governments</td>
<td>(355,962)</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td>$ 18,363,974</td>
</tr>
</tbody>
</table>
## SILICON VALLEY CLEAN ENERGY AUTHORITY

**BUDGETARY COMPARISON SCHEDULE**

October 1, 2020 through March 31, 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>Energy Sales</td>
<td>$113,716,624</td>
<td>$119,731,877</td>
<td>-$6,015,253</td>
<td>-5%</td>
<td>$250,747,000</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>558,740</td>
<td>521,544</td>
<td>37,196</td>
<td>7%</td>
<td>981,000</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>114,275,364</strong></td>
<td><strong>120,253,421</strong></td>
<td><strong>(5,978,057)</strong></td>
<td>-5%</td>
<td><strong>251,728,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
</tr>
<tr>
<td>Operating Margin</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
</tr>
<tr>
<td>Professional Services</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
</tr>
<tr>
<td>Notifications</td>
</tr>
<tr>
<td>Lease</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING INCOME/(LOSS)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING REVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income</td>
</tr>
<tr>
<td>Investment Income</td>
</tr>
<tr>
<td>Grant Income</td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING REVENUES</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NON-OPERATING EXPENSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
</tr>
<tr>
<td>Transfer to Programs Fund</td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>-$4,605,866</td>
</tr>
</tbody>
</table>

Treasure Report, March 2021
### SILICON VALLEY CLEAN ENERGY AUTHORITY
#### PROGRAM FUND
##### BUDGETARY COMPARISON SCHEDULE
October 1, 2020 through March 31, 2021

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</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>

<table>
<thead>
<tr>
<th>EXPENDITURES &amp; OTHER USES:</th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>AMENDED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td>6,475,000</td>
<td>852,677</td>
<td>5,622,323</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance: $1,205,000

| Fund balance at beginning of period | 4,437,570 |
| Fund balance at end of period | $8,854,893 |

### CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
#### BUDGETARY COMPARISON SCHEDULE
October 1, 2020 through March 31, 2021

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</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>

<table>
<thead>
<tr>
<th>EXPENDITURES &amp; OTHER USES:</th>
<th>AMENDED BUDGET</th>
<th>ACTUAL</th>
<th>AMENDED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures *</td>
<td>2,170,000</td>
<td>220,297</td>
<td>1,949,703</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance: $(2,170,000)

| Fund balance at beginning of period | 8,422,537 |
| Fund balance at end of period | $8,202,240 |
SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2020 through March 31, 2021

Net Increase (decrease) in available fund balance per budgetary comparison schedule $ (4,605,866)

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

- Subtract depreciation expense (43,158)
- Subtract program expense not in operating budget (852,677)
- Subtract CRCR expense not in operating budget (220,297)
- Add back transfer to Program fund 5,270,000
- Add back capital asset acquisition 280,213

Change in Net Position (171,785)
### OPERATING REVENUES

<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>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity sales, net</td>
<td>$ 28,096,823</td>
<td>$ 18,883,887</td>
<td>$ 21,158,486</td>
<td>$ 16,807,750</td>
<td>$ 13,786,525</td>
<td>$ 14,983,153</td>
<td>$ 113,716,624</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>115,513</td>
<td>88,930</td>
<td>99,269</td>
<td>103,321</td>
<td>66,706</td>
<td>85,001</td>
<td>558,740</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Income</td>
<td>12,500</td>
<td>45,813</td>
<td>58,313</td>
<td>58,313</td>
<td>58,313</td>
<td>58,313</td>
<td>58,313</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td>$ 28,212,336</td>
<td>$ 18,972,817</td>
<td>$ 21,270,255</td>
<td>$ 16,911,071</td>
<td>$ 13,853,231</td>
<td>$ 15,113,967</td>
<td>$ 114,333,677</td>
<td></td>
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<td></td>
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</tr>
</tbody>
</table>

### OPERATING EXPENSES

<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>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>17,134,450</td>
<td>15,075,488</td>
<td>17,475,125</td>
<td>18,505,400</td>
<td>15,538,726</td>
<td>22,269,507</td>
<td>105,998,696</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>515,431</td>
<td>500,561</td>
<td>443,961</td>
<td>469,232</td>
<td>433,328</td>
<td>486,011</td>
<td>2,828,524</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data manager</td>
<td>263,699</td>
<td>263,235</td>
<td>263,906</td>
<td>263,445</td>
<td>263,518</td>
<td>265,009</td>
<td>1,592,812</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service fees - PG&amp;E</td>
<td>96,883</td>
<td>101,260</td>
<td>97,487</td>
<td>96,980</td>
<td>96,339</td>
<td>96,973</td>
<td>586,322</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultants and other professional fees</td>
<td>316,457</td>
<td>286,315</td>
<td>343,745</td>
<td>549,859</td>
<td>345,961</td>
<td>444,200</td>
<td>2,379,537</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administration</td>
<td>142,834</td>
<td>131,876</td>
<td>170,271</td>
<td>146,750</td>
<td>100,557</td>
<td>557,971</td>
<td>1,250,259</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>6,737</td>
<td>6,891</td>
<td>6,557</td>
<td>7,065</td>
<td>7,065</td>
<td>6,843</td>
<td>43,158</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>$ 18,476,491</td>
<td>$ 18,365,626</td>
<td>$ 18,893,052</td>
<td>$ 20,038,631</td>
<td>$ 16,785,994</td>
<td>$ 24,108,514</td>
<td>$ 114,668,308</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Operating income (loss)**

<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>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total nonoperating revenues (expenses)</strong></td>
<td>9,735,845</td>
<td>2,607,191</td>
<td>2,377,203</td>
<td>(3,127,560)</td>
<td>(2,932,763)</td>
<td>(8,994,547)</td>
<td>(334,631)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Nonoperating revenues (expenses)**

<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>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>36,768</td>
<td>30,271</td>
<td>29,178</td>
<td>27,507</td>
<td>19,293</td>
<td>20,999</td>
<td>164,016</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financing costs</td>
<td>(985)</td>
<td>(165)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>(1,170)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total nonoperating revenues (expenses)</strong></td>
<td>36,768</td>
<td>30,271</td>
<td>28,193</td>
<td>27,322</td>
<td>19,293</td>
<td>20,999</td>
<td>162,846</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Change in net position**

<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>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Change in net position</strong></td>
<td>$ 9,772,613</td>
<td>$ 2,637,462</td>
<td>$ 2,405,396</td>
<td>(3,100,238)</td>
<td>(2,913,470)</td>
<td>(8,973,548)</td>
<td>(171,785)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2020 through March 31, 2021
### Return on Investments

<table>
<thead>
<tr>
<th>Money Market</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>$38,768</td>
<td>$33,271</td>
<td>$29,178</td>
<td>$27,507</td>
<td>$19,293</td>
<td>$20,999</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$164,016</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
  - March: 174,082,517

- **Average daily portfolio invested**
  - October: 144,362,137
  - November: 144,437,356
  - December: 160,267,489
  - January: 161,586,880
  - February: 165,502,382
  - March: 164,820,497

- **% of average daily portfolio invested**
  - October: 94.3%
  - November: 92.3%
  - December: 94.6%
  - January: 92.6%
  - February: 94.2%
  - March: 94.7%

### Detail of Portfolio

<table>
<thead>
<tr>
<th></th>
<th>Opening Rate</th>
<th>February Rate</th>
<th>Carrying Value</th>
<th>Interest Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market - River City Bank</td>
<td>1.26%</td>
<td>0.15%</td>
<td>$160,042,400</td>
<td>$20,999</td>
</tr>
</tbody>
</table>

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

RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>244.6</td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td>244.9</td>
<td></td>
</tr>
<tr>
<td>Dec</td>
<td>245.0</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>245.1</td>
<td></td>
</tr>
<tr>
<td>Feb</td>
<td>245.9</td>
<td></td>
</tr>
<tr>
<td>Mar</td>
<td>246.2</td>
<td></td>
</tr>
</tbody>
</table>

NON-RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th>Month</th>
<th>Actual</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Nov</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Dec</td>
<td>27.7</td>
<td></td>
</tr>
<tr>
<td>Jan</td>
<td>27.8</td>
<td></td>
</tr>
<tr>
<td>Feb</td>
<td>27.7</td>
<td></td>
</tr>
<tr>
<td>Mar</td>
<td>27.7</td>
<td></td>
</tr>
<tr>
<td>Apr</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jun</td>
<td></td>
<td></td>
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<tr>
<td>Jul</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aug</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sep</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# SILICON VALLEY CLEAN ENERGY AUTHORITY
## ACCOUNTS RECEIVABLE AGING REPORT

<table>
<thead>
<tr>
<th>AGE SUMMARY</th>
<th>$13,189,444</th>
<th>$1,449,631</th>
<th>$999,751</th>
<th>$571,583</th>
<th>$2,721,096</th>
<th>$0</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;30 days</td>
<td>$1,449,631</td>
<td>$999,751</td>
<td>$571,583</td>
<td>$2,721,096</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>&lt;60 days</td>
<td>$1,449,631</td>
<td>$999,751</td>
<td>$571,583</td>
<td>$2,721,096</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>&lt;90 days</td>
<td>$1,449,631</td>
<td>$999,751</td>
<td>$571,583</td>
<td>$2,721,096</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>&lt;120 days</td>
<td>$1,449,631</td>
<td>$999,751</td>
<td>$571,583</td>
<td>$2,721,096</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>Older</td>
<td>$1,449,631</td>
<td>$999,751</td>
<td>$571,583</td>
<td>$2,721,096</td>
<td>$0</td>
<td></td>
</tr>
</tbody>
</table>

### AGE SUMMARY CHART

- **Accounts Receivable Days**: 33 DAYS
- **Total Due**: $18,930,504
- **Bad Debt % (Budget)**: 1%

### 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>69.7%</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>7.7%</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>5.3%</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>3.0%</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>14.4%</td>
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</tr>
</tbody>
</table>
RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy Authority (SVCE) Board authorize the Chief Executive Officer (CEO) to execute the attached Joint Scheduling Coordination Services Agreement (JSCA) in substantial form between SVCE, Central Coast Community Energy (3CE) and ZGlobal Inc., and any necessary ancillary agreements and documents in a total amount not to exceed for SVCE $400,000 for an initial term from July 2021 through December 2024, and the right to extend the term up to three times for one additional year.

Execution of the JSCA with ZGlobal is a key component in the process bringing contracted power purchase agreements (PPAs) into operating resources providing carbon free electricity, renewable resources, and capacity to SVCE’s customers.

BACKGROUND
3CE and SVCE have issued three joint requests for offers (RFOs) for long term PPAs to meet their goals for renewable and clean energy procurement, starting in 2017. To date, ten PPAs have been approved and executed, totaling almost 500 MW of renewable generation and approximately 132 MW of energy storage for SVCE\(^1\). The cost commitments of these agreements exceed $1,300,000,000.

Being the off taker of renewable energy and energy storage services, the addition of scheduling coordination services within the California Independent System Operator ("CAISO") is required. Furthermore, given 3CE and SVCE are jointly receiving the output from most of these projects, it is necessary to jointly schedule and conduct billing settlements for most resources. The first three projects are expected to come online in the second half of 2021. The vendor providing these services is extremely important to assisting SVCE in maximizing the value of our renewable PPAs within the CAISO to keep our overall cost of energy cost-competitive.

To address this need for scheduling services, SVCE and 3CE jointly released a Request for Proposals (RFP) for Scheduling Coordination (SC) Services on February 15, 2021. The RFP closed on March 15, 2021 with seven proposals for SC services. After an initial screening evaluation, SVCE and 3CE selected three proposers for second round interviews. Each participant was evaluated based on proposal price, market and legislative/regulatory knowledge, data and analytic capability, ability to aggregate and disaggregate schedules

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\(^1\) Execution of the San Luis West Solar with Storage PPA is pending.
and settlements, and perceived flexibility to work collaboratively. This evaluation unanimously selected ZGlobal as the best proposal.

**ANALYSIS & DISCUSSION**

ZGlobal, Inc. is an organization that has provided SC services in California for nine years. In California they provide services for 23 generation customers and seven load customers, above average experience for all participants in the RFP. ZGlobal has provided load SC services to SVCE since 2017. ZGlobal has proven to be a collaborative partner with SVCE for SC services for load over the past four years.

Over the next two plus years SVCE and 3CE will bring 10 to 13 PPAs from contract to operations. In most cases, the PPA states the buyers, SVCE and 3CE, as having the scheduling coordination responsibility. This was the preferred approach, especially with respect to solar with storage resources (“S+S”) as the buyers retain optionality and therefore can maximize revenues. In some cases, the seller is the SC, however SVCE and 3CE will still need settlements and billing support services from ZGlobal.

The table below provides the expected Commercial Operations Dates (COD) and lead time start date for each project. The lead time is the estimate for time required to bring a given project from testing to commercial operations and to prepare for scheduling and settlements.

<table>
<thead>
<tr>
<th>PPA#</th>
<th>Project</th>
<th>Scheduling Coordinator</th>
<th>Lead Time Date</th>
<th>Expected COD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Slate S+S</td>
<td>Buyer</td>
<td>Jun-21</td>
<td>Oct-21</td>
</tr>
<tr>
<td>2</td>
<td>Big Beau S+S</td>
<td>Buyer</td>
<td>Aug-21</td>
<td>Dec-21</td>
</tr>
<tr>
<td>3</td>
<td>Ormat Geothermal</td>
<td>Seller</td>
<td>Oct-21</td>
<td>Dec-21</td>
</tr>
<tr>
<td>4</td>
<td>Coso Geothermal</td>
<td>Seller</td>
<td>Nov-21</td>
<td>Jan-22</td>
</tr>
<tr>
<td>5</td>
<td>Rabbitbrush S+S</td>
<td>Buyer</td>
<td>Feb-22</td>
<td>Jun-22</td>
</tr>
<tr>
<td>6</td>
<td>Yellow Pine S+S</td>
<td>Seller</td>
<td>Aug-22</td>
<td>Dec-22</td>
</tr>
<tr>
<td>7</td>
<td>Aratina S+S</td>
<td>Buyer</td>
<td>Feb-23</td>
<td>Jun-23</td>
</tr>
<tr>
<td>9</td>
<td>Angela S+S</td>
<td>Buyer</td>
<td>Dec-22</td>
<td>Mar-23</td>
</tr>
<tr>
<td>10</td>
<td>AES Mountain Wind</td>
<td>Seller</td>
<td>Nov-22</td>
<td>Jan-23</td>
</tr>
</tbody>
</table>

The JSCA performs the following functions:

- Provides appropriate services a Scheduling Coordinator would provide to bring a given PPA on-board to commercial operations.
- Performs coordination, supports strategy, supports operations and bids, schedules and tracks operations once a PPA comes on-line.
- Verifies California Independent System Operator (CAISO) settlements
- Provides detailed data for schedule and bill verification and planning purposes.

The JSCA effective date is the date services are first received in July 2021. The initial term of the JSCA goes through 2024 with an automatic annual extension, if not cancelled through 2027. This is standard for scheduling service contracts because resources must be scheduled and settled, and this structure ensures a clearly intentioned change-over if desired.

The JSCA is priced based on a “bucket” structure of PPAs where the cost of scheduling each PPA decreases as more PPAs are added. A description of the service fees is provided for in the attached JSCA. In addition to scheduling and operating costs, each PPA has startup costs, which vary based on the complexity of the unit, and whether SVCE and 3CE provide scheduling coordination services or not. Initially the costs are expected to be split equally between 3CE and SVCE, however over time this may change as one CCA brings on more PPAs or more complex PPAs than the other. The expected cost for the initial period is $340,500 based on an assumed number of PPAs and an even split between SVCE and 3CE. A not-to-exceed amount of $400,000 is
recommended in the event that SVCE brings on additional PPAs than assumed for the initial period. Table 2 summarizes SVCE’s expected cost for the initial period of the contract.

Table 2 – Expected Cost

<table>
<thead>
<tr>
<th>Number of PPAs</th>
<th>Initial Period July 2021 to December 31, 2024</th>
<th>SVCE’s Share of Expected Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start-up Cost</td>
<td>$25,000</td>
<td>$12,500</td>
</tr>
<tr>
<td>Scheduling/Operating Cost</td>
<td>$656,000</td>
<td>$328,000</td>
</tr>
<tr>
<td><strong>Total Expected Cost</strong></td>
<td><strong>$681,000</strong></td>
<td><strong>$340,500</strong></td>
</tr>
</tbody>
</table>

Beyond the initial period, should SVCE and 3CE agree to continue to use Zglobal for SC services, staff will return to the Board for approval to extend the authority on an annual basis. Over the life of the JSCA the total contract cost is not expected to exceed $1,600,000 or $800,000 for SVCE.

**STRATEGIC PLAN**

This contract supports SVCE’s Strategic Plan Goal #5, Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner and Goal #6, Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives. This contract supports those goals by bringing the existing and future PPAs into operations and seeks to optimize them to meet compliance and net market value goals.

**ALTERNATIVE**

In the analysis, the final comparison was between ZGlobal which offered reasonable services and with whom SVCE has a collaborative history, and another service provider that provided a stronger service offering at a higher price. The lower price (estimated at $750K/year by year three) and the collaborative history with ZGlobal overcame the service advantage of the second-place proposer. The difference in price is more than adequate to augment services up to the second-place proposer, if needed.

Another alternative is for SVCE and 3CE to develop in-house scheduling coordination, optimization and CAISO settlements functions. This alternative would also require the acquisition of specific software based on the CAISO’s specifications and staffing on a 24 hours-a-day and seven hours per week basis. Given the limitations of current staff bandwidth and ramp-up time needed to put this alternative in place, staff does not believe this to be a viable alternative.

**FISCAL IMPACT**

This contract is expected to add approximately $25K in cost starting in fiscal year (FY)2021. These funds are budgeted for in the FY 2021 operating budget. Beyond FY 2021, staff will seek approval of funds as part of the annual operating budget.

**ATTACHMENTS**

1. Joint Scheduling Coordination Service Agreement.
Agreement for Scheduling Coordination Services

This Agreement is made by and between Central Coast Community Energy ("3CE"), a California Joint Powers Authority formed and operating under California Government Code section 6500 et seq., Silicon Valley Clean Energy ("SVCE"), a California Joint Powers Authority formed and operating under California Government Code section 6500 et seq. and ZGlobal Inc ("ZGlobal"), a California corporation with its principal place of business located at 604 Sutter Street, Folsom, California. SVCE and 3CE and ZGlobal may be individually referred to herein as “Party” or collectively as “Parties.”

WHEREAS, 3CE and SVCE seek to operate and monitor renewable generation resources they have, or may have in the future, under long term power purchase agreements, either together or separately, within the California Independent System Operator (the “CAISO”); and

WHEREAS, 3CE and SVCE require generation scheduling services, as more particularly described in this Agreement;

WHEREAS, ZGlobal has been selected by 3CE and SVCE through a competitive solicitation to provide Generation Services, as defined below, subject to the terms and conditions set forth in this Agreement;

The recitals set forth above are incorporated into and made part of this Agreement.

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

1. **GENERAL DESCRIPTION**
   1.1. SVCE and 3CE hereby engage ZGlobal to perform, and ZGlobal hereby agrees to perform, the services described in Exhibit A ("Generation Services") in conformity with the terms of this Agreement. The Generation Services are generally described as: scheduling coordination, settlement, and optional data services for joint or separate power agreements.

2. **PAYMENT PROVISIONS**
   2.1. 3CE and SVCE shall pay ZGlobal in accordance with the payment provisions set forth in Exhibit B, subject to the limitations set forth in this Agreement.

   2.2. ZGlobal will only charge for the actual number of projects receiving Generation Services during the monthly billing period.
2.3. 3CE and SVCE agree to each pay 50% of invoices for Generation Services due in accordance with this Agreement. Notwithstanding the above, ZGlobal understands and agrees that 3CE and SVCE anticipate entering into an operating agreement under which 3CE and SVCE may agree to different or alternative percentages due from 3CE and SVCE to ZGlobal. 3CE and SVCE shall provide ZGlobal with joint updated direction in writing to invoice 3CE and SVCE in conformance with the operating agreement, to address addition of joint or individual renewal generation resources or as otherwise agreed to between 3CE and SVCE.

3. TERM OF AGREEMENT
3.1. The term of this Agreement is from the date services are first delivered, noticed in writing to SVCE and 3CE, until December 31, 2024 (the “Term”). This Agreement is of no force or effect until signed by ZGlobal, SVCE and 3CE, with ZGlobal’s execution to be first in time. ZGlobal may not commence work under this Agreement before 3CE and SVCE sign this Agreement.

3.1.1. The Term shall automatically be extended up to three times, each time for one (1) additional year ending on December 31 of the following year, unless any Party provides written notice to the other Parties objecting to the extension of term no later than sixty (60) days before the end of the Term (the “Extended Term”). Reference to the Term throughout also include the Extended Term.
3.1.2. In no event shall this Agreement be automatically extended beyond three times, each for one (1) additional year, without a written amendment in accordance with section 14.2 below.

4. SCOPE OF SERVICES AND ADDITIONAL PROVISIONS
4.1. The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

4.1.1. Exhibit A: Generation Services-Scope of Services
4.1.2. Exhibit B: Payment Terms & Fees
4.1.3. Exhibit C: New Project Addition

5. PERFORMANCE STANDARDS
5.1. ZGlobal warrants that ZGlobal and ZGlobal’s agents, employees and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under
this Agreement and are not employees of 3CE or SVCE or immediate family of an employee of 3CE or SVCE.

5.2. ZGlobal shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. ZGlobal shall not use SVCE and/or 3CE premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6. **PAYMENT CONDITIONS**

6.1. Fees, as stated in Exhibit B, shall remain unchanged for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. 3CE or SVCE do not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.

6.2. Negotiations for fee changes shall be commenced by ZGlobal, a minimum of ninety days (90) prior to the expiration of the Agreement. Fee changes are not binding unless mutually agreed upon in writing by SVCE, 3CE and ZGlobal.

6.3. Separate Invoices shall be submitted monthly by ZGlobal on a form acceptable to SVCE and 3CE and provide sufficient detail, as determined by SVCE and 3CE, of services rendered for the invoiced period.

6.4. SVCE and 3CE shall certify the invoice for payment in either the amount requested, or in such other amount as SVCE and 3CE determines is due in conformity with this Agreement. Invoices shall be certified and paid according to the provisions of Exhibit B.

7. **TERMINATION**

7.1. During the Term of this Agreement, SVCE and 3CE may terminate the Agreement for any reason by giving written notice of termination to the ZGlobal at least ninety (90) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced to cover services provided prior to the date of termination.

7.2. The Parties may, upon ten (10) day written notice, cancel and terminate this Agreement following a defaulting Party’s failure to cure a material default within fifteen (15) days. A material default set forth below.

7.2.1. Occurrence of Default by ZGlobal
7.2.1.1. Failure to adequately perform Generation Services as set forth in this Agreement, including but not limited to: failure to pay (CAISO or schedule coordination service), failure to schedule, failure to settle, failure to provide data in the agreed upon form or timeframe.

7.2.1.2. Failure to timely pay SVCE or 3CE for CAISO Transactions pursuant to this Agreement.

7.2.2. Occurrence of Default by SVCE or 3CE

7.2.2.1. Failure to adequately perform obligations as set forth in this Agreement, including but not limited to: failure to provide bidding and schedule resources timely, failure to meet CAISO financial obligations; or the failure to pay the scheduling coordinator for services.

7.2.2.2. SVCE or 3CE’s failure to timely pay ZGlobal pursuant to this Agreement.

7.3. In the event that any Party elects to terminate this Agreement, the terms and conditions of this Agreement shall remain in effect to the extent necessary and for the period of time required for the Parties to fulfill all outstanding obligations, including payment in full of amounts due for performance prior to termination and transfer of information from ZGlobal to SVCE and 3CE.

7.3.1. Notwithstanding section 7.3, if SVCE and 3CE terminates this Agreement following ZGlobal’s failure to cure a material default, SVCE and 3CE may be relieved of the payment of any consideration to ZGlobal, and SVCE and 3CE may proceed with the work in any manner, which SVCE and 3CE deems proper. The cost to SVCE and 3CE shall be deducted from any sum due the ZGlobal under this Agreement.

8. INDEMNIFICATION

8.1. ZGlobal shall indemnify, defend, and hold harmless SVCE and 3CE, their Directors, Board members, officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by ZGlobal and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by SVCE and 3CE. It is the intent of the Parties to this Agreement to provide the broadest possible coverage for SVCE and 3CE. ZGlobal shall reimburse SVCE and 3CE for all costs, attorneys’ fees, expenses and liabilities incurred with respect to any litigation in which the ZGlobal is obligated to indemnify, defend and hold harmless SVCE and 3CE under this Agreement.
8.1.1 ZGlobal's selection of counsel to satisfy ZGlobal's defense and hold harmless obligation as set forth in section 8.1 above, shall be subject to review and approval by SVCE and 3CE.

8.1.2 Notwithstanding any other provision of this Agreement, SVCE and 3CE shall be entitled to participate fully in the defense of any claim or action.

9. INSURANCE REQUIREMENTS

9.1. Prior to commencement of this Agreement, ZGlobal shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, ZGlobal upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to SVCE and 3CE. ZGlobal shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and SVCE and 3CE has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of ZGlobal.

9.2. All coverages, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by SVCE and 3CE’s General Counsel.

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

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

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

9.3.1.3. Workers’ Compensation Insurance, if ZGlobal employs others in the performance of this Agreement, in accordance with California Labor Code
section 3700 and with Employer’s Liability limits not less than $1,000,000 each person, $1,000,000 each accident and $1,000,000 each disease.

9.3.1.4. **Professional Liability Insurance**, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than $1,000,000 per claim and $2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, ZGlobal shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

9.4. All insurance required by this Agreement shall be with a company acceptable to SVCE and 3CE and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date ZGlobal completes its performance of services under this Agreement.

9.5. Each liability policy shall provide that SVCE and 3CE shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for ZGlobal and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

9.6. Commercial general liability and automobile liability policies shall provide an endorsement naming SVCE and 3CE, its Directors, Board members, officers, agents, and employees as Additional Insureds with respect to liability arising out of ZGlobal’s work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by SVCE and 3CE and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by ZGlobal’s insurance.

9.7. Prior to the execution of this Agreement by SVCE and 3CE, ZGlobal shall file certificates of insurance with SVCE and 3CE showing that ZGlobal has in effect the insurance
required by this Agreement. ZGlobal shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

10. RECORDS AND CONFIDENTIALITY

10.1. “Confidential Information” means all secret, proprietary, confidential or otherwise nonpublic information of or relating to SVCE or 3CE, in any form whether written, electronic, visual or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by SVCE or 3CE or its respective employees or agents which contain or reflect or are based upon, in whole or in part, the foregoing, that is designated by SVCE or 3CE as “confidential” or which would be understood by ZGlobal acting reasonably, to be commercially sensitive and proprietary.

10.1.1. Confidential Information does not include information (i) that is or becomes generally known to the public other than as a result of disclosure by ZGlobal in violation of the terms of this Agreement; (ii) that is in the possession of ZGlobal at the time of disclosure by SVCE or 3CE, as reasonably evidenced by a prior or contemporaneous writing and other than as a result of ZGlobal’s breach of any legal obligation; (iii) that becomes known to ZGlobal through disclosure by sources other than SVCE or 3CE which, to the knowledge of ZGlobal, are not subject to any obligation of confidentiality or other duty not to disclose such information; or (iv) that is independently developed by ZGlobal without reference to the Confidential Information and through persons who have not had, either directly or indirectly, access to or knowledge of such Confidential Information, as reasonably evidenced in writing by ZGlobal.

10.2. ZGlobal and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. ZGlobal shall not disclose any Confidential Information received from SVCE and 3CE or prepared in connection with the performance of this Agreement, unless SVCE and 3CE specifically permits ZGlobal to disclose such records or information. ZGlobal shall promptly transmit to SVCE and 3CE any and all requests for disclosure of any such Confidential Information. ZGlobal shall not use any Confidential Information gained by ZGlobal in the performance of this Agreement except for the sole purpose of carrying out ZGlobal’s obligations under this Agreement.

10.3. ZGlobal acknowledges and agrees that SVCE and 3CE will share Confidential Information that is specific to their respective renewable generation resources. ZGlobal agrees that such Confidential Information is confidential to that Party and may not be
shared with the other Party. ZGlobal may only share Confidential Information regarding a renewable generation resource with an entity that is a principal to that renewable generation resource. Disclosure of Confidential Information to any party that is not a principal to that renewable generation resource shall be a breach of this Agreement.

10.4. Upon expiration or termination of this Agreement, ZGlobal shall return to SVCE and 3CE any SVCE and 3CE records which ZGlobal used or received from SVCE and 3CE to perform services under this Agreement.

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

11. NON-DISCRIMINATION

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

12. INDEPENDENT CONTRACTOR

12.1. In the performance of work, duties, and obligations under this Agreement, ZGlobal is at all times acting and performing as an independent contractor and not as an employee of SVCE and/or 3CE. No offer or obligation of permanent employment with SVCE and/or 3CE has been made and ZGlobal shall not become entitled by virtue of this Agreement to receive from SVCE and/or 3CE any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers’ compensation coverage, insurance or disability benefits. ZGlobal shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income
taxes and social security, arising out of ZGlobal’s performance of this Agreement. In connection therewith, ZGlobal shall defend, indemnify, and hold SVCE and 3CE harmless from any and all liability which SVCE and 3CE may incur because of ZGlobal’s failure to pay such taxes.

13. NOTICES
13.1. Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to SVCE and 3CE and ZGlobal’s contract administrators at the addresses listed below:

Central Coast Community Energy
Attn: Chief Financial & Technology Officer
70 Garden Court, Suite 300
Monterey, Ca 93940

Silicon Valley Clean Energy Authority
Attn: Girish Balachandran, CEO
333 W. El Camino Real, Suite 330
Sunnyvale, California 94087

ZGlobal Inc.,
Attn: Ziad Alaywan, CEO
604 Sutter Street, Suite 250
Folsom, CA 95630

With a copy to:
Attn: Jesse Montaño
750 Main St.
El Centro, CA 92243

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

14.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by SVCE and 3CE and ZGlobal.
14.3. **Waiver.** Any waiver of any terms and conditions of this Agreement must be in writing and signed by SVCE and 3CE and ZGlobal. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

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

14.5. **Disputes.** ZGlobal shall continue to perform under this Agreement during any dispute.

14.6. **Assignment and Subcontracting.** The ZGlobal shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of SVCE and 3CE. None of the services covered by this Agreement shall be subcontracted without the prior written approval of SVCE and 3CE. Notwithstanding any such subcontract, ZGlobal shall continue to be liable for the performance of all requirements of this Agreement.

14.7. **Successors and Assigns.** This Agreement and the rights, privileges, duties, and obligations of SVCE and 3CE and ZGlobal under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns, and heirs.

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

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

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

14.11. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California.

14.12. **Non-exclusive Agreement.** This Agreement is non-exclusive and both SVCE and 3CE and ZGlobal expressly reserve the right to contract with other entities for the same or similar services.

14.13. **Construction of Agreement.** SVCE and 3CE and ZGlobal agree that each Party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party.
shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

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

14.15. **Authority.** Any individual executing this Agreement on behalf of SVCE, 3CE or ZGlobal represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such Party and bind the Party to the terms and conditions of this Agreement.

14.16. **Integration.** This Agreement, including the exhibits, represent the entire Agreement between SVCE, 3CE and the ZGlobal with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between SVCE, 3CE and ZGlobal as of the effective date of this Agreement, which is the date that both SVCE and 3CE have signed the Agreement.

14.17. **Interpretation of Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

*Signature Page follows*
Central Coast Community Energy

Approved as to Form

BY: ______________________________________
Tom Habashi, CEO

Date: ____________________________

BY: ______________________________________
Robert M. Shaw, Chief Operating Officer & General Counsel

Date: ____________________________

Silicon Valley Clean Energy

Approved as to Form

BY: ______________________________________
Girish Balachandran, CEO

Date: ____________________________

BY: ______________________________________
Gregory W. Stepanicich

Date: ____________________________

ZGlobal

BY: ______________________________________
Ziad Alaywan, P.E., President and CEO

Date: ____________________________

Scheduling Coordination Services Agreement
Exhibit A – Generation Services: Scope of Work

Coordination
In the event that 3CE and SVCE provide inconsistent or separate direction to ZGlobal, ZGlobal shall notify both 3CE and SVCE of this discrepancy and the Parties shall meet in good faith to resolve any inconsistency or provide any clarification needed.

One-Time Setup Services
1. Support for New Resource Integration (NRI) as appropriate including appropriate telemetry required by a Scheduling Coordinator.
   a. In addition, verify validated resource adequacy volumes by resource.
2. Assist with ensuring that CAISO generation resource data template is consistent with operating characteristics and CAISO bidding/scheduling rules.
3. Establish all relevant points of contact for operations.
4. If appropriate, ensure effective communication with generator forecast vendor.
5. Incorporate operating and cost characteristics into an optimization model.
7. Incorporate resources into PowerSettlements (ZGlobal’s Energy Trading and Risk Management System) system and develop billing settlement disaggregation rules.
8. Establish new Scheduling Coordinator IDs as directed by SVCE and 3CE. Initially these services will be performed under ZGlobal’s SCID. This in no way limits the rights of SVCE and or 3CE to bring these resources under their own SCID’s with ZGlobal acting as agent in the future.
   a. To facilitate SC services under ZGlobal’s SCID or as agent under other SCID(s), SVCE and 3CE agree to perform all tasks identified as necessary for ZGlobal to provide SC services in this configuration, including but not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO’s SIBR and CMRI systems, meter data and meteorological data.

One-Time Develop Initial Bidding/Scheduling Strategy
1. Identify objective for optimizing resources.
2. Verify model performance to optimize according to objectives, according to market prices and rules.
3. Work with 3CE and SVCE to develop initial bidding/scheduling strategy.
4. Establish metrics against which to measure results.
Operations

1. Develop daily bid strategy that is adaptive to varying market and resource conditions.
   a. Coordinate with counterparty if not Scheduling Coordinator.
2. Scheduling/Bidding in both Day-Ahead and Real-Time markets.
4. Performing all relevant communications such as outage notification as SC and outage coordination with PPA participants.
5. CAISO settlements and disaggregating amounts between SVCE and 3CE.
   a. Include detailed settlement data for verification and planning.
6. Reporting on performance and verification metrics.
7. Support related compliance reporting, including but not limited to RA, RPS and GHG reporting, as appropriate.
8. Operational meetings with SVCE and 3CE to discuss performance and update bidding strategies. Starting daily and moving to weekly as Parties become comfortable with resource performance. Meetings will be more frequent as current conditions warrant.
9. SVCE and 3CE will be responsible for all CAISO Transactions imposed as a result of scheduling and/or bidding.
   a. SVCE and 3CE will pay all CAISO Transaction costs and receive all CAISO Transaction payments for all relevant ISO Charge Codes.
   b. With ZGlobal as the SC, 3CE and SVCE will pay all costs net costs to ZGlobal within 2 business days of being billed by ZGlobal. ZGlobal will pay all net receipts within two business days of receipt.
10. ZGlobal does not wish to finance payment of CAISO bills. As such, if ZGlobal is the Scheduling Coordinator, ZGlobal at its reasonable discretion may require SVCE and 3CE to deposit amounts to ZGlobal consistent with ZGlobal’s estimate of amounts to be owed to the CAISO. Examples of reasonable discretion include failure to make timely payment in item 9 above and the potential of a large billing requirement. Specifically:
   a. Deposits must be delivered within 5 days of notice of required deposit.
   b. Money will only be held on deposit by ZGlobal when net funds are expected to be owed to the CAISO.
   c. Total funds shall not exceed thirty days of estimated CAISO net billing amount at any time.
   d. In any case, all funds held by ZGlobal will be returned to SVCE and 3CE within five days after the termination of this Agreement.
Data Delivery Services
1. Deliver detailed modeling, meter, scheduling, and settlement data by resource as appropriate by resource. Data will be delivered in an agreed-upon format to all Parties. Such format is not to change other than by CAISO data provision change unless otherwise negotiated.

SVCE and 3CE Responsibilities
1. Provide information for initiation of service for any given resource in a timely fashion.
2. Provide information for bidding and scheduling resources in a timely fashion.
3. Meet CAISO financial obligations, both making and receiving payment.
4. Pay for SC services in a timely fashion.
5. Provide “landing zone” for data services.
Exhibit B – Payment Terms & Fees

Invoices Issued become payable according to the following.

1. CAISO Transactions – Net 2 business days after invoice
2. ZGlobal for Generation Services – Net 10 business days after invoice

Generation Services Fees

Fees for the One-Time Setup Services & Development of Initial Bidding/Scheduling Strategy

1. Solar plus Storage, as SC - $2,520/project
2. Solar plus Storage, not SC - $1,210/project
3. Solar, no Storage, as SC - $500/project
4. Solar, no Storage, not SC - $250/project
5. Wind plus Storage, as SC - $2,520/project
6. Wind plus Storage, not SC - $1,210/project
7. Wind, no Storage, as SC - $500/project
8. Wind, no Storage, not SC - $250/project
9. Storage only, as SC - $1,750/project
10. Storage only, not SC - $800/project
11. Any other Project, as SC – $500/project
12. Any other Project, not SC - $250/project

A project is defined as a facility at a single location, regardless of the number of CAISO Resource IDs associated with the facility. For example, a Solar plus Storage project with a Co-Located configuration would have four CAISO Resource IDs, two for 3CE and two for SVCE. This would count as one project for the purposes of these Fees.

Fees for the Operations and Data Delivery Services

1. 1-6 Projects - $11,904/Month
2. 7-15 Projects - $14,880/Month
3. 16-25 Projects - $21,105/Month
4. 26-35 Projects - $27,790/Month

A Project is defined as a facility at a single location, regardless of the number of CAISO Resource IDs associated with the facility. For example, a Solar plus Storage project with a Co-Located configuration would have four CAISO Resource IDs, two for 3CE and two for SVCE. This would count as one Project for the purposes of these Fees.
**Payment Split for Generation Services**

These are default splits in place until superseded by a joint operations agreement between 3CE and SVCE, as discussed in the Agreement. In all cases one hundred percent of the properly invoiced amount will be paid to ZGlobal.

1. SVCE – 50%
2. 3CE – 50%

**CAISO Transactions**

ZGlobal shall provide Generation Services as the Scheduling Coordinator representing 3CE and SVCE in the CAISO. ZGlobal shall provide 3CE and SVCE with a statement of CAISO settlement activities on a regular basis in coordination with CAISO’s settlement calendar.

Additionally, each month ZGlobal shall provide 3CE and SVCE with an aggregate or estimate of CAISO Transactions based on available information from CAISO. For CAISO Transactions executed by ZGlobal as principal for 3CE's and SVCE's generation accounts within CAISO, 3CE & SVCE shall pay ZGlobal for the CAISO Transactions when balances are owed to the CAISO, and ZGlobal shall pay 3CE & SVCE for CAISO Transactions when balances are payable from the CAISO. All Parties agree to make payments in a timely manner.

In all cases one hundred percent of the CAISO Transactions will be paid so ZGlobal is held harmless.

These are default splits in place until superseded by a joint operations agreement between 3CE and SVCE, as discussed in the Agreement.

1. Schedule Based Changes – 50% SVCE, 50% 3CE
2. Energy and Capacity Based Charges/Credits – Share of Schedule
Exhibit C – New Project Addition Form

Note that this Form may be updated upon written Agreement of the Parties without requiring an Amendment to the Agreement.

1 Introduction

To ensure the orderly addition of units, the cost of initiation, and cost of operations as new units are added, this form or one substantially similar containing at a minimum the details below will be used to document the addition of new projects to receive service under this Agreement.

2 New Project Details

Notice Date : ______________________
PPA Add Date : ______________________
PPA Name : ______________________
Unit Type : ______________________
Buyer SC (y/n) : _____

Fee for the One-Time Setup Services & Development of Initial Bidding/Scheduling Strategy
$___________

Total PPAs currently being scheduled plus this new project: _______

Monthly Fees for the Operations and Data Delivery Services, after addition of new project:
$___________

PPA included with notice (y/n): ______

Notes and Comments:
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Staff Report – Item 1e

Item 1e: Authorize the Chief Executive Officer to Execute Agreement with ev.energy for a Full-Scale GridShift: EV Charging Program

From: Girish Balachandran, CEO

Prepared by: Rebecca Fang, Associate Data Analyst
Aimee Bailey, Director of Decarbonization & Grid Innovation Programs

Date: 5/12/2021

RECOMMENDATION
Staff recommends the Board authorize the CEO to execute the attached agreement with non-substantive changes approved by the CEO and subject to final review and approval by the General Counsel with a cost not-to-exceed amount of $400,000 with ev.energy, to scale the GridShift: EV Charging pilot to a full program.

BACKGROUND
Ev.energy was selected through SVCE’s fall 2019 application round for the Innovation Onramp program that focused on mobility. The application cycle was highly competitive, with dozens of applications submitted, including multiple from ev.energy competitors that also focused on a smart electric vehicle (EV) charging app offering for residential customers. The pilot was to demonstrate the value and viability of a mobile application (app) based customer offering to facilitate smart electric vehicle (EV) charging to lower costs and emissions. SVCE branded the pilot as “GridShift: EV Charging” for our customers. To participate in the pilot, customers downloaded the SVCE-branded app, connected their vehicles, and set preferences (e.g. that the vehicle must be fully charged by 7AM every day). Then, the ev.energy platform automatically optimized their charging to minimize retail electricity bills and reduce grid emissions.

The pilot agreement was executed in May 2020 for a not-to-exceed (NTE) amount of $99,000. An amendment was made in April 2021 to extend the pilot contract by up to three months to allow SVCE and ev.energy to continue providing managed EV charging services to pilot participants while staff carried out a pilot evaluation. This contract amendment added $13,500, making a new NTE of $112,500 over two fiscal years.

This pilot falls under the umbrella of SVCE’s virtual power plant (VPP) program activities, given that the cloud-based aggregation of participant EVs can respond to SVCE signals to charge or curtail based grid conditions. This type of VPP resource can be leveraged to support grid reliability.

ANALYSIS & DISCUSSION

Pilot Results
Through the GridShift: EV Charging pilot, SVCE and ev.energy provided managed EV charging services to 79 participating vehicles. Over the course of a 6-month pilot period, participants are estimated to have saved over $5,000 in energy bill costs. In addition, low-carbon events that were conducted over a 2-month period resulted in over 4,400 lbs of CO2 emissions saved.

In April, SVCE worked with our evaluation, measurement and verification (EM&V) consultant ADM to conduct a participant survey to evaluate customer satisfaction with the GridShift: EV Charging pilot. The survey found that...
around 66% of respondents would recommend the GridShift app (33% unconditionally and 33% conditionally). Key benefits of the GridShift: EV Charging pilot include reduction of carbon impacts (cited by 88%) and lowering of charging costs (cited by 71%). Multiple comments and input from participants informed planned improvements to the app and customer experience for the proposed scaled program.

2021 Summer Readiness
In the wake of the August 2020 blackouts, CAISO, state regulators, SVCE and other stakeholders have prioritized several near-, mid- and longer-term measures to ensure grid reliability in summer 2021 and beyond. A key strategy identified by stakeholders is specifically an increase in availability of and participation in VPP programs, which provide critical demand-side flexibility during times of grid stress. In response to the rotating outages in 2020, SVCE’s 2021 summer readiness goals necessitates additional demand flexibility. A scale-up GridShift: EV Charging program would provide SVCE with demand flexibility on the order of 1 MW (650 EVs) by summer 2021, which could scale to several megawatts and thousands of vehicles in the coming years.

Staff Proposal
Staff carried out an informal bid process for the scope of services included in the proposed agreement, to assess the current capabilities of competitors and ensure competitive pricing. Based on experience from the pilot as well as the results from the informal bid process, staff propose scaling the GridShift: EV Charging program with ev.energy via the draft contract agreement (Attachment 1). This will enable SVCE to continue providing managed EV charging services to SVCE customers and to address key points of survey feedback through improved communications and streamlining the customer experience. In addition to supporting 2021 summer readiness goals, the scaled-up program is expected to serve as an important program offering to help residential customers reduce energy costs as SVCE transitions to TOU rates in June 2021.

In order for SVCE to implement the scaled-up program this summer, staff in consultation with General Counsel has been negotiating final changes to the contract right up to the agenda deadline. If the Board authorizes the execution of the proposed new agreement with ev.energy, General Counsel will conduct a final review of the agreement and make any necessary changes to ensure that the contract terms are consistent and adequately protect the legal interests of SVCE.

STRATEGIC PLAN
The proposal supports SVCE’s updated 2020-2021 Strategic Plan Goal 12, which is to “enact competitive service offerings and programs that deliver measurable environmental and economic benefits”, by providing SVCE customers with a managed EV charging program to reduce the cost and emissions impact of their home EV charging. This program will also support SVCE communities and the state in achieving grid reliability goals and objectives for the 2021 summer season and beyond.

FISCAL IMPACT
The Board adopted the Decarbonization Strategy and Programs Roadmap in December 2018 (Resolution No. 2018-20), which included an initial budget allocation of $1.1M for the implementation of virtual power plant (VPP) programs. The proposed agreement with a not-to-exceed amount of $400,000 remains within the Board-approved VPP programs budget. Therefore, the staff proposal has no incremental fiscal impact.

ATTACHMENTS
1. Draft Agreement with ev.energy for GridShift: EV Charging Pilot Program Scale-Up
MASTER AGREEMENT
SOFTWARE AS A SERVICE

This agreement ("Agreement") is entered into and is effective as of May 13, 2021 ("Effective Date"), by and between Silicon Valley Clean Energy, an independent public agency located at 333 W El Camino Real, #330, Sunnyvale, California 94087 ("SVCE") and EV.ENERGY CORP., a Delaware Corporation limited by shares with offices at 437 Kipling Street, Palo Alto, California 94301 ("Service Provider").

RECITALS

WHEREAS, SVCE requires third-party hosted “software as a service” services, as further described herein, with respect to certain of its information technology needs;

WHEREAS, SVCE requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to SVCE to perform such Services on behalf of SVCE;

WHEREAS, based on Service Provider’s superior knowledge and experience relating to such Services, SVCE has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of SVCE’s data are critical to the operation of SVCE’s business; and,

WHEREAS, Service Provider has agreed to provide the Services to SVCE, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein, the term (the “Initial Term”) shall commence on the Effective Date and continue for three (3) years. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement may be renewed for an indefinite number of successive one (1) year terms (each, a “Renewal Term”) upon mutual written agreement of the parties.

2. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to license to SVCE certain hosted software and provide all other services necessary for productive use of such software including managed EV charging, priority hardware integrations, customer marketing, recruitment and on-boarding, customer support and troubleshooting, customer data monitoring and reporting, and continuous data security (collectively, the “Services”) as further set forth in Exhibit “A” attached hereto.

2.1 Authorized SVCE Users. Unless otherwise limited herein, Service Provider grants SVCE a renewable, irrevocable, nonexclusive, royalty-free, and worldwide right and license for any SVCE employee, contractor, or agent, or any other individual or entity authorized by SVCE (each, an “Authorized SVCE User”) to access and use the business-focused Services, including, for instance the web-based data portal, access to confidential program data, etc.
2.2 **Authorized Users.** Unless otherwise limited herein, Service Provider grants SVCE a renewable, irrevocable, nonexclusive, royalty-free, and worldwide right and license for each compatible electric vehicle ("EV") or electric vehicle service equipment ("EVSE") (each, an “Authorized User”) to access and use the Services. For the avoidance of doubt, a customer may utilize both a compatible EV and a compatible EVSE as part of their access to the Services and only be counted once as an Authorized User. However, if a customer utilizes multiple EVs as part of the Services, each EV will separately be counted as an Authorized User. An Authorized User will be counted and invoiced to SVCE unless marked as dormant and removed by SVCE from the program. Other than any limitations otherwise described herein, Authorized Users will have no other limitations on their access to or use of the Services.

2.3 **Acknowledgement of License Grant.** For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a grant of license to use intellectual property in software form, to SVCE by the Service Provider.

2.4 **Changes in Number of Authorized Users.** Service Provider will invoice SVCE for an initial number of up to 100 Authorized Users ("Minimum Commitment") and Service Provider shall invoice SVCE for monthly Service Fees no lower than this Minimum Commitment. Should SVCE elect to increase the number of Authorized Users, Service Provider shall increase its Service Fees for subsequent calendar months in line with the pricing tiers specified in Exhibit A.

2.5 **Control and Location of Services.** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of SVCE. Except as otherwise expressly set forth in Exhibit A, the Services (including all data storage), shall be stored at rest within the continental United States, European Union or United Kingdom and on computing and data storage devices residing therein, and all such locations shall be disclosed to SVCE annually and within thirty (30) days of the effective date of this Agreement. SVCE acknowledges that from time to time the Service Provider may temporarily access a limited set of data from outside of these geographies, for example during international travel or if a subcontractor is temporarily based outside of these geographies.

2.6 **Subcontractors.** Service Provider reserves the right to enter into subcontracts for the performance of a subset of the Services as part of this Agreement, subject to SVCE’s written approval. If newly appointed subcontractors will be involved in processing personal information on behalf of SVCE, the Service Provider will notify SVCE by updating the list of subcontractors used in the Service Provider’s privacy policy, which can be found on its website here: https://ev.energy/privacy-policy/. Service Provider’s use of subcontractors shall not relieve Service Provider of any of its duties or obligations under this Agreement.

2.7 **Development and Test Environments.** The Service Provider shall not usually notify SVCE of any new releases to the mobile application or software, but will notify SVCE in advance of any new releases or updates that affect the core functionality of the Services. The Service Provider will notify SVCE how the new releases or updates differ in the functionality, performance, and compatibility of the software and Services before such new releases are deployed into live production. SVCE is entitled to test the functionality using a test version of the software at no additional charge.

2.8 **Documentation.** The documentation for the Services ("Documentation") will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. SVCE shall have the right to make any number of additional copies of the Documentation at no additional charge.

2.9 **Changes in Functionality.** During the term of this Agreement, Service Provider shall not reduce or eliminate functionality in the Services. Where Service Provider has reduced or eliminated functionality in the Services, SVCE, at SVCE’s sole election and in SVCE’s sole determination,
shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis. Where Service Provider increases functionality in the Services, such functionality shall be provided to SVCE without any increase in the Services Fees unless the functionality or feature was requested and agreed to by SVCE, in which case Service Provider shall invoice SVCE for the mutually-agreed associated costs as described in §2.6.

2.10 No Effect of Click-Through Terms and Conditions. Where an Authorized SVCE User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement. Where an Authorized User (i.e. GridShift program participant) is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions may be binding if reviewed and agreed upon by SVCE.

2.11 Modification of the Services. SVCE’s Director of Information Technology shall be authorized to waive, in writing, any of the Service Provider’s obligations with respect to the Services, where deemed to be in SVCE’s best interests, provided that no such modification shall result in any increase in the amount of the Services Fees.

2.12 Compliance with All Laws. Service Provider shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Service Provider shall, at all times, observe and comply with all such applicable laws and regulations, including, but not limited to the Americans with Disabilities Act. SVCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Service Provider to comply with this paragraph.

3. Service Levels.

3.1 Service Levels. For the term of this Agreement, Service Provider shall provide the Services, force majeure events excepted, during the applicable Service Periods and in accordance with the applicable Service Level Standards, each as described in Exhibit A hereto.

3.2 Service Level Reporting. On a quarterly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting period, Service Provider shall provide reports to SVCE describing the performance of the Services and of Service Provider as compared to the Service Level Standards. The report shall be in a form agreed to by SVCE, and, in no case, shall contain less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; (c) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved; and, (d) any Performance Credit due to SVCE. Service Provider and SVCE will meet quarterly to review the performance of Service Provider as it relates to the Service Levels. Where Service Provider fails to provide a report for a Service Level in the applicable timeframe, the Service Level shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Service Provider shall, without charge, make SVCE’s historical Service Level reports available to SVCE upon request.

3.3 Failure to Meet Service Level Standards. In the event Service Provider does not meet a Service Level Standard, Service Provider shall: (a) owe to SVCE any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.
In no case shall SVCE be required to notify Service Provider that a Performance Credit is due as a condition of payment of the same.

3.4 **Termination for Material and Repeated Failures.** SVCE shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement, and be entitled to a return of any pro-rated fees where Service Provider fails to meet any Service Level Standard: (a) to such an extent that the SVCE’s ability, as solely determined by SVCE, to use the Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

3.5 **Audit of Service Levels.** No more than annually, SVCE or SVCE’s agent shall have the right to audit Service Provider’s books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit, at SVCE’s own cost. Where it is determined that any Performance Credit was due to SVCE but not paid, Service Provider shall immediately owe to SVCE the applicable Performance Credit.

4. **Support; Maintenance; Additional Services.**

4.1 **Technical Support.** Service Provider shall provide the Technical Support as described in Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.

4.2 **Maintenance.** Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; (d) the mobile app Services work with the then-current version and the three prior versions of Apple iOS and Google Android mobile operating systems; and (e) the web-based data portal Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome internet browsers. The Services Fees shall be inclusive of the fees for maintenance except where explicitly stated in Exhibit A as they relate to external data ingestion fees.

4.2.1 **Required Notice of Maintenance.** Unless as otherwise agreed to by SVCE on a case-by-case basis, Service Provider shall provide no less than thirty (30) calendar day’s prior written notice to SVCE of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to SVCE and in any circumstance no later than one (1) business day following the implementation of the emergency maintenance.

4.2.2 **Acceptance of Non-Emergency Maintenance.** For non-emergency maintenance, only on an exceptional basis and upon written request to the Service Provider shall SVCE have a mutually agreed-upon period to test any maintenance changes prior to Service Provider introducing such maintenance changes into production (the “Maintenance Acceptance Period”). In the event that SVCE rejects, for good cause, any maintenance changes during the Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if SVCE has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by SVCE and Service Provider shall be entitled to introduce the maintenance changes into production.
4.3 **Customization / Integration Services.** Service Provider shall provide the Customization / Integration Services, if any, described in Exhibit A. The Services Fees shall be in addition to the fees for the Customization / Integration Services.

4.4 **Training Services.** Service Provider shall provide the Training Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.

5. **Audit Rights of Service Provider.** Service Provider shall have no right to conduct an on-premises audit of SVCE’s compliance with the use of the Services. No more than once annually, Service Provider shall have the right to request from SVCE its certification of compliance with the permitted number of Authorized Users. Where the actual number of users exceeds the permitted number of Authorized Users, SVCE, at SVCE’s sole election shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Service Provider; or, (b) acquire the appropriate number of Authorized Users’ licenses at the rate specified in Exhibit A so as to be in compliance with the permitted number of Authorized Users.

6. **Change Control Procedure.** SVCE may, upon written notice, request changes to the scope of the Services under Exhibit A. If SVCE requests an increase in the scope, SVCE shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify SVCE whether or not the change has an associated cost impact. If SVCE approves, SVCE shall issue a change order, which will be executed by the Service Provider. SVCE shall have the right to decrease the scope, and the associated fees will be reduced accordingly.

7. **Termination; Renewals.**

7.1 **Termination for Convenience.** Without limiting the right of a party to terminate this Agreement as provided for in this Agreement, either Party may terminate this Agreement for convenience upon not less than two (2) months’ prior written notice to the other Party.

7.2 **Termination for Cause.** Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party’s sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.

7.3 **Termination for late payment.** The Service Provider may terminate this agreement with immediate effect if SVCE fails to make payment within 30 calendar days of written notice of arrears which have accumulated to a value greater than or equal to $20,000 worth of previously raised and overdue invoices.

7.4 **Payments upon Termination.** Upon the termination of this Agreement, SVCE shall pay to Service Provider all undisputed and/or pro-rated amounts due and payable hereunder, if any, and Service Provider shall pay to SVCE all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.

7.5 **Return of SVCE Data.** Upon the termination of this Agreement, Service Provider shall, within fourteen (14) business days following the termination of this Agreement, provide SVCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the SVCE Data in the format specified by SVCE. Further, Service Provider shall certify to SVCE the destruction of any SVCE Data within the possession or control of Service Provider, in accordance with Section 12.5, but such destruction shall occur only after the SVCE Data has been returned to SVCE. This Section shall survive the termination of this Agreement.
7.6 **Renewals.** Should the Services continue beyond the Initial Term, the Services Fees for the Renewal Term may be increased no more than ten percent (10%) of the previous year’s Service Fees on an annualized basis.

8. **Transition Services.** Service Provider will provide to SVCE and/or to the service provider selected by SVCE ("Successor Service Provider") assistance reasonably requested by SVCE to effect the orderly transition of the Services, in whole or in part, to SVCE or to Successor Service Provider ("Transition Services") following the termination of this Agreement, in whole or in part. The Transition Services may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to SVCE or Successor Service Provider; (b) if required, transferring the SVCE Data to Successor Service Provider; (c) using commercially reasonable efforts to assist SVCE in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services; (d) using commercially reasonable efforts to make available to SVCE, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and, (e) such other activities upon which the parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

9. **Fees; Billing.** SVCE shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained in this Agreement. Any sum due Service Provider for the Services for which payment is not otherwise specified shall be due and payable no later than thirty (30) business days after receipt by SVCE of an invoice from Service Provider.

9.1 **Billing Procedures.** Service Provider shall bill to SVCE the sums due pursuant to Exhibit A by Service Provider’s invoice, which shall contain: (a) SVCE’s purchase order number, if any, and Service Provider’s invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d) taxes, if any; (e) any Performance Credits or other credits; and, (f) total amount due. Service Provider shall forward invoices in electronic format to the email address of the designated SVCE program manager and invoices@svcleanenergy.org.

9.2 **Taxes.** Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that SVCE is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.

9.3 **Credits.** Any amounts due to SVCE, such as a Performance Credit, from Service Provider may be applied by SVCE, at the sole election of SVCE, against any current or future fees due to Service Provider. Any such amounts that are not so applied by SVCE shall be paid to SVCE by Service Provider within thirty (30) calendar days following SVCE’s request. This Section shall survive the termination of this Agreement.

9.4 **Non-binding Terms.** Any terms and conditions included in a Service Provider invoice shall be deemed to be solely for the convenience of the Service Provider, and no such term or condition shall be binding upon the SVCE.

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

9.6 **Billing Reviews by Third-Party.** For purposes of determining the competitiveness and appropriateness of fees charged to SVCE by Service Provider, SVCE is entitled to disclose to a third-party this Agreement, and any other data pertaining to fees paid or payable by SVCE to Service Provider.
9.7 **No Suspension of Services.** Service Provider shall not suspend any part of the Services where: (a) SVCE is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but undisputed amount due to Service Provider is less than ninety (90) business days in arrears.

10. **Representations and Warranties.**

10.1 **Mutual.** SVCE and Service Provider represent and warrant that:

10.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;

10.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;

10.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors’ rights generally and by general equitable principles;

10.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement and;

10.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

10.2 **By Service Provider.** Service Provider represents and warrants that:

10.2.1 it is in the business of providing the Services;

10.2.2 the Services are fit for the ordinary purposes for which they will be used;

10.2.3 it is possessed of superior knowledge with respect to the Services;

10.2.4 it acknowledges that SVCE is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to SVCE;

10.2.5 it knows the particular purpose for which the Services are required by SVCE;

10.2.6 it is the lawful licensee or owner of the Services (excluding any SVCE Data therein) and has all the necessary rights in the Services to grant the use of the Services to SVCE;

10.2.7 any open-source software provided by the Service Provider may be used according to the terms and conditions of the specific license under which the relevant Open-Source Software is distributed, but is provided ‘as is’;

10.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement; it has
the expertise to perform the Services in a competent, workmanlike, and professional manner;

10.2.9 it will use its best efforts to ensure that no computer viruses, worms, malware, or similar items (collectively, a “Virus”) are introduced into SVCE’s computing and network environment by the Services, and that, where it transfers a Virus to SVCE through the Services, it shall reimburse SVCE the actual cost incurred by SVCE to remove or recover from the Virus, including the costs of persons employed by SVCE to perform such services;

10.2.10 the Services are free of any mechanism which may disable the Services and Service Provider warrants that no loss of SVCE Data will result from such items if present in the Services;

10.2.11 in the case of SVCE’s reasonable dispute of any Service Provider invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of SVCE Data; and the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation.

10.3 No representation or warranty is given by the Service Provider:

10.3.1 that all faults will be fixed within a specified period, with the exception of faults where that fall within defined service response levels outlined in this Agreement,

10.3.2 that third parties will enable continued access to control and/or data from EVs and EVSEs.

10.4 All other conditions, warranties or other terms which might have effect between the parties or be implied into this Agreement by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

10.5 Any unauthorized modifications to or improper use of the Services by, or on behalf of, SVCE and its Authorized Users shall render all Contractor's warranties and obligations under this Agreement null and void.

11. SVCE Data.

11.1 Ownership. SVCE’s data (“SVCE Data,” which shall also be known and treated by Service Provider as Confidential Information) shall include: (a) SVCE’s data collected, accessed, used, processed, stored, or generated as the result of the SVCE’s use of the Services; and, (b) personally identifiable information (“PII”) collected, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual’s social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements listed herein. Except where subject to a third party’s intellectual property rights, all SVCE Data is and shall remain the sole and exclusive property of SVCE and all right, title, and interest in the same belongs to SVCE. This Section shall survive the termination of this Agreement.

11.2 Service Provider Use of SVCE Data. Service Provider is provided a limited license to access SVCE Data for the sole and exclusive purpose of providing the Services, including a license to collect,
process, store, generate, and display SVCE Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain SVCE Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose SVCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c) allow access to SVCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make a available SVCE Data for Service Provider’s own purposes or for the benefit of anyone other than SVCE without SVCE’s prior written consent. This Section shall survive the termination of this Agreement.

11.3 Access to, and Extraction of SVCE Data. SVCE shall have full and complete access to, and ability to download, its SVCE Data 24 hours per day, 7 days per week, except during authorized periods of maintenance by Service Provider. Further, Service Provider shall, within one (1) business day of SVCE’s request, provide SVCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any fees due to Service Provider), an extract of the SVCE Data in the format specified by SVCE. In the event SVCE gives Service Provider written notice of a “litigation hold”, then as to all data identified in such notice, Service Provider shall, at no additional cost to SVCE, isolate and preserve all such data pending receipt of further direction from the SVCE.

11.4 Backup and Recovery of SVCE Data. As a part of the Services, Service Provider is responsible for maintaining a backup of SVCE Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in Exhibit A, Service Provider shall maintain a contemporaneous backup of SVCE Data that can be recovered within two (2) hours at any point in time. Any backups of SVCE Data shall not be considered in calculating storage used by SVCE.

11.5 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of SVCE Data or the physical, technical, administrative, or organizational safeguards put in place by Service Provider that relate to the protection of the security, confidentiality, or integrity of SVCE Data, Service Provider shall, as applicable: (a) notify SVCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with SVCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by SVCE; (c) in the case of PII, at SVCE’s sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse SVCE for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting SVCE’s obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless SVCE for any and all Claims (as defined herein), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from SVCE in connection with the occurrence; (g) be responsible for recreating lost SVCE Data in the manner and on the schedule set by SVCE without charge to SVCE; and, (h) provide to SVCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Service Provider will undertake to prevent a future occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Service Provider’s representative; a
12. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

12.1 **Meaning of Confidential Information.** For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. Except for electric and gas usage information provided to Service Provider pursuant to this Agreement, the term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, SVCE Data shall be deemed to be Confidential Information.

12.2 **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement, or as required by law. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

12.3 **Cooperation to Prevent Disclosure of Confidential Information.** Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 6250 et seq.). If a request under the California Public Records Act is made to view Service Provider’s Confidential Information, SVCE shall notify Service Provider of the request and the date that such records will be released to the requester unless Service Provider obtains a court order enjoining that disclosure. If Service Provider fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.

12.4 **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of SVCE, at the sole election of SVCE, the immediate termination, without liability to SVCE, of this Agreement.
12.5 **Surrender of Confidential Information upon Termination.** Upon termination of this Agreement or an Exhibit A, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which is in such party's possession, custody, or control; provided, however, that Service Provider shall return SVCE Data to SVCE following the timeframe and procedure described further in this Agreement. Should Service Provider or SVCE determine that the return of any SVCE Data or non-SVCE Data Confidential Information is not feasible, Service Provider shall destroy the data comprising such Confidential Information in compliance with the most current version of NIST standard SP800-88, or other standard acceptable to the SVCE, and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

13. **Data Privacy and Information Security.**

13.1 **Undertaking by Service Provider.** Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing, maintaining, and providing a written description to SVCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the SVCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the SVCE Data; (c) protect against unauthorized disclosure, access to, or use of the SVCE Data; (d) ensure the proper disposal of SVCE Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program used to protect SVCE Data be less stringent than the safeguards used by Service Provider for its own data.

If the Services include handling credit card information, then the Service Provider shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Service Provider agrees and warrants that it is responsible for the security of “cardholder data” that Service Provider possesses, stores, processes, or transmits on behalf of the SVCE, and for any impact on the security of SVCE’s cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the Services.

13.2 **Audit by Service Provider.** At SVCE’s request and sole cost to bear, Service Provider shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to SVCE.

13.3 **Right of Audit by SVCE.** Without limiting any other audit rights of SVCE, SVCE shall have the right to review Service Provider’s data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, upon request by SVCE and at most one (1) time per calendar year, Service Provider agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by SVCE regarding Service Provider’s data privacy and information security program.

13.4 **Audit Findings.** Service Provider shall implement any required safeguards as identified by SVCE or by any audit of Service Provider’s data privacy and information security program.

13.5 **Pattern of Violations.** It shall be considered a material breach of this Agreement if Service Provider engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Service Provider understands that if SVCE finds that Service Provider is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement SVCE shall promptly cease all disclosures of Confidential Information to Service Provider. Service Provider further understands that if SVCE receives a customer complaint about Service Provider’s misuse of data or other violation of the Disclosure Provisions, SVCE shall promptly cease disclosing that
customer’s information to Service Provider and shall notify the California Public Utilities Commission (“CPUC”) of the complaint.

13.6 **CPUC Compliance.** Service Provider shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

13.7 **Injunction, Specific Performance or Such Other Relief.** Service Provider acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Service Provider hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Service Provider or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.

13.8 **SVCE’s Right to Termination for Deficiencies.** SVCE reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if SVCE reasonably determines that Service Provider fails or has failed to meet its obligations under this Section.

14. **Proprietary Rights.**

14.1 **Intellectual Property Ownership.** The intellectual property of the software Services provided by the Service Provider (other than open-source software and third-party software) are, and shall remain, the property of the Service Provider, and the Service Provider reserves the right to grant a license to use its software Services to any other party or parties. SVCE acquires no rights in or to the Service Provider’s software and accompanying documentation other than those expressly granted by this Agreement. SVCE shall not permit any third parties (apart from Authorized Users and Authorized SVCE Users) to access the Service Provider’s software and/or Services without its prior written consent.

14.2 **Pre-existing Materials.** SVCE acknowledges that, in the course of performing the Services, Service Provider may use software and related application programming interfaces (“APIs”), algorithms, codes, methodologies and designs that have been previously developed by Service Provider (collectively, the “Pre-existing Materials,” which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.

14.3 **No License.** Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

14.4 **Infringement of Intellectual Property.** SVCE shall use commercially reasonable efforts to prevent any infringement of the Service Provider’s Intellectual Property Rights in the Contractor Software and shall promptly report to the Service Provider any such infringement that comes to its attention.

14.5 **No sub-license.** SVCE shall not sub-license, rent, lend, assign, or transfer the software and Services of the Service Provider, to any other entity other than to Authorized Users as outlined in this Agreement, without the prior written consent of the Service Provider.

14.6 The provisions of this Section shall survive the termination of this Agreement.

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

15.2 **Proprietary Rights Indemnification.** Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that SVCE is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Service Provider shall, at its expense: (a) obtain for SVCE the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by SVCE; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforesaid, Service Providers shall reimburse to SVCE any prepaid fees and support SVCE at zero cost with any request for Transition Services.

15.3 **Indemnification Procedures.** Promptly after receipt by SVCE of a threat, notice, or filing of any Claim against an Indemnitee, SVCE shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and SVCE shall not independently defend or respond to a Claim; provided, however, that: (a) SVCE may defend or respond to a Claim, at Service Provider’s expense, if SVCE’s counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) SVCE shall have the right, at its own expense, to monitor Service Provider’s defense of a Claim. At Service Provider’s request, SVCE shall reasonably cooperate with Service Provider in defending a claim or settling a Claim; provided, however, that Service Provider shall reimburse SVCE for all reasonable out-of-pocket costs incurred by SVCE (including, without limitation, reasonable attorneys’ fees and expenses) in providing such cooperation.

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

15.5 **Insurance.** Unless otherwise approved in writing by SVCE’s risk manager, Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Service
Provider, pursuant to this Agreement: commercial general liability ($1,000,000 per occurrence, $2,000,000 aggregate); excess liability ($2,000,000 per occurrence, $2,000,000 aggregate); workers’ compensation (statutory limits) and employers’ liability ($500,000 per accident); cyber liability ($5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of SVCE Data; (ii) data breach including theft, destruction, and/or unauthorized use of SVCE Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of SVCE Data; and professional liability ($1,000,000 per occurrence, $1,000,000 aggregate). Any of the foregoing policy limits shall be subject to modification by the SVCE’s risk manager upon thirty (30) days prior, written notice to Service Provider, and at any time prior to commencement of the Services.

The Indemnitees shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses. Service Provider shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Service Provider waives all rights of subrogation with respect to said policies. Such policies shall require that SVCE be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. SVCE shall have the right to request (with Service Provider’s mutual agreement) an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Service Provider’s exposure to SVCE increases. Service Provider shall provide SVCE with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide SVCE with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

16. General

16.1 Relationship between SVCE and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for SVCE or in any way to bind or to commit SVCE to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of SVCE. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of SVCE. In recognition of Service Provider’s status as an independent contractor, SVCE shall carry no Workers’ Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider’s agents or staff, if any. SVCE shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of SVCE.

16.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the County of Santa Clara, State of California, in all questions and controversies arising out of this Agreement.

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

16.4 Compliance with Laws; SVCE Policies and Procedures. Service Provider agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable.
Service Provider shall comply with SVCE policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.

16.5 **Cooperation.** Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any SVCE supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to SVCE, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.

16.6 **Force Majeure; Excused Performance.** Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood, pandemic or other natural catastrophe, governmental legislation, acts, orders, or regulation including “shelter-in-place” orders, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plan to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of SVCE Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Service Provider’s subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced or permitted to be introduced, by Service Provider that result in an outage or inability for SVCE to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan (“Business Continuity Plan”) to SVCE upon SVCE’s request. The Business Continuity Plan shall include: (a) Services and SVCE Data backup and recovery procedures, including procedures and resources for disaster recovery; (b) fail-over procedures; and, (c) how Service Provider will interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to SVCE upon SVCE’s request.

16.7 **Advertising and Publicity.** Service Provider shall not refer to SVCE directly or indirectly in any advertisement, news release, or publication, or use any SVCE logo, seal or mark, without prior written approval from SVCE.

16.8 **No Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party’s right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

16.9 **Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be given by email or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by email shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee. For notices given by email, addressee shall provide acknowledgement.
within 10 business days of receipt. If the sender does not receive acknowledgement from the addressee within 10 business days, the notice shall then be given by certified mail.

16.10 **Assignment of Agreement.** This Agreement and the obligations of Service Provider hereunder are personal to Service Provider. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of SVCE. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. SVCE, at SVCE’s sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of SVCE’s business.

16.11 **Counterparts; Facsimile/PDF/Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

16.12 ** Entire Agreement.** This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between SVCE and Service Provider as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

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

16.14 **No Recourse against Constituent Members of Authority.** SVCE is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Service Provider shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE’s constituent members in connection with this Agreement.

16.15 **Non-Discrimination.** In the performance of this Agreement, Service Provider, and any subcontractor of Service Provider shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Service Provider shall have responsibility for compliance with this Section.

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

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

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

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

16.20 Exclusivity. The Service Provider shall be free to work with other community choice aggregators, energy utilities, energy retailers, and energy service companies as required by its business model. This notwithstanding, the Service Provider shall provide SVCE visibility into the number of SVCE customers to whom it is providing EV charging services outside of the GridShift program, and commits to collaborating with SVCE to originate said customers onto the GridShift program.

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

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

16.23 Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Service Provider’s proposal, the provisions of this Agreement shall control.
16.24 **Successors and Assigns.** The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

Executed on the dates set forth below by the undersigned authorized representative of SVCE and Service Provider to be effective as of the Effective Date.

**SILICON VALLEY CLEAN ENERGY (SVCE)**
By:
Name:
Title:
Date:

Addresses for Notice:
Email:
Mailing Address: 333 W El Camino Real, #330, Sunnyvale, CA 94087

**EV.ENERGY CORP. (SERVICE PROVIDER)**
By:
Name: Nick Woolley
Title: Director
Date:

Addresses for Notice:
E-mail: nick.woolley@ev.energy
Mailing address: 437 Kipling Street #200, Palo Alto, CA 94301
EXHIBIT A

STATEMENT OF SERVICES, SUPPORT, AND SERVICE LEVEL AGREEMENT

This Exhibit A - Statement of Services and Service Level Agreement shall be incorporated in and governed by the terms of that certain Master Software as a Service Agreement by and between SILICON VALLEY CLEAN ENERGY (“SVCE”) and EV.ENERGY CORP. (“Service Provider”) dated May 13, 2021, (“Agreement”). In the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description. Service Provider shall provide the following Services to SVCE through this Agreement:

a) Smart Energy Service development, configuration and deployment;
b) Smart Energy Service delivery;
c) Marketing Services;
d) Technical Support Services; and
e) Training Services.

Smart Energy Service development, configuration and deployment. Service Provider will provide the hardware integrations, mobile app features and utility data portal included in the non-Hardware Agreement between the Parties dated May 1, 2020. New hardware integrations and mobile app features may or may not be released and made available to Authorized Users in line with the Service Provider’s non-binding product roadmap. Customized or time-sensitive hardware integrations, data ingestion feeds or features for the Smart Energy Service will be delivered at the below prices in accordance with a mutually agreed upon set of requirements and timetable outlined in Exhibit B:

a) Vehicle telematic integrations: $15,000 per OEM
b) EVSE integrations: $15,000 per model
c) Event-based data ingestion feeds: $10,000 to build each feed, plus additional charges on a time & materials basis for any work required to update and/or maintain the functionality of these feeds (rate card to be provided)
d) Reporting on event performance & efficacy: chargeable on a time & materials basis; rate card to be shared

SVCE will be able to access each of the above via a mobile test environment upon delivery. Within five business days of the Service Provider’s delivery, SVCE shall review the additional integration, customization or feature to confirm that it meets and confirms to the mutually agreed upon set of requirements. Should the Service Provider fail in any material respect to conform with the requirements, SVCE shall give the Service Provider a detailed description of any such non-conformance, in writing, within the five-day review period. If SVCE does not provide any written comments in the five-day period described above, or the new integration/customization/feature is found to conform with SVCE’s requirements, then the Service Contractor shall consider its work to be deemed accepted and will deploy the work into a production environment ready for use by the Authorized Users.

Smart Energy Service delivery. Beginning on the effective date of this Agreement, and for the duration of the Agreement, the Service Provider shall provide managed EV charging services for Authorized Users. “Managed EV charging” shall mean the ability to wirelessly connect to the customer’s compatible EV or compatible EVSE, and control charging on/off to deliver a charging schedule that has been optimized to one or multiple variables set by SVCE for charging done at the customer’s primary residential address supplied by SVCE. These variables may include time-of-use rate pricing and hours and/or average or marginal carbon emissions from energy generation. The Service Provider will manage ongoing new releases and updates to the Smart Energy Service as it deems necessary to maintain functionality, performance and compatibility.

Service Provider shall also continue to provide a mobile application (“GridShift app”) designed with SVCE branding which allows SVCE customers to create an account, select or automatically be matched with their electricity rate, connect their compatible EV or compatible EVSE, receive notifications, set a ready-by time for scheduled managed charging, temporarily override managed charging, view approximate energy consumption and costs for historic charging sessions, disable managed EV charging, contact customer support, and revoke the Service Provider’s access to control their vehicle and/or EVSE.
In addition, Service Provider shall work with SVCE to design and deploy events, which are periods of time that SVCE customers are encouraged to either shift their charging toward or away from. Events will be designed around triggers such as: average or marginal carbon emissions from energy generation, grid reliability triggers (e.g. Flex Alerts, Emergency Load Reduction Program, Critical Peak Pricing/Peak Day Pricing), and SVCE-defined triggers. Service Provider shall maintain oversight over the event triggers through the data ingestion feeds built during Smart Energy Service development, configuration & deployment, but cannot make any guarantees about the efficacy or performance of such event triggers. SVCE shall provide the Service Provider with minimum thirty (30) days’ notice in advance of any changes to the source or nature of these event triggers. The procedure and communications required to call an event shall be mutually agreed upon by SVCE and Service Provider.

Additional detail on likely event triggers is included in Table 1 to indicate possible event frequencies, dispatch profiles, triggers, and processes for notification. Service Provider and SVCE shall work to further refine the event triggers, core attributes of each event type, and associated communication channel(s) to all or select Authorized Users, but the information in Table 1 sets the general expectation of types of integrations and activity that will be needed to support events.

<table>
<thead>
<tr>
<th>Event type</th>
<th>Flex Alert</th>
<th>ELRP</th>
<th>CPP/PDP</th>
<th>SVCE-defined reliability</th>
<th>Low-carbon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Context</td>
<td>Issued by CAISO</td>
<td>CPUC</td>
<td>PG&amp;E Peak Day Pricing events</td>
<td>SVCE and Service Provider-defined events</td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>~10 per year</td>
<td>Annual dispatch limit of 60 hours</td>
<td>9 – 15 per year</td>
<td>Around 2 per month</td>
<td>Around 10 per month</td>
</tr>
<tr>
<td>Time of day</td>
<td>4pm – 9pm Pacific</td>
<td>4pm – 9pm Pacific</td>
<td>4pm – 9pm Pacific</td>
<td>Any time</td>
<td>Off-peak hours</td>
</tr>
<tr>
<td>Event duration</td>
<td>5 hours</td>
<td>1 – 5 hours</td>
<td>5 hours</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Trigger</td>
<td>Grid emergencies</td>
<td>CAISO Alert declaration followed by IOU activation of day-ahead/day-of trigger</td>
<td>Event days are triggered by high temperatures, CAISO emergencies or high market prices</td>
<td>To be defined by SVCE</td>
<td>Average or marginal grid emissions falls below a threshold determined by SVCE and Service Provider</td>
</tr>
<tr>
<td>Notice</td>
<td>Usually day-ahead, sometimes little to no advance notice</td>
<td>Both day-ahead and day-of triggers</td>
<td>Day-ahead</td>
<td>Day-ahead</td>
<td>6 – 24 hours ahead</td>
</tr>
<tr>
<td>Notification method</td>
<td>Posted to ISO website</td>
<td>TBD</td>
<td>Forecast available on PG&amp;E website. Event day alerts</td>
<td>SVCE notifies Service Provider via e-mail</td>
<td>CAISO integration (average emissions) or</td>
</tr>
</tbody>
</table>
Finally, Service Provider shall provide to SVCE a web-based data portal through which Authorized SVCE Users can view and download aggregated and customer-level charging data that is updated and made available in real time. Customer-level charging data shall be of sufficient granularity and quality in order to enable SVCE to claim incremental LCFS credits for customers’ residential charging, and in order to enable SVCE to match charging sessions to an individual customer account or address and the customer’s vehicle model and/or charger model. In addition, customer-level charging data shall include indicators that flag whether the charging occurred at the home address the Authorized User has specified in the mobile app, flag the customer’s participation in events, and flag when secondary emissions optimization has occurred. The web-based data portal shall also provide a list of all Authorized Users and their program status (i.e. smart-charging enabled, smart-charging disabled, dormant).

**Marketing Services.** As part of its intention to increase the number of Authorized Users, the Service Provider shall provide core Marketing Services at no additional cost to SVCE. These Marketing Services will be designed and executed by the Service Provider and may include targeted email and social media campaigns, communications via EV owners’ associations and forums, online advertising, customer referrals, and referrals from third parties including hardware manufacturers and installers. Any marketing materials that are co-branded or use SVCE’s name must be approved by SVCE. When requested by SVCE and where practical, the Service Provider will support SVCE in designing and executing its own customer outreach campaigns including but not limited to the time-of-use transition. In addition, as part of its commitment to growing the GridShift program and the number of Authorized Users receiving the Services, SVCE will also commit to a material amount of spend on program marketing, including but not limited to program enrollment incentives, rebates for GridShift-compatible EVSEs, and/or financial incentives for customers who participate in any number of the events listed in Table 1.

**Technical Support Services.** Service Provider will provide to Authorized SVCE Users and Authorized Users with email support (“Technical Support”), with responses to any queries raised to gridshift@ev.energy provided within 3 business days. Technical Support will include any research and resolution activity performed by Service Provider.

<table>
<thead>
<tr>
<th>a) Scope of Technical Support</th>
<th>b) Service Provider’s obligations</th>
<th>c) SVCE’s obligations</th>
</tr>
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<tbody>
<tr>
<td>Technical Support shall be provided in English and shall include assisting SVCE and/or its Authorized Users with general inquiries in connection with the Services, remote diagnosis (and where possible) correction of any errors/bugs/failures to ensure that the Authorized User is provided with the functionalities described above, and responding to SVCE with all reasonable requests for information or assistance as soon as reasonably practicable.</td>
<td>Service Provider shall have no obligation to provide Technical Support where faults rise from (i) misuse, incorrect use of or damage to the customer’s hardware or firmware; (ii) failure of the customer or SVSE to maintain the necessary environmental conditions for use of the managed charging software; (iii) use of the managed charging software or mobile app in combination with any hardware not designated as compatible by the Service Provider; or (iv) any modification to the customer’s hardware, firmware or software not authorized by the Service Provider. The Service Provider will not provide or be under any obligation to provide on-site Technical Support.</td>
<td>SVCE shall cooperate with the Service Provider in any manner reasonably required in order to carry out Technical Support Services, including provision of information and data, making available Authorized SVCE Users, and providing any information in relation to the diagnosis of any errors, bugs or failures.</td>
</tr>
</tbody>
</table>

**Training Services.** Service Provider shall provide each Authorized SVCE User with a one-time online training session on how to access and utilize the web-based data portal. In addition, Service Provider shall provide all new Authorized Users with on-boarding instructions, web-based FAQs, and/or pre-recorded on-boarding tutorials available via web access. Training for new Authorized Users will cover how to connect a compatible vehicle/EVSE, how to set a home.

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charging location and ready-by-time, how to enable advanced app features including push notifications and automatic off-peak charging, and how to override or disable managed charging. Training for new Authorized Users will be provided no earlier than 30 days prior to, and no later than 30 days after, the official date of their enrollment in the managed charging program as communicated by SVCE to the Service Provider. Any additional training required by SVCE shall be provided at the Service Provider’s standard rates then in force.

Start Date and End Date. Services shall begin on the Effective Date and be delivered indefinitely unless otherwise terminated by either party in line with §7 of this Agreement. Any bespoke Smart Energy Service development, configuration and deployment services will be delivered according to the timelines laid out in Exhibit B.

Authorized Users and Services Fees. This Agreement will be governed by a scalable pricing model, with a minimum commitment of up to 100 Authorized Users at a minimum price of $4,500 per month (“Minimum Commitment”). Between 101 and 500 Authorized Users, Service Provider shall invoice SVCE a fee of $7,500 per month. Between 501 and 1,000 Authorized Users, Service Provider shall invoice SVCE a fee of $10,000 per month. Beyond 1,000 Authorized Users, Service Provider shall invoice SVCE a fee of $1,250 per month per block of 500 incremental Authorized Users (e.g. 1,001 Authorizes Users would be invoiced at a fee of $11,250 per month). These prices will be reviewed by the Service Provider on an annual basis starting May 13th, 2022, where they may be revised by the Service Provider by a maximum of 5%. Invoices will be prepared on a monthly basis and the Service Provider shall only invoice SVCE based on the number of Authorized Users who have had access to the Services for the full preceding calendar month.

Technical Support and Incident Response Procedures

There are broadly three kinds of incidents which could occur, arising from:

a) Hardware connection issues: a compatible EV or compatible EVSE loses its local connectivity at the customer’s home, the OEM’s telematic platform temporarily goes offline, or the Service Provider’s access to connect to the hardware has expired or has been revoked by the Authorized User.

b) Charging schedule issues: Service Provider charges an Authorized User’s vehicle entirely or partly during off-peak pricing hours when there are enough off-peak pricing hours to charge the vehicle to the specified battery level before the specified ready-by-time; or the Service Provider does not charge the Authorized User’s vehicle to the specified battery level before the specified ready-by-time.

c) Mobile app issues: the GridShift mobile application provided by the Service Provider does not receive or display push notifications authorized by the User, does not display accurate energy consumption or cost data for the Authorized User, or does not display an accurate location for the User’s charging session(s).

For hardware connection issues, Service Provider shall endeavor to work with the affected User to troubleshoot possible connectivity issues between the vehicle/EVSE and the managed-charging platform. If the connection issue is found to be the result of a bug or flaw on the managed-charging platform, Service Provider shall notify SVCE, shall endeavor to remedy the issue, shall notify SVCE and the affected User(s) once resolved, and shall pay any applicable Performance Credits to SVCE. If the connection issue is found to be the result of a bug or flaw on the manufacturer’s platform, Service Provider shall notify SVCE and the affected User(s) of the issue and update them once it is resolved, but shall not be responsible for paying any Performance Credits.

For charging schedule issues, Service Provider shall publish and maintain a real-time monitoring tool which automatically detects charging sessions with significant (i.e. >5 kWh and >10% of total energy delivered) quantities of electricity delivered during peak pricing hours, when sufficient off-peak pricing hours were available to deliver a charge to the User’s specified battery level before the specified ready-by-time. When such charging sessions are detected, Service Provider shall report them to SVCE, investigate the root cause(s) of the issue, and remedy the issue in line with the Technical Support Problem Response and Resolution Service Level section below.

For mobile app issues, Service Provider shall work with Authorized Users who raise an issue with the mobile app to troubleshoot and/or identify the root cause of the issue, release a fix in the subsequent app update where feasible, and
email the affected User(s) explaining the cause of the error/discrepancy and outlining resolutions including but not limited to an update to the mobile app. Service Provider will regularly issue updates to the mobile app to ensure continued compatibility with the latest Apple iOS and Google Android software.

Service Levels.

a) **Availability Service Level.**

   1) **Definitions.**

      (a) “Actual Uptime” shall mean the total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.

      (b) “Maintenance Window” shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Service Provider shall maintain the Services, to be mutually agreed upon by SVCE and the Service Provider.

      (c) “Scheduled Downtime” shall mean the total minutes in the reporting month represented by the Maintenance Window.

      (d) “Scheduled Uptime” shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

   2) **Service Level Standard.** Services will be available to Authorized Users for normal use 99% of the Scheduled Uptime.

   3) **Calculation.** \( \frac{\text{Actual Uptime}}{\text{Scheduled Uptime}} \times 100 = \text{Percentage Uptime} \)

      (as calculated by rounding to the second decimal point) \( \times \$10,000 \)

   4) **Performance Credit.**

      (a) Where Percentage Uptime is greater than or equal to 99%, no Performance Credit will be due to SVCE.

      (b) Where Percentage Uptime is less than 99%, SVCE shall be due a Performance Credit proportional to the % reduction in Percentage Uptime for the reporting month.

   5) **Example Calculation.**

      (a) Assuming reporting month is February 2012 (41,760 minutes).

      (b) Assuming a Maintenance Window of Sundays from Midnight to 4:00 a.m. Eastern Standard Time (equals Scheduled Downtime of 960 minutes).

      (c) Scheduled Uptime equals 40,800 minutes (total minutes of 41,760 in February 2012 less 960 minutes of Scheduled Downtime).

      (d) Assuming Actual Uptime of 40,000 minutes. A Percentage Uptime is calculated as follows: \( \frac{40,000}{40,800} \times 100 = 98.04\% \).

      (e) The threshold of 99% less the Percentage Uptime of 98.04% = 0.96%.

      (f) SVCE is due 0.96% of $10,000 as a Performance Credit.
b) **Technical Support Problem Response and Resolution Service Level.**

1) **Definition.** “Total Problems” shall mean the total of problems occurring in the reporting month.

2) **Service Level Standard.** The Service Provider will respond to two categories of problems associated with delivery of the Services:

   i) Problems that shall be investigated and resolved within 5 working days if the problem prevents >25% of Authorized Users from accessing the Services to charge their vehicle as required; and

   ii) Problems that shall be investigated and resolved within 15 working days if >25% of Authorized Users are able to access the Services to charge their vehicle as required, but are unable to access a specific functionality delivered by the Service Provider.

3) **Calculation.** Performance Credit = (Number of problems occurred in any one calendar month) x 25% x $10,000.

4) **Performance Credit.** Performance Credit will be issued up to a maximum of $5,000 in any calendar month.

5) **Example Calculation**

   a) Number of problems occurred in any one calendar month = 2

   b) Performance credit = 2 x 0.25 x $10,000 = $5,000.
**EXHIBIT B**

**SCHEDULE OF PERFORMANCE**

The below Schedule provides a high-level timeline for expansion of the GridShift Program. Given the interdependencies between SVCE and the Service Provider to carry out the below tasks not explicitly noted as a “Customized/time-sensitive feature,” the Service Provider will endeavor to work with SVCE to complete the below tasks within the respective Begin and Complete dates but it is understood that timely delivery is dependent on SVCE, OEMs and other third-party actors. This schedule may be modified with the written approval of SVCE.

<table>
<thead>
<tr>
<th>Task</th>
<th>Begin</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Finalize marketing plan for TOU transition</td>
<td>May 13, 2021</td>
<td>May 31, 2021</td>
</tr>
<tr>
<td>2. Deliver TOU transition marketing campaign</td>
<td>June 1, 2021</td>
<td>July 31, 2021</td>
</tr>
<tr>
<td>3. TOU customer enrollment</td>
<td>July 1, 2021</td>
<td>August 31, 2021</td>
</tr>
<tr>
<td>4. Finalize reliability events program design for summer 2021</td>
<td>May 13, 2021</td>
<td>May 31, 2021</td>
</tr>
<tr>
<td>5. Build &amp; test data ingestion feeds required to deliver reliability events for summer 2021*</td>
<td>June 1, 2021</td>
<td>June 30, 2021</td>
</tr>
<tr>
<td>6. Deliver reliability events for summer 2021</td>
<td>July 1, 2021</td>
<td>October 31, 2021</td>
</tr>
<tr>
<td>7. Finalize broader marketing plan for GridShift program scale-up (non-TOU)</td>
<td>June 1, 2021</td>
<td>June 30, 2021</td>
</tr>
<tr>
<td>8. Deliver GridShift scale-up marketing campaign</td>
<td>July 1, 2021</td>
<td>September 30, 2021</td>
</tr>
<tr>
<td>9. Test &amp; release OEM smart-charging integrations for Jaguar, Land Rover, ChargePoint Home Flex</td>
<td>May 13, 2021</td>
<td>June 30, 2021</td>
</tr>
<tr>
<td>10. Test &amp; release OEM integrations for BMW (smart-charging), Nissan (read-only), Ford (read-only), Hyundai (read-only), Siemens VersiCharge (smart-charging)</td>
<td>July 1, 2021</td>
<td>September 30, 2021</td>
</tr>
<tr>
<td>11. Conduct second enrollment wave¹</td>
<td>October 1, 2021</td>
<td>October 31, 2021</td>
</tr>
<tr>
<td>12. Test &amp; release smart-charging OEM integration for Chevrolet*</td>
<td>December 1, 2021</td>
<td>December 31, 2021</td>
</tr>
<tr>
<td>14. Deliver New Year GridShift scale-up marketing campaign</td>
<td>January 1, 2022</td>
<td>Ongoing</td>
</tr>
<tr>
<td>15. Conduct third enrollment wave²</td>
<td>February 1, 2022</td>
<td>Ongoing</td>
</tr>
<tr>
<td>16. Reintroduce &amp; deliver summer reliability events</td>
<td>June 1, 2022</td>
<td>October 31, 2022</td>
</tr>
<tr>
<td>17. Reintroduce &amp; deliver low-carbon events</td>
<td>November 1, 2022</td>
<td>May 31, 2023</td>
</tr>
</tbody>
</table>

*Customized/time-sensitive feature with additional costs for SVCE – time is of the essence  
¹ Target is to have 500 – 1,000 Authorized Users enrolled by December 31, 2021  
² Target is to have 2,000 – 5,000 Authorized Users enrolled by December 31, 2022

Note: “read-only” OEM integrations mean that an Authorized User with this hardware is eligible to benefit from all of the elements of the Smart Energy Service except Managed EV Charging.
Staff Report – Item 1f

<table>
<thead>
<tr>
<th>Item 1f:</th>
<th>Adopt Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Prepared by:</td>
<td>Amrit Singh, CFO and Director of Administrative Services</td>
</tr>
<tr>
<td></td>
<td>Kevin Armstrong, Administrative Services Manager</td>
</tr>
<tr>
<td>Date:</td>
<td>5/12/2021</td>
</tr>
</tbody>
</table>

RECOMMENDATION
Staff recommends that the Board adopt Resolution 2021-11 amending the approved positions chart, job classifications, and salary schedule.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION
The Finance and Administration Committee, at the May 3, 2021 meeting, supported the proposed new staff positions and revisions to certain existing staff position titles and salary ranges. The Committee appreciated that the proposed changes showed flexibility and responsiveness to changing business conditions, and were in consensus to include this item on the Consent Calendar. Staff has included an additional recommendation to increase the salary range of the Principal Power Analyst position, which has been included after the Finance and Administration Committee Meeting on May 3.

BACKGROUND
SVCE has been operating recently with a number of vacant positions and seeks additional flexibility in filling out its current headcount (32 FTE), and aiding in the recruitment and promotion of staff across wider ranges of position levels.

ANALYSIS & DISCUSSION
The current Adjusted Operating Budget for FY2021 funds thirty-two (32) full-time equivalent positions and five (5) part-time positions. While no additions to overall headcount are being proposed, several new job classifications are being created, primarily to expand the range of certain single positions to broadband series. Also, several titles are being revised to better reflect the evolving nature of SVCE’s business, and to aid in recruiting. While these broadbanding revisions are creating new, higher-level job classifications, the budget impact will be minimal during FY2021. If all current vacant positions were filled at the highest classification level in their relevant broadbanded series, the cumulative potential budget impact would be $80,000. (Principal Data Engineer, Principal Data Scientist, Power Contracts and Settlements Manager). The actual budget impact will likely be a fraction of that as they are filled somewhere within the range, rather than at the maximum salary level. A summary table of the proposed changes follows, and a revised table of organization chart references revised positions in maroon.
### Agenda Item: 1f

<table>
<thead>
<tr>
<th>Dept.</th>
<th>From</th>
<th>To</th>
<th>Reason / Purpose</th>
</tr>
</thead>
</table>
| **ASCR** | Manager of Account Services | Manager of Energy Services | • New title will align better with current program deployment and marketing responsibilities  
• Update Salary range to remain competitive |
| **Power Resources** | Power Analyst | Power Contracts and Settlements Manager (new) | • New classification focused on improving contract monitoring, settlements process, and controls  
• Update Salary ranges to remain competitive  
• Existing Power Analyst JD kept for future need  
• Create broadband series to aid in recruiting / advancement |
| | Principal Power Analyst | Power Resources Planner series  
- Senior Power Resources Planner (new)  
- Power Resources Planner  
- Associate Power Resources Planner (new) | |
| | Power Resources Planner position | Power Resources Planner series  
- Senior Power Resources Planner (new)  
- Power Resources Planner  
- Associate Power Resources Planner (new) | |
| **Decarb & Grid Innovation Programs** | Manager of Decarb & Grid Innovation Programs position | Manager of DGI series  
- Senior Manager (new)  
- Manager  
- Associate Manager (new) | • Expand existing single positions into broadband series to aid in recruiting / advancement  
• Clarify experience required for Data Scientist  
• Update Salary ranges to remain competitive  
• Differentiate Analyst series from Data Analyst series be retitling around program management focus |
| | Senior Data Engineer position | Data Engineer series  
- Principal Data Engineer (new)  
- Senior Data Engineer  
- Data Engineer (new) | |
| | Data Scientist position | Data Scientist series  
- Principal Data Scientist (new)  
- Senior Data Scientist (new)  
- Data Scientist | |
| **Decarb & Grid Innovation Programs** | Program Analyst Series | Program Manager series  
- Principal Program Mgr (new)  
- Senior Program Mgr  
- Program Mgr  
- Associate Program Mgr | |

*These changes will not increase headcount / budgeted FTEs (32) and result in minimal budget impact*
STRATEGIC PLAN
The recommendation directly supports Strategic Plan goal 1, “Build and Maintain a high-performing team.”

ALTERNATIVE
Staff is open to alternate suggestions from the Board.

FISCAL IMPACT
The fiscal impact of the proposed staffing changes will largely depend on the future addition of additional full-time employee positions. For FY 2020-21, if all current vacant positions were filled at the highest newly-created levels within their broadbanded series, the budget impact would be $80,000, but is expected to be a fraction of that as positions are filled more centrally within the salary ranges.

ATTACHMENTS
1. Resolution 2021-11, Amending the Approved Positions Chart, Job Classifications and Salary Schedule
2. Job Descriptions: Manager of Energy Services; Senior Power Resources Planner; Associate Power Resources Planner; Principal Power Analyst; Power Contracts and Settlements Manager; Senior Manager
of Decarbonization and Grid Innovation Programs; Associate Manager of Decarbonization and Grid Innovation Programs; Principal Data Engineer; Data Engineer; Principal Data Scientist; Data Scientist; Senior Data Scientist; Principal Program Manager; Senior Program Manager; Program Manager; Associate Program Manager
RESOLUTION NO. 2021-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE APPROVED POSITIONS CHART, JOB CLASSIFICATIONS AND SALARY SCHEDULE

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

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

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

WHEREAS, the Board of Directors has amended the Organization Chart and Salary Schedule to add and delete positions and update salaries with the adoption of Resolution Nos. 2017-07, 2017-10, 2018-06, 2018-10, 2019-04, 2019-15, 2020-09, 2020-15, 2020-20, 2020-26, 2020-34; and 2021-06 and

WHEREAS, Resolution No. 2019-04 also renamed the Organization Chart as the Positions Chart; and

WHEREAS, to meet the needs of the Authority, the Chief Executive Officer recommends that the Board amend the existing schedule of job classification titles and salary ranges.

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

Section 1. The Authority’s schedule of job classification titles and salary ranges is amended to modify existing position titles and salary ranges as shown below. The following schedule of job classification titles and salary ranges shall replace and supersede the schedule shown in Resolution 2021-06:

<table>
<thead>
<tr>
<th>Title</th>
<th>Minimum Salary (Annual $)</th>
<th>Maximum Salary (Annual $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Services Manager</td>
<td>120,952</td>
<td>190,067</td>
</tr>
<tr>
<td>Administrative Analyst</td>
<td>83,737</td>
<td>143,428</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>55,824</td>
<td>88,601</td>
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<tr>
<td>Associate Analyst Program Manager</td>
<td>69,780</td>
<td>109,654</td>
</tr>
<tr>
<td>Associate Data Analyst</td>
<td>82,684</td>
<td>122,559</td>
</tr>
<tr>
<td>Associate Manager of Decarbonization and Grid Innovation Programs</td>
<td>110,597</td>
<td>158,446</td>
</tr>
<tr>
<td>Associate Power Analyst</td>
<td>82,684</td>
<td>122,559</td>
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<tr>
<td>Associate Power Resources Planner</td>
<td>110,597</td>
<td>170,446</td>
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<tr>
<td>Associate Legislative Analyst</td>
<td>72,106</td>
<td>113,310</td>
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<tr>
<td>Position</td>
<td>Salary 1</td>
<td>Salary 2</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-----------</td>
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</tr>
<tr>
<td>Board Clerk / Executive Assistant</td>
<td>102,344</td>
<td>165,651</td>
</tr>
<tr>
<td>Chief Financial Officer and Director of Administrative Services</td>
<td>148,865</td>
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<tr>
<td>Communications Manager</td>
<td>111,648</td>
<td>175,447</td>
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<td>Communications Specialist</td>
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<tr>
<td>Data Analyst</td>
<td>96,641</td>
<td>144,489</td>
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<tr>
<td>Data Engineer</td>
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<td>158,446</td>
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<td>Data Scientist</td>
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<tr>
<td>Director of Account Services and Community Relations</td>
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<td>Director of Decarbonization and Grid Innovation Programs</td>
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<tr>
<td>Director of Regulatory and Legislative Policy</td>
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<td>Energy Services Specialist</td>
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<td>Energy Services Lead</td>
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<td>Financial Analyst</td>
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<tr>
<td>Manager of Decarbonization and Grid Innovation Programs</td>
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<td>Marketing Specialist</td>
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<td>Principal Data Engineer</td>
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<td>Principal Data Scientist</td>
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<td>Principal Program Manager</td>
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<td>Analyst Program Manager</td>
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<td>Rates Manager</td>
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<td>Senior Analyst Program Manager</td>
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<tr>
<td>Senior Policy Analyst</td>
<td>97,692</td>
<td>153,516</td>
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</table>
Section 2. The organization of positions shall be as shown in Attachment 1: SVCE Approved Positions Chart. This new Approved Positions Chart shall replace and supersede the Approved Positions Chart adopted by Resolution 2021-06.

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

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

ADOPTED AND APPROVED this 12th day of May, 2021 by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
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<th>ABSENT</th>
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<td>Director Tyson</td>
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<td>Director Rennie</td>
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<td>Director Chua</td>
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<tr>
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<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>
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<td>Director Larsson</td>
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</tbody>
</table>

Chair

ATTEST:

Clerk

Attachment 1: SVCE Approved Positions Chart
**SVCE Positions Chart**

<table>
<thead>
<tr>
<th>Chief Executive Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board Clerk/Executive Assistant</td>
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<tr>
<td>Chief Financial Officer and Director of Administrative Services</td>
</tr>
<tr>
<td>Rates Manager</td>
</tr>
<tr>
<td>Senior Rates Analyst</td>
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<tr>
<td>Senior Financial Analyst</td>
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<tr>
<td>Financial Analyst</td>
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<tr>
<td>Administrative Services Manager</td>
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<tr>
<td>Management Analyst</td>
</tr>
<tr>
<td>Administrative Analyst</td>
</tr>
<tr>
<td>Administrative Assistant</td>
</tr>
<tr>
<td>Director of Account Services &amp; Community Relations</td>
</tr>
<tr>
<td>Account Services Manager of Energy Services</td>
</tr>
<tr>
<td>Energy Services Lead</td>
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<tr>
<td>Senior Energy Services Specialist</td>
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<tr>
<td>Energy Services Specialist</td>
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<tr>
<td>Communications Manager</td>
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<tr>
<td>Senior Communications Specialist</td>
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<tr>
<td>Senior Marketing Specialist</td>
</tr>
<tr>
<td>Marketing Specialist</td>
</tr>
<tr>
<td>Communications Specialist</td>
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<tr>
<td>Director of Power Resources</td>
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<tr>
<td>Power Resources Manager</td>
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<tr>
<td>Principal Power Analyst</td>
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<tr>
<td>Senior Power Analyst</td>
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<tr>
<td>Power Analyst</td>
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<tr>
<td>Associate Power Analyst</td>
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<tr>
<td>Associate Power Resources Planner</td>
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<tr>
<td>Power Resources Planner</td>
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</tr>
<tr>
<td>Associate Manager of Decarbonization &amp; Grid Innovation Programs</td>
</tr>
<tr>
<td>Principal Data Engineer</td>
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<tr>
<td>Senior Data Engineer</td>
</tr>
<tr>
<td>Data Engineer</td>
</tr>
<tr>
<td>Principal Data Scientist</td>
</tr>
<tr>
<td>Senior Data Scientist</td>
</tr>
<tr>
<td>Data Scientist</td>
</tr>
<tr>
<td>Principal Program Manager</td>
</tr>
</tbody>
</table>

*This approved list of Job Titles has more positions than the number of FTEs funded by the Board via the Budget, to provide flexibility to hire at the right level and also provide advancement opportunities*
<table>
<thead>
<tr>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Analyst</td>
</tr>
<tr>
<td>Analyst</td>
</tr>
<tr>
<td>Associate Analyst</td>
</tr>
<tr>
<td>Senior Data Analyst</td>
</tr>
<tr>
<td>Data Analyst</td>
</tr>
<tr>
<td>Associate Data Analyst</td>
</tr>
<tr>
<td><strong>Director of Regulatory &amp; Legislative Policy</strong></td>
</tr>
<tr>
<td>Senior Government Affairs Manager</td>
</tr>
<tr>
<td>Principal Policy Analyst</td>
</tr>
<tr>
<td>Senior Policy Analyst</td>
</tr>
<tr>
<td>Policy Analyst</td>
</tr>
<tr>
<td>Senior Regulatory Analyst</td>
</tr>
<tr>
<td>Associate Regulatory Analyst</td>
</tr>
</tbody>
</table>

*This approved list of Job Titles has more positions than the number of FTEs funded by the Board via the Budget, to provide flexibility to hire at the right level and also provide advancement opportunities*
MANAGER OF ENERGY SERVICES

**SALARY RANGE:** $111,648 - $175,447

**SUMMARY DESCRIPTION**
The Manager of Energy Services (Manager) is an external-facing position, and a critical role within the SVCE organization. Responsibilities include deployment of strategic electrification programs for SVCE customers and communities, and management of customer service operations, electric rates and service offerings. In addition, the Manager maintains strong working relationships with community stakeholders and large energy customers – including key energy and sustainability contacts at many of the top tech companies in Silicon Valley. The Manager leads SVCE’s internal Energy Services team and manages third-party billing and customer service partners and selected program consultants. The position regularly collaborates with SVCE’s Decarbonization and Grid Innovation team as well as other SVCE internal teams, and reports to the Director of Account Services and Community Relations. By maintaining and growing strong relationships with SVCE’s customer base, the community, and key third-party services partners, the Manager helps ensure the organization’s mission and goals are met.

**SUPERVISION RECEIVED AND EXERCISED**
The Manager supervises and directs Energy Services staff on account and program-related issues.

**ESSENTIAL FUNCTIONS**

**Customer and Community Relations**
- Present SVCE services to customers and communities
- Establish relevant key account contacts and maintain relationships
- Regularly engage with and support the Member Agency Working Group (MAWG)
- Provide direct support for inquiries from key accounts
- Identify customer needs through direct meetings, surveys, events
- Match customers with SVCE services and programs based on needs
- Measure and communicate results with communities, key accounts
- Participate in relevant industry and working groups, advisory boards

**Program Deployment**
- Effectively convene and engage customers, stakeholders and solution providers
- Engage in program operational design, deployment and administration
- Author program communications
- Provide project and/or program management
- Vendor negotiations, contracting and management
- Support of EM&V processes
- Provide knowledge and expertise in (some combination of):
Electric vehicle and EV charging systems
- Building systems, e.g., HVAC/mechanical, electrical, controls
- Solar, NEM and storage
- Demand management programs
- Building codes
- Facilities management
- Develop and deliver content and training on electrification

Customer Rates and Offerings
- Assist with development and maintenance of SVCE electricity rates and rate programs
- Implement new PG&E/CPUC-initiated programs and rate structures
- Assist with development of competitive customized energy service offerings for large commercial/industrial (C&I) customers
- Support customer-specific analytics and modeling for custom offerings
- Support contracting and ongoing delivery of custom C&I offerings
- Assist with definition of economics/value propositions for online customer offerings
- Identify, document and champion new business development opportunities

Customer Operations
- Support detailed utility bill inquiries, including complex NEM, storage, commercial and EV rates
- Support call center operations, and customer escalations
- Perform rate and cost comparisons
- Communicate billing information
- Support general energy-related inquiries from customers and other stakeholders
- Effectively utilize SVCE CRM and customer data analytics systems in support of customer interactions
- Deliver effective customer correspondence
- Support regulatory notices, e.g., JRM, PCL, Move-ins
- Support NEM cash-outs
- Manage customer metrics, e.g., opt outs, load statistics, forecast info
- Assist with development and support of community GHG tracking
- Engage effectively with SVCE billing services provider (Calpine), PG&E rep(s)

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge and experience with:
- Electrification and decarbonization programs
- Building systems, including HVAC, electrical/lighting, controls, solar/NEM, energy storage, building codes and facilities management
- Electric vehicles, charging infrastructure, and fleet electrification
- Utility billing structures, bill presentment, and program operations
- Community Choice Aggregation (CCA) programs, the interaction between CCAs and investor-owned utilities, and SVCE services
- Principles of effective account management, marketing and salesmanship
- Diverse communities and customer types in the SVCE service area
• Microsoft Excel, including some familiarity with functions and advanced features
• Microsoft Office Suite, including Power Point and Word
• Use of CRM systems and customer data analytics
• Appropriate telephone and e-mail etiquette
• Principles and practices of employee supervision, as applicable
• Recognized within current organization and externally as excellent with the above

Ability to:
• Establish and maintain effective working relationships with local community groups and governmental organizations, SVCE Board members and other local elected officials; industrial, commercial and residential customers; supervisors and coworkers
• Take responsibility and work independently, as well as coordinate or participate in team efforts
• Develop effective and compelling presentations
• Effectively utilize data, estimation, heuristics, and reporting
• Exercise sound judgment in applying appropriate policies and procedures
• Demonstrate creative problem solving and commercial awareness
• Communicate effectively both verbally (by phone and in-person) and in written form
• Manage projects and time efficiently
• Represent SVCE with confidence and enthusiasm
• Be self-motivated with a strong drive to resolve issues quickly and effectively
• Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment
• Work accurately and swiftly under pressure
• Demonstrate patience, tact and courtesy

Willingness to:
• Work occasional overtime or on weekends and evenings

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

EDUCATION. A Bachelor’s Degree from an accredited university or college is required in engineering, environmental science, operations management, business/economics or closely related field, or other degrees with demonstrable and commensurate work experience that are directly relevant for this position. A Master’s Degree or building trades experience is highly desirable.

EXPERIENCE: Ten (10) years of progressively responsible customer-facing experience with clean energy-related products or services at: an energy services company, corporate/commercial facilities engineering, design, management or consulting company, electric utility, energy or buildings-related department of a public agency, energy products company, or a related organization.

LICENSES/CERTIFICATES: Possession and continued maintenance of a valid class C California driver’s license and a safe driving record or the ability to provide alternate
transportation as approved by the CEO. One or more professional certifications, including, but not limited to Certified Energy Manager (CEM), Business Energy Professional (BEP), Leadership in Energy and Environmental Design (LEED).

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
POWER RESOURCE PLANNER SENIOR
POWER RESOURCES PLANNER

**SALARY RANGE:** $148,209,952.865 to $190,204,276.067

**SUMMARY DESCRIPTION**
Under general direction of the Director of Power Resources, the Senior Power Resources Planner (“Planner”), power portfolio planning, rate development support, and forecasting of supply and demand side programs. The Planner will also work with the Decarbonization and Grid Innovation team to develop and implement solutions in support of SVCE’s greenhouse gas reduction goals.

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Power Resources. Management of consultants and contractors is expected. This position has no direct reports however may supervise temporary and/or internship positions.

**ESSENTIAL FUNCTIONS**
- Assist in the development of technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
- Evaluates the cost and benefits of distributed energy resources including energy storage, energy efficiency, distributed generation, electric vehicles and customer-sited generation and storage.
- Support/lead in the administration and selection of energy solutions through local and/or regional requests for proposals.
- Work with other public agencies within SVCE’s territory to explore, evaluate and implement carbon-free and renewable energy projects.
- Assist in the development of retail rates to meet customer and decarbonization needs including Net Energy Metering, custom contract rates for large customers, green tariffs, and renewable energy feed-in-tariffs.
- Support integrated resource planning efforts.
- Support legislative and regulatory efforts by providing subject matter expertise and/or policy analysis.
- Assist the development and implementation of systems, processes, plans and reports to ensure compliance with all applicable laws, standards, mandates and regulatory requirements related to providing electricity as a load serving entity in California including meeting the Renewable Portfolio Standard, resource adequacy, power content label reporting, and integrating resource planning requirements.
- Assist in Support/lead the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Lead the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
• Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
• Support the development and implementation of SVCE’s overarching decarbonization roadmap.
• Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

**KNOWLEDGE, SKILLS, AND ABILITIES**

*Knowledge:*

• Principles of electricity generation, transmission, distribution and infrastructure.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

*Skills:*

• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Superior people management experience and skills.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.

**REQUIRED QUALIFICATIONS**

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

*EDUCATION.* A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

*EXPERIENCE.* Five-Seven (57) years, depending on level, of progressively responsible experience as an analyst at an electric utility, regulatory agency, cleantech company, or similar
organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
POWER RESOURCE PLANNER
ASSOCIATE POWER RESOURCES PLANNER

SALARY RANGE: $1210,952,592 to $19070,446,067

SUMMARY DESCRIPTION
Under general direction of the Director of Power Resources, the Associate Power Resources Planner (“Planner”), power portfolio planning, rate development support, and forecasting of supply and demand side programs. The Planner will also work with the Decarbonization and Grid Innovation team to develop and implement solutions in support of SVCE’s greenhouse gas reduction goals.

SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Power Resources. Management of consultants and contractors is expected. This position has no direct reports however may supervise temporary and/or internship positions.

ESSENTIAL FUNCTIONS
• Assist in the development of technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
• Evaluates the cost and benefits of distributed energy resources including energy storage, energy efficiency, distributed generation, electric vehicles and customer-sited generation and storage.
• Support/lead in the administration and selection of energy solutions through local and/or regional requests for proposals.
• Work with other public agencies within SVCE’s territory to explore, evaluate and implement carbon-free and renewable energy projects.
• Assist in the development of retail rates to meet customer and decarbonization needs including Net Energy Metering, custom contract rates for large customers, green tariffs, and renewable energy feed-in-tariffs.
• Support integrated resource planning efforts.
• Support legislative and regulatory efforts by providing subject matter expertise and/or policy analysis.
• Assist the development and implementation of systems, processes, plans and reports to ensure compliance with all applicable laws, standards, mandates and regulatory requirements related to providing electricity as a load serving entity in California including meeting the Renewable Portfolio Standard, resource adequacy, power content label reporting, and integrating resource planning requirements
• Assist in Support/lead the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
• Lead the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
• Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
• Support the development and implementation of SVCE’s overarching decarbonization roadmap.
• Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

KNOWLEDGE, SKILLS, AND ABILITIES

Knowledge:
• Principles of electricity generation, transmission, distribution and infrastructure.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

Skills:
• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Superior people management experience and skills.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.

REQUIRED QUALIFICATIONS

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

EDUCATION. A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE. Five Three (53) years, depending on level, of progressively responsible experience as an

Associate Power Resources Planner
analyst at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
PRINCIPAL POWER ANALYST

**SALARY RANGE:** $120,952-$148,876-$189,067-$204,276

**SUMMARY DESCRIPTION**
Under general direction of the Director of Power Resources, the Principal Power Analyst ("Analyst"), supports efforts related to power portfolio planning, energy risk management, rate development, custom product offerings for large customers, and load analytics and forecasting. The Power Resources department ("Front Office") is responsible for supplier and resource origination, meeting all wholesale energy needs, portfolio risk management, asset and portfolio optimization, settlements and compliance. The Analyst shall work with other members of the Front Office and independently on a range of complex strategic, administrative and analytical projects and tasks. The ideal candidate must possess experience with energy data analytics, energy trading and risk management and should have experience with industry standard modeling and simulation software packages.

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Power Resources. Management of consultants and contractors is expected. This position has no direct reports however may supervise temporary and/or internship positions.

**ESSENTIAL FUNCTIONS**
The ideal candidate should have strong analytical skills, knowledge of energy fundamentals and wholesale energy markets, risk management and accounting concepts (cost to serve load), forecasting, and ability to manage large sets of data. The Analyst will provide lead analytical support to the Front Office, with the following responsibilities:

- Design, program, modify, and operate systems for measuring, monitoring, and reporting financial risk from power supply positions.
- Calculating Value at Risk, Mark to Market, Gross Margin at Risk, PPA valuation, and other risk metrics.
- Evaluate, recommend and support procurement of deal trade capture and/or enterprise systems to manage supply contracts from origination to settlements.
- Support/lead efforts to develop systems/processes to implement new renewable resources and ensure optimization of resources in wholesale energy markets.
- Support/lead integrated resource planning, modeling and implementation efforts.
- Create and maintain various supply and demand-side models to support key forecasting, procurement and programmatic initiatives and/or compliance requirements including energy hedges, resource adequacy, carbon-free and RPS.
- Lead and support internal analysis and modeling of innovative rate design for new SVCE offerings or new program offerings.
- Provide internal technical analyses to assess impact of programs and policies on SVCE’s operations.
- Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

**KNOWLEDGE, SKILLS, AND ABILITIES**

*Knowledge of:*

- Principles of electricity generation, transmission and distribution.
- Knowledge of California energy markets and energy products, energy trading and trade capture processes, and standard risk management policies and strategies.
- Statistics, machine learning, and optimization algorithms and principles, and their application.
- California regulatory bodies and agencies (i.e., CPUC, CEC, CARB, BAAQMD and CAISO) policies and requirements applicable to load serving entities.

*Technical analytic skills/models:*

- General understanding of basic data science methods & approaches
- Expert proficiency in Excel modeling and Access Data Base
- SQL/programming proficiency
- Basic programming skills desired
- Proficiency in Microsoft Office Suite
- Proficiency in Tableau
- Proficiency or working understanding of energy deal trade management systems and electric supply modeling/dispacht software such as Ascend Analytics PowerSimm and BatterySimm; Plexos, Aurora, Sevrim.

*Ability to:*

- Configure and maintain various database systems
- Extract data, perform various analyses, and translate findings into meaningful business recommendations;
- Develop, perform and maintain queries and reports;
- Manage projects and teams
- Be self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
- Demonstrate excellent written and oral communication skills.

**REQUIRED QUALIFICATIONS**

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

**EDUCATION:** A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

**EXPERIENCE:** Minimum of eight (8) years, depending on level, of progressively responsible experience as an analyst at an electric utility, regulatory agency, cleantech
company, or similar organization.

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

**PHYSICAL AND WORKING CONDITIONS**

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

**ENVIRONMENT:** Work is performed in a typical office setting with exposure to computer screens and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events. Remote/telework may be included.

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
POWER RESOURCES SETTLEMENTS & COMPLIANCE ANALYST

POWER CONTRACTS AND SETTLEMENTS MANAGER

SALARY RANGE: $102,344 - $160,827

SUMMARY DESCRIPTION
Under general direction of the Director of Power Resources, the Power Resource Contracts and Settlements Manager and Compliance Analyst (“Manager/Analyst”), has responsibility for power portfolio contract monitoring, invoice review and validation; tracking and resolution of CAISO Statement discrepancies, risk mitigation, and operations reporting as well as invoice review and validation to support the SVCE power supply portfolio. The position may assist in the administration of competitive solicitations for procurement of various energy products procurement processes, negotiation, monitoring and management of power contracts, ongoing correspondence with counterparties including performance tracking, and other duties to support supply planning, program development and compliance.

The Power Contracts and Settlements Manager will be responsible for all aspects of managing SVCE’s power supply contracts. The Manager will perform significant program and service delivery planning and evaluation including overseeing SVCE’s power supply contract lifecycle and formulating and implementing improvements for contracts and settlements processes. The Analyst performs assignments under general direction. Manager is as part of the Power Resources team and works closely with SVCE’s technical team including external consultants, portfolio manager, and scheduling coordinator. This position provides general oversight and management of power supply contracts, including adherence to milestones and performance requirements, provides support by developing and reviewing CAISO Statements, analyzing transactions, and identifying imbalance energy impacts and monitoring Congestion Revenue Rights (CRR) positions for existing and potential power supply contracts as well as reviewing, validating and processing power supply invoices for payment. This position may also provide support and analysis to support power resource planning, regulatory compliance, and the development of customer energy programs.

SUPERVISION RECEIVED AND EXERCISED
This position reports to the Director of Power Resources and may exercise direct supervision over staff within its functional area. This position does not have lead worker and/or supervisory responsibilities.

ESSENTIAL FUNCTIONS
- Assist the development and implementation of systems, processes, plans and reports to ensure compliance with all applicable laws, standards, mandates and regulatory requirements related to providing electricity as a load serving entity in California including meeting the Renewable Portfolio Standard, resource adequacy, power content label reporting, and integrating resource planning requirements.
- Assist in maintaining models to evaluate, track and report on carbon content, energy and capacity needs, power costs, revenue requirements, risks and performance.
- Support the preparation and submittal of compliance reports and materials on behalf of SVCE, including those required by the California Public Utilities Commission (CPUC), California Energy Commission (CEC), The Climate Registry (TCR) and the Department of...
Energy (DOE):

- Evaluate congestion impacts of contracted physical paths and identify financially advantageous paths for nomination to the annual, monthly, and quarterly CAISO allocations and auctions.
- Work with consultants, vendors, scheduling coordinator, and senior management to analyze risk and value around complex transactions and portfolio positions, including power generation, load forecasts and load scheduling, hedging strategies.
- Manage supplier invoice and settlement process including overseeing the payment of all invoices related to power supply.
• Coordinate with SVCE’s scheduling coordinator(s) and/or other power operation/technical support vendors.
• Receive, track and manage renewable energy certificates (RECs) within the WREGIS system.
• Identify opportunities for portfolio optimization, budget savings, and congestion cost avoidance.
• Interface with power suppliers and contractors regarding timely invoicing.
• Maintain models to track supply costs, portfolio position and cost exposure for planning and budget purposes.
• Assist in the development of load forecasts for energy, capacity and distributed energy resources including electric vehicles.
• Analyze trends and projections related to market prices, technology and customer needs to facilitate program development and resource planning.
• Assist in the evaluation of energy supply and alternative resources.
• Interface with IT consultants and scheduling software vendor for process improvements.
• Work with accounting and settlement groups to deliver critical financial reporting information.

Invoice Validation and Settlement:

• Manage supplier invoice and settlement process including overseeing the payment of all invoices related to power supply.
• Interface with power suppliers and contractors regarding timely invoicing and payment processing.
• Perform validation on invoices to ensure accurate charges and credits have been applied.
• Validate CAISO statements and CAISO cost recovery from counterparties as provided for in contract terms.
• Manage SVCE’s various renewable energy certificate accounts within the WREGIS system.
• Resolve, or provide support in resolving invoice and billing issues.
• Track invoice payments and prepare related reports to management, technical team and external accountant.
• Provide information to assist finance department with problem resolution and audits.

Contract Management:

• Track, manage, and store information for energy supply contracts including renewable
energy, Resource Adequacy, as well as financial transactions.

- Track contract deliverables and ensure compliance and mitigate contractual risks.
- Evaluate and track counterparty credit risk and manage process credit support process.
- Track and report on key power purchase agreement milestones and deliverables.
- Establish standard operating procedures, protocols and safeguards to ensure procurement team decision making processes are aligned with agency goals and regulatory obligations.
- Assist with drafting of new vendor and supplier agreements.
- Serve as point of contact for counterparties in negotiations for supply agreements.
- Manage the “Back Office” activities, in adherence to the Risk Management policies and procedures.

Contract Origination Support:

- Support contract negotiations and facilitate contract execution.
- Assist in competitive solicitation procurement processes and assist with ongoing correspondence with counterparties to further contracting opportunities.

- Coordinate with SVCE’s scheduling coordinator(s) and/or other power operation/technical support vendors.
- Interact with IT consultants and scheduling software vendor for process improvements.
- Assist with creation of materials to facilitate Board review of potential supplier agreements, policies, programs and plans including staff reports, supporting information, and presentation materials.

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of:

- Contract management and invoicing best practices.
- Energy resource planning and risk management concepts.
- Strong understanding of the general wholesale electricity market and California specific requirements, participants and governance structure.
- Electric portfolio modeling, management, procurement and optimization strategies and tools.
- Energy risk management principals, metrics and hedging strategies, products and tools.
- Retail load forecasting, metering, rate design, energy efficiency and electrification programs and distributed energy resources.
- Energy generation technologies including carbon neutral electricity, conventional energy, and renewable energy such as wind, biomass, geothermal, solar, concentrating solar, and hydroelectricity.
- Energy storage and emerging energy technologies.
- Power purchase agreement structures, general terms, conditions and basic requirements including power purchase agreements and enabling agreements (EEI and WSPP).
- California’s Renewables Portfolio Standard, Power Content Label and Power Source Disclosure Programs, resource adequacy obligations, integrated resource planning requirements and greenhouse gas measuring, reporting and mitigation requirements.
- Renewable energy project development including environmental and local use permitting, interconnection agreements and processes.
- The California Independent System Operator (CAISO) and its settlement process, power scheduling protocols, strategies and cost mitigation measures including congestion revenue rights.
- The Western Renewable Energy Information System (WREGIS).
- Regulatory reporting and compliance requirements of the California Public Utilities Commission (CPUC), and California Energy Commission (CEC), CAISO and California Air Resource Board as they apply to load serving entities in general and specifically to Community Choice Aggregation (CCA).
- Microsoft Office software including Access, Excel, Word, PowerPoint and Project.

**Ability to:**
- Work independently and as a team member.
- Manage project and teams.
- Manage and track multiple priorities, meet deadlines, and quickly adapt to changing priorities in a fast-paced dynamic environment.
- Achieve goals and provide accurate, timely, and meaningful progress updates.
- Be thorough and detail-oriented.
- Demonstrate patience, tact, and courtesy.
- Identify and solve problems effectively and expeditiously.
- Establish and maintain effective working relationships with persons encountered during the performance of duties, including counterparties, consultants, SVCE team members, and Board Directors.
- Communicate effectively verbally, in writing, and through presentations.
- Prepare high quality research, reports and other written work products.
- Exercise sound judgment, creative problem solving, effective dispute resolution, and commercial awareness.

**REQUIRED QUALIFICATIONS**

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

**EDUCATION.** Bachelor’s degree in engineering, business, economics, operations research, environmental science or accounting from an accredited university.

**EXPERIENCE.** Three-Seven (37) years of progressively responsible experience in utility power settlements or resource planning at an electric utility, municipal utility, Community Choice Aggregation or Direct Access program or in a closely related field. A Master’s degree in the aforementioned fields can substitute for up to one year of the required experience.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
SENIOR MANAGER OF DECARBONIZATION & GRID INNOVATION PROGRAMS

**SALARY RANGE:** $1,482,952,865 - $2,041,902,767

**SUMMARY DESCRIPTION**
The Senior Manager of Decarbonization & Grid Innovation Programs (abbreviated as “Sr Manager”) works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimagine energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:

- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

Program planning and design requires integrating input from all other SVCE divisions in addition to external stakeholders throughout the design cycle. Program work includes close collaboration on markets with the California ISO, CEC, CARB, BAAQMD, PG&E, municipal utilities and other CCAs.

The Sr Manager will lead teams and projects, as needed, under the general direction of the Director of Decarbonization & Grid Integration. Examples of anticipated responsibilities include managing staff, consultants and contractors carrying out the following:

- developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities;
- analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification;
- carrying out statistical analysis for the purposes of retail customer segmentation and targeted marketing;
• designing and conducting the evaluation, measurement and verification for programmatic initiatives;
• creating compelling graphics, charts, tables, and other methods of data visualization to incorporate into written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; and,
• preparing written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff.

The Sr Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of staff, consultants and contractors.

ESSENTIAL FUNCTIONS
• Supervise staff in carrying out technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
• Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) as needed throughout a program’s lifetime (design, development, implementation, evaluation, measurement, and verification).
• Support/lead integrated resource planning efforts.
• Support/lead the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
• Lead the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
• Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
• Support/lead the development and implementation of SVCE’s overarching decarbonization roadmap.
• Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

KNOWLEDGE, SKILLS, AND ABILITIES
Knowledge:
• Principles of electricity generation, transmission, distribution and infrastructure.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

Ability to:
• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Superior people management experience and skills.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Eight–Ten (8–10) years, depending on level, of progressively responsible experience as an analyst at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

ENVIRONMENT: Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers’ markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.
**PHYSICAL:** While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
ASSOCIATE MANAGER OF DECARBONIZATION & GRID INNOVATION PROGRAMS

SALARY RANGE: $10,957,209.52 - $19,058,446.067

SUMMARY DESCRIPTION
The Associate Manager of Decarbonization & Grid Innovation Programs (abbrv. “Assoc Manager”) works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimagine energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:
- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

Program planning and design requires integrating input from all other SVCE divisions in addition to external stakeholders throughout the design cycle. Program work includes close collaboration on markets with the California ISO, CEC, CARB, BAAQMD, PG&E, municipal utilities and other CCAs.

The Assoc Manager will lead teams and projects, as needed, under the general direction of the Director of Decarbonization & Grid Integration. Examples of anticipated responsibilities include managing staff, consultants and contractors carrying out the following:
- developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities;
- analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification;
- carrying out statistical analysis for the purposes of retail customer segmentation and targeted marketing;
designing and conducting the evaluation, measurement and verification for programmatic initiatives;
creating compelling graphics, charts, tables, and other methods of data visualization to incorporate into written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; and,
preparing written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff.

The Assoc Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of staff, consultants and contractors.

ESSENTIAL FUNCTIONS
• Supervise staff in carrying out technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
• Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) as needed throughout a program’s lifetime (design, development, implementation, evaluation, measurement, and verification).
• Support/lead integrated resource planning efforts.
• Support/lead the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
• Lead the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
• Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
• Support/lead the development and implementation of SVCE’s overarching decarbonization roadmap.
• Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

KNOWLEDGE, SKILLS, AND ABILITIES
Knowledge:
• Principles of electricity generation, transmission, distribution and infrastructure.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

Ability to:
• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Superior people management experience and skills.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Eight Six (86) years, depending on level, of progressively responsible experience as an analyst at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

ENVIRONMENT: Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers’ markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.
**PHYSICAL:** While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
**Salary Range:** $120,597,952 - $170,067,446

**Summary Description**
The Senior Principal Data Engineer works under the direction of the Director for Decarbonization & Grid Innovation to lead an organization-wide data strategy, and the design, implementation and management of an optimized and reliable overarching data architecture for SVCE’s business functions to support achieving our decarbonization mission. This position works closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness).

**Supervision Received and Exercised**
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of projects, consultants and contractors is required.

**Essential Functions**
- Design, implement and manage an optimized and reliable overarching data architecture to support SVCE’s business and mission.
- Develop and maintain the infrastructure required for extraction, transformation, and loading of data from a wide variety of data sources (ETL).
- Identify, design, and implement internal process improvements, including automating manual processes, optimizing data delivery, and re-designing infrastructure for greater scalability.
- Design and implement best practices for data storage, versioning, querying, as well as managing relevant documentation.
- Build processes supporting data transformation, data structures, metadata, dependency and workload management.
- Collaborate across the organization and with external partners to aggregate additional relevant data sets to support business functions.
- Design and develop data analytics dashboards and visualization tools.
- Collaborate with internal and external stakeholders to understand business and policy challenges, goals and objectives and translate them into data analytics use cases.
- Support data requests with key Silicon Valley stakeholders such as research institutions, start-ups, high-tech, students and the community.

**Knowledge, Skills, and Abilities**
- Experience building and optimizing ‘big data’ data pipelines, architectures, and data sets.
- Excellent programming and statistical programming skills, including Python and R, respectively.
• Working knowledge of message queuing, stream processing, and highly scalable ‘big data’ data stores.
• Advanced working SQL knowledge and experience working with relational databases, query (SQL) as well as working familiarity with a variety of databases.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application (regression analysis, time series, probabilistic models, supervised classification and unsupervised learning).
• A successful history of manipulating, processing and extracting value from large disconnected datasets.
• Subject matter expertise in one or more of the following topics: wholesale electricity markets, retail electricity markets, retail rate design, deep decarbonization, electrification, building energy usage, electric vehicles, energy efficiency, energy resources and procurement.

• Superior project management skills, including managing multiple priorities.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Experience supporting and working with cross-functional teams in a dynamic environment.
• Ability to work independently and in a team.
• Excellent communication skills, including distilling complex information in a simple and understandable manner.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Six-Eight (86) years of progressively responsible experience as a data engineer at an electric utility, cleantech company, software company, or similar organization.

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

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.
ENVIRONMENT: Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers’ markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
SENIOR DATA ENGINEER

**SALARY RANGE:** $110,225.97 - $170,584.46

**SUMMARY DESCRIPTION**
The Senior Data Engineer works under the direction of the Director for Decarbonization & Grid Innovation to lead an organization-wide data strategy, and the design, implementation and management of an optimized and reliable overarching data architecture for SVCE’s business functions to support achieving our decarbonization mission. This position works closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness).

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of projects, consultants and contractors is required.

**ESSENTIAL FUNCTIONS**
- Design, implement and manage an optimized and reliable overarching data architecture to support SVCE’s business and mission.
- Develop and maintain the infrastructure required for extraction, transformation, and loading of data from a wide variety of data sources (ETL).
- Identify, design, and implement internal process improvements, including automating manual processes, optimizing data delivery, and re-designing infrastructure for greater scalability.
- Design and implement best practices for data storage, versioning, querying, as well as managing relevant documentation.
- Build processes supporting data transformation, data structures, metadata, dependency and workload management.
- Collaborate across the organization and with external partners to aggregate additional relevant data sets to support business functions.
- Design and develop data analytics dashboards and visualization tools.
- Collaborate with internal and external stakeholders to understand business and policy challenges, goals and objectives and translate them into data analytics use cases.
- Support data requests with key Silicon Valley stakeholders such as research institutions, start-ups, high-tech, students and the community.

**KNOWLEDGE, SKILLS, AND ABILITIES**
- Experience building and optimizing ‘big data’ data pipelines, architectures, and data sets.
- Excellent programming and statistical programming skills, including Python and R, respectively.
• Working knowledge of message queuing, stream processing, and highly scalable ‘big data’ data stores.
• Advanced working SQL knowledge and experience working with relational databases, query (SQL) as well as working familiarity with a variety of databases.
• Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application (regression analysis, time series, probabilistic models, supervised classification and unsupervised learning).
• A successful history of manipulating, processing and extracting value from large disconnected datasets.
• Subject matter expertise in one or more of the following topics: wholesale electricity markets, retail electricity markets, retail rate design, deep decarbonization, electrification, building energy usage, electric vehicles, energy efficiency, energy resources and procurement.

• Superior project management skills, including managing multiple priorities.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Experience supporting and working with cross-functional teams in a dynamic environment.
• Ability to work independently and in a team.
• Excellent communication skills, including distilling complex information in a simple and understandable manner.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Six-Four (64) years of progressively responsible experience as a data engineer at an electric utility, cleantech company, software company, or similar organization.

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

PHYSICAL AND WORKING CONDITIONS
The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.
**ENVIRONMENT:** Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers’ markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
**SUMMARY DESCRIPTION**
The Senior Principal Data Scientist works under the direction of the Director for Decarbonization & Grid Innovation to lead high-impact analyses to develop actionable insight for SVCE’s business functions to support achieving our decarbonization mission. This position works closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness, Administrative & Finance).

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of projects, consultants and contractors is required.

**ESSENTIAL FUNCTIONS**
- Collaborate across internal teams to understand business and policy challenges, goals and objectives and translate them into high-impact, data analytics use cases (e.g. load forecasting, customer segmentation, precision program design, etc.)
- Develop models and algorithms to generate actionable insight from data across the organization
- Evaluate and deploy third-party models, algorithms and tools, where appropriate
- Design, develop and maintain data analytics dashboards and visualization tools
- Develop, perform and maintain queries and reports
- Support troubleshooting data quality and transfer issues with services providers, PG&E, and customers
- Support configuration and maintenance of the organization’s data systems (cloud-based data warehouse, CRM, etc.)
- Support data requests with key Silicon Valley stakeholders such as research institutions, start-ups, high-tech, students and the community

**KNOWLEDGE, SKILLS, AND ABILITIES**
- Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application (regression analysis, time series, probabilistic models, supervised classification and unsupervised learning)
- A successful history of manipulating, processing and extracting value from large datasets
- Excellent programming and statistical programming skills, including Python and R
- Working knowledge of message queuing, stream processing, and highly scalable ‘big data’ data stores
• Advanced working SQL knowledge and experience working with relational databases, query (SQL) as well as working familiarity with a variety of databases
• Subject matter expertise in one or more of the following topics: wholesale electricity markets, retail electricity markets, retail rate design, deep decarbonization, electrification, building energy usage, electric vehicles, energy efficiency, energy resources and procurement
• Superior project management skills, including managing multiple priorities
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment
• Experience supporting and working with cross-functional teams in a dynamic environment
• Ability to work independently and in a team
• Excellent communication skills, including distilling complex information in a simple and understandable manner

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Four Eight (48) years of progressively responsible experience as a data engineer scientist at an electric utility, cleantech company, software company, or similar organization.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
DATA SCIENTIST

**SALARY RANGE:** $110,597 - $158,446

**SUMMARY DESCRIPTION**
The Data Scientist works under the direction of the Director for Decarbonization & Grid Innovation to lead high-impact analyses to develop actionable insight for SVCE’s business functions to support achieving our decarbonization mission. This position works closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness, Administrative & Finance).

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of projects, consultants and contractors is required.

**ESSENTIAL FUNCTIONS**
- Collaborate across internal teams to understand business and policy challenges, goals and objectives and translate them into high-impact, data analytics use cases (e.g. load forecasting, customer segmentation, precision program design, etc.)
- Develop models and algorithms to generate actionable insight from data across the organization
- Evaluate and deploy third-party models, algorithms and tools, where appropriate
- Design, develop and maintain data analytics dashboards and visualization tools
- Develop, perform and maintain queries and reports
- Support troubleshooting data quality and transfer issues with services providers, PG&E, and customers
- Support configuration and maintenance of the organization’s data systems (cloud-based data warehouse, CRM, etc.)
- Support data requests with key Silicon Valley stakeholders such as research institutions, start-ups, high-tech, students and the community

**KNOWLEDGE, SKILLS, AND ABILITIES**
- Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application (regression analysis, time series, probabilistic models, supervised classification and unsupervised learning)
- A successful history of manipulating, processing and extracting value from large datasets
- Excellent programming and statistical programming skills, including Python and R
- Working knowledge of message queuing, stream processing, and highly scalable ‘big data’ data stores
• Advanced working SQL knowledge and experience working with relational databases, query (SQL) as well as working familiarity with a variety of databases
• Subject matter expertise in one or more of the following topics: wholesale electricity markets, retail electricity markets, retail rate design, deep decarbonization, electrification, building energy usage, electric vehicles, energy efficiency, energy resources and procurement
• Superior project management skills, including managing multiple priorities
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment
• Experience supporting and working with cross-functional teams in a dynamic environment
• Ability to work independently and in a team
• Excellent communication skills, including distilling complex information in a simple and understandable manner

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Four (4) years of progressively responsible experience as a data engineer scientist at an electric utility, cleantech company, software company, or similar organization.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
**SALARY RANGE:** $122,059 - $158,704

**SENIOR DATA SCIENTIST**

**SUMMARY DESCRIPTION**
The Senior Data Scientist works under the direction of the Director for Decarbonization & Grid Innovation to lead high-impact analyses to develop actionable insight for SVCE’s business functions to support achieving our decarbonization mission. This position works closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness, Administrative & Finance).

**SUPERVISION RECEIVED AND EXERCISED**
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of projects, consultants and contractors is required.

**ESSENTIAL FUNCTIONS**
- Collaborate across internal teams to understand business and policy challenges, goals and objectives and translate them into high-impact, data analytics use cases (e.g. load forecasting, customer segmentation, precision program design, etc.)
- Develop models and algorithms to generate actionable insight from data across the organization
- Evaluate and deploy third-party models, algorithms and tools, where appropriate
- Design, develop and maintain data analytics dashboards and visualization tools
- Develop, perform and maintain queries and reports
- Support troubleshooting data quality and transfer issues with services providers, PG&E, and customers
- Support configuration and maintenance of the organization’s data systems (cloud-based data warehouse, CRM, etc.)
- Support data requests with key Silicon Valley stakeholders such as research institutions, start-ups, high-tech, students and the community

**KNOWLEDGE, SKILLS, AND ABILITIES**
- Strong understanding of statistics, machine learning, and optimization algorithms and principles, and their application (regression analysis, time series, probabilistic models, supervised classification and unsupervised learning)
- A successful history of manipulating, processing and extracting value from large datasets
- Excellent programming and statistical programming skills, including Python and R
- Working knowledge of message queuing, stream processing, and highly scalable ‘big data’ data stores
• Advanced working SQL knowledge and experience working with relational databases, query (SQL) as well as working familiarity with a variety of databases
• Subject matter expertise in one or more of the following topics: wholesale electricity markets, retail electricity markets, retail rate design, deep decarbonization, electrification, building energy usage, electric vehicles, energy efficiency, energy resources and procurement
• Superior project management skills, including managing multiple priorities
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment
• Experience supporting and working with cross-functional teams in a dynamic environment
• Ability to work independently and in a team
• Excellent communication skills, including distilling complex information in a simple and understandable manner

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Four Six (46) years of progressively responsible experience as a data engineer scientist at an electric utility, cleantech company, software company, or similar organization.

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

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

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
PRINCIPAL PROGRAM MANAGER

SALARY RANGE: $120,952 - $190,067

SUMMARY DESCRIPTION
The Principal Program Manager works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimagine energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:
- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

The Principal Program Manager will work independently and in teams, as needed, to perform assignments under the general direction of the Director of Decarbonization & Grid Innovation. The Principal Program Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

Examples of anticipated assignments include developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities; analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification; supporting the development of written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; managing consultants and contractors.
SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of Program staff, consultants and contractors.

ESSENTIAL FUNCTIONS

Strategic Planning and Analysis
- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of the program portfolio to support decarbonization and grid integration across SVCE service territory.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans and align with SVCE goals.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Keep abreast of customer and market trends, patterns and issues through research and data analysis to inform modifications to strategy and programs.

Program and Policy Design
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Affairs) as needed throughout a program’s lifetime.
- Lead design and development of programs. Develop requests for proposals (RFPs) and lead RFP review and selection process.
- Manage the delivery of some programs directly or through management of consultants/contractors. Responsibilities include developing timelines, managing deliverables, and coordinating program execution.
- Support Account Services & Community Relations staff in program delivery, including marketing, communications and administration.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Track and report on program budget spending and allocations.

Subject Matter Expert (SME) Support for Legislative and Regulatory (L&R) Engagement
- Support integrated resource planning efforts.
- Act as SME to support the legislative and regulatory team in responding to public proceedings, weighing in on policy issues, and considering new legislation.
- Participate on calls with other parties and help coordinate comments that reflect SVCE positions.

Evaluation, Measurement and Verification (EM&V)
- Lead design and development of EM&V plans for programs and innovation pilots with SVCE’s EM&V consultant.
- During program lifetime, keep EM&V approach and objectives in mind when
adjusting programmatic elements.
• Lead development of EM&V report by managing consultant and reviewing materials.

KNOWLEDGE, SKILLS, AND ABILITES
Knowledge:
• Principles of electricity generation, transmission, distribution and infrastructure.
• Data analytics and statistics.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

Ability to:
• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.
• Manage consultants and contractors in the performance of some of these duties.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Eight (8) years, depending on level, of progressively responsible experience as an analyst or program manager at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

LICENSE: Possession of a valid Class C California driver’s license and a satisfactory driving record at the time of hire.
PHYSICAL AND WORKING CONDITIONS
The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

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

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

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

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

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER------
**Salary Range:** $110,976 - $145,583

**Summary Description**

The **Senior Analyst Program Manager** works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimagine energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:

- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

Program planning and design requires integrating input from all other SVCE divisions in addition to external stakeholders throughout the design cycle. Program work includes close collaboration on markets with the California ISO, CEC, CARB, BAAQMD, PG&E, municipal utilities and other CCAs.

The **Senior Analyst Program Manager** will work independently and in teams, as needed, to perform assignments under the general direction of the Director of Decarbonization & Grid Integration Innovation. The Senior Program Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

Examples of anticipated assignments include developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities; analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification; supporting the development of written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; managing consultants and contractors.
The Senior Analyst may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of Program staff, consultants and contractors.

ESSENTIAL FUNCTIONS

Strategic Planning and Analysis
- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of the program portfolio to support decarbonization and grid integration across SVCE service territory.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans and align with SVCE goals.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Keep abreast of customer and market trends, patterns and issues through research and data analysis to inform modifications to strategy and programs.

Program and Policy Design
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Affairs) as needed throughout a program’s lifetime.
- Lead design and development of programs. Develop requests for proposals (RFPs) and lead RFP review and selection process.
- Manage the delivery of some programs directly or through management of consultants/contractors. Responsibilities include developing timelines, managing deliverables, and coordinating program execution.
- Support Account Services & Community Relations staff in program delivery, including marketing, communications and administration.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Track and report on program budget spending and allocations.

Subject Matter Expert (SME) Support for Legislative and Regulatory (L&R) Engagement
- Support integrated resource planning efforts.
- Act as SME to support the legislative and regulatory team in responding to public proceedings, weighing in on policy issues, and considering new legislation.
- Participate on calls with other parties and help coordinate comments that reflect SVCE positions.

Evaluation, Measurement and Verification (EM&V)
- Lead design and development of EM&V plans for programs and innovation pilots with SVCE’s EM&V consultant.
• During program lifetime, keep EM&V approach and objectives in mind when adjusting programmatic elements.
• Lead development of EM&V report by managing consultant and reviewing materials.

- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) as needed throughout a program’s lifetime (design, development, implementation, evaluation, measurement, and verification).
- Support integrated resource planning efforts.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Performs related duties and responsibilities as required.

**KNOWLEDGE, SKILLS, AND ABILITIES**

**Knowledge:**

- Principles of electricity generation, transmission, distribution and infrastructure.
- Data analytics and statistics.
- End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
- Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
- Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
- Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

**Ability to:**

- Proficiency in Microsoft Office Suite and GIS software.
- Superior project management skills, including managing multiple priorities.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.
• Manage consultants and contractors in the performance of some of these duties.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Six (6) years, depending on level, of progressively responsible experience as an analyst or program manager at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

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

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

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

HEARING: Hear in the normal audio range with or without correction.
-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
**SALARY RANGE:** $83,737 - $131,585

**SUMMARY DESCRIPTION**

The **Analyst Program Manager** works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimage energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:

- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

Program planning and design requires integrating input from all other SVCE divisions in addition to external stakeholders throughout the design cycle. Program work includes close collaboration on markets with the California ISO, CEC, CARB, BAAQMD, PG&E, municipal utilities and other CCAs.

The ** Analyst Program Manager** will work independently and in teams, as needed, to perform assignments under the general direction of the Director of Decarbonization & Grid Integration Innovation. The Program Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

Examples of anticipated assignments include developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities; analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification; supporting the development of written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; managing consultants and contractors.
The Analyst may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

**SUPERVISION RECEIVED AND EXERCISED**

This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of Program staff, consultants and contractors.

**ESSENTIAL FUNCTIONS**

**Strategic Planning and Analysis**
- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of the program portfolio to support decarbonization and grid integration across SVCE service territory.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans and align with SVCE goals.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Keep abreast of customer and market trends, patterns and issues through research and data analysis to inform modifications to strategy and programs.

**Program and Policy Design**
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Affairs) as needed throughout a program’s lifetime.
- Lead design and development of programs. Develop requests for proposals (RFPs) and lead RFP review and selection process.
- Manage the delivery of some programs directly or through management of consultants/contractors. Responsibilities include developing timelines, managing deliverables, and coordinating program execution.
- Support Account Services & Community Relations staff in program delivery, including marketing, communications and administration.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Track and report on program budget spending and allocations.

**Subject Matter Expert (SME) Support for Legislative and Regulatory (L&R) Engagement**
- Support integrated resource planning efforts.
- Act as SME to support the legislative and regulatory team in responding to public proceedings, weighing in on policy issues, and considering new legislation.
- Participate on calls with other parties and help coordinate comments that reflect SVCE positions.

**Evaluation, Measurement and Verification (EM&V)**
- Lead design and development of EM&V plans for programs and innovation pilots with SVCE’s EM&V consultant.
• During program lifetime, keep EM&V approach and objectives in mind when adjusting programmatic elements.
• Lead development of EM&V report by managing consultant and reviewing materials.
• Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
• Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) as needed throughout a program’s lifetime (design, development, implementation, evaluation, measurement, and verification).
• Support integrated resource planning efforts.
• Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
• Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
• Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
• Support the development and implementation of SVCE’s overarching decarbonization roadmap.
• Write staff reports and presentations for Board and Committee meetings.
• Performs related duties and responsibilities as required.

**KNOWLEDGE, SKILLS, AND ABILITIES**

*Knowledge:*

• Principles of electricity generation, transmission, distribution and infrastructure.
• Data analytics and statistics.
• End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
• Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
• Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
• Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

*Ability to:*

• Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
Ability to work independently or in a team, as needed.
Excellent written and oral communication skills.
Manage consultants and contractors in the performance of some of these duties.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Four (4) years, depending on level, of progressively responsible experience as an analyst or program manager at an electric utility, regulatory agency, clean tech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

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

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

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

HEARING: Hear in the normal audio range with or without correction.
-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----
**ASSOCIATE ANALYST PROGRAM MANAGER**

**SALARY RANGE:** $69,780 – $109,654

**SUMMARY DESCRIPTION**

The Associate Analyst Program Manager works under the direction of the Director for Decarbonization & Grid Innovation and collaborates closely with the Directors and Managers of other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) to plan and design a platform and portfolio of programs to achieve SVCE goals.

The focus areas of the program portfolio include mobility, the built environment and grid integration and innovation. In general, built environment programs will catalyze efficient electrification and reimagine energy use in the built environment. In general, mobility programs will reduce emissions, electrify and automate personal and commercial transport. In general, grid integration & innovation programs will enable demand-side flexibility for achieving high-penetration renewables.

SVCE is in a unique position to lead in developing programs that will positively impact customers in its member jurisdiction and have an impact beyond its borders. The Decarbonization & Grid Innovation team is responsible for:

- planning and designing programs that amplify and multiply value;
- developing partnerships with key Silicon Valley stakeholders such as academia, start-ups, high-tech, students and the community;
- developing platforms for innovation, proofs-of-concept and prototypes that will be key to moving the needle in decarbonization and grid innovation within member territories and influence change throughout the state and country; and,
- developing sophisticated data analytics dashboards and visualizations to support programs and overall business goals.

Program planning and design requires integrating input from all other SVCE divisions in addition to external stakeholders throughout the design cycle. Program work includes close collaboration on markets with the California ISO, CEC, CARB, BAAQMD, PG&E, municipal utilities and other CCAs.

The Associate Analyst Program Manager will work independently and in teams, as needed, to perform assignments under the general direction of the Director of Decarbonization & Grid Integration Innovation. The Associate Program Manager may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

Examples of anticipated assignments include developing avoided cost models, cost-effectiveness models for decarbonization initiatives, and GHG emissions reductions forecasts accounting for SVCE’s programmatic activities; analyzing local and state policy related to decarbonization and developing creative policy and market transformation proposals for accelerating electrification; supporting the development of written reports and oral presentations for community training and workshops, legislative and professional groups, the Board of Directors, and SVCE staff; managing consultants and contractors.
The Associate Analyst may be assigned to assist in the work of other SVCE teams and perform related work and other analytic tasks for SVCE, as required.

SUPERVISION RECEIVED AND EXERCISED
This position reports directly to the Director of Decarbonization and Grid Innovation. Significant management of Program staff, consultants and contractors.

ESSENTIAL FUNCTIONS

Strategic Planning and Analysis
- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of the program portfolio to support decarbonization and grid integration across SVCE service territory.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans and align with SVCE goals.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Keep abreast of customer and market trends, patterns and issues through research and data analysis to inform modifications to strategy and programs.

Program and Policy Design
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Affairs) as needed throughout a program’s lifetime.
- Lead design and development of programs. Develop requests for proposals (RFPs) and lead RFP review and selection process.
- Manage the delivery of some programs directly or through management of consultants/contractors. Responsibilities include developing timelines, managing deliverables, and coordinating program execution.
- Support Account Services & Community Relations staff in program delivery, including marketing, communications and administration.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Track and report on program budget spending and allocations.

Subject Matter Expert (SME) Support for Legislative and Regulatory (L&R) Engagement
- Support integrated resource planning efforts.
- Act as SME to support the legislative and regulatory team in responding to public proceedings, weighing in on policy issues, and considering new legislation.
- Participate on calls with other parties and help coordinate comments that reflect SVCE positions.

Evaluation, Measurement and Verification (EM&V)
- Lead design and development of EM&V plans for programs and innovation pilots with SVCE’s EM&V consultant.
During program lifetime, keep EM&V approach and objectives in mind when adjusting programmatic elements.

Lead development of EM&V report by managing consultant and reviewing materials.

- Carry out technology, policy, and economic analysis to support the planning, design, development, and evaluation of programs to support decarbonization and grid integration across SVCE service territory.
- Work closely with the other teams (Power Supply, Account Services & Community Relations, Legislative & Regulatory Effectiveness) as needed throughout a program’s lifetime (design, development, implementation, evaluation, measurement, and verification).
- Support integrated resource planning efforts.
- Support the development of partnerships with local, state and federal agencies, national laboratories, universities, businesses, start-ups, and non-profits to create opportunities for program funding, new program markets and more effective program design and implementation.
- Support the development of applications in response to funding opportunities issued by the CPUC, CEC, BAAQMD, DOE, CARB, and other agencies.
- Contribute to ongoing work with staff from member jurisdictions to support local climate action plans.
- Support the development and implementation of SVCE’s overarching decarbonization roadmap.
- Write staff reports and presentations for Board and Committee meetings.
- Perform related duties and responsibilities as required.

**KNOWLEDGE, SKILLS, AND ABILITIES**

**Knowledge:**
- Principles of electricity generation, transmission, distribution and infrastructure.
- Data analytics and statistics.
- End-to-end knowledge of retail customer programs (design, development, implementation, evaluation, measurement, and verification).
- Regulatory and legislative activities relating to decarbonization, distributed energy resources, demand response.
- Familiarity with policies and procedures at the CPUC, CEC, CARB, BAAQMD and the California ISO related to decarbonization, electrification, building codes, distributed energy resources, rates and customer programs.
- Deeper subject matter expertise in one or more of the following topics: state and local climate and energy policy, pathways to deep decarbonization, wholesale and retail power markets, resource planning, energy usage in the built environment, building codes and end uses, transportation electrification, grid integration, electric distribution system, and grid edge technologies.

**Ability to:**
- Proficiency in Microsoft Office Suite and GIS software.
• Superior project management skills, including managing multiple priorities.
• Self-directed and comfortable operating in a dynamic, fast-paced start-up environment.
• Ability to work independently or in a team, as needed.
• Excellent written and oral communication skills.
• Manage consultants and contractors in the performance of some of these duties.

REQUIRED QUALIFICATIONS

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

EDUCATION: A Bachelor’s Degree from an accredited university or college in science, technology, engineering, mathematics, environmental science, or a related, quantitative field. A Master’s Degree in the aforementioned fields can substitute for up to one year of the required experience. A Doctoral Degree in the aforementioned fields can substitute for up to three years of the required experience.

EXPERIENCE: Two (2) years, depending on level, of progressively responsible experience as an analyst or program manager at an electric utility, regulatory agency, cleantech company, or similar organization with emphasis on electrification of the built environment, mobility, or grid integration, or a closely related field.

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

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

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

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

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

HEARING: Hear in the normal audio range with or without correction.
Staff Report – Item 1g

Item 1g: Authorize the Chief Executive Officer to Execute Agreement with Strategic Energy Innovations to Host Two Climate Corps Fellows for the 2021-2022 Fellowship Cycle

From: Girish Balachandran, CEO

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

Date: 5/12/2021

RECOMMENDATION
Authorize the CEO to execute the Service Agreement, any nonfinancial amendments, and other related documents for Climate Corps fellow hosting services with the nonprofit Strategic Energy Innovations, not-to-exceed $129,000 through June 30, 2022.

BACKGROUND
SVCE was introduced to Strategic Energy Innovations (SEI) and the Climate Corps fellowship program through the City of Cupertino’s Office of Sustainability, who had a fellow focused on outreach projects for SVCE placed there for the 2017 – 2018 FY. In recognizing the need for additional outreach support in SVCE’s pre-launch period, the Climate Corps fellow transferred to working solely with SVCE in January 2017. Since 2017, SVCE has hosted Climate Corps fellows on the Account Services and Community Relations team primarily focused on outreach and educational initiatives.

SEI’s services include recruitment for fellows along with preliminary interviews, monthly trainings for fellows, and opportunities for professional development. The Climate Corps fellowship extends over a 10-month period and the services include helping staff with outreach, communications efforts, report preparation, and any other needs the organization has for marketing and program development.

ANALYSIS & DISCUSSION
Aligned with SVCE’s mission to reduce the dependence on fossil fuels and fight climate change locally, the Climate Corps fellowship program focuses on advancing sustainable solutions with organizations while fostering emerging leaders. The award-winning Climate Corps fellowship program provides professional development opportunities in the sustainability and energy fields by connecting young professionals to work with companies, agencies and local governments on projects that address climate change issues. Hosting Climate Corps fellows not only helps individuals interested in the energy field gain industry experience, but also helps SVCE to continue to reach the organization’s goals set forth in the adopted strategic plan.

SVCE has hosted Climate Corps fellows for the past five fellowship cycles, including one fellow this current cycle. Climate Corps fellows have been instrumental in the success of SVCE outreach projects and initiatives. Past and current fellow projects include the Bike to the Future high school scholarship competition focused on clean transportation innovation, the award-winning SVCE Understanding Your Bill video, the current EmPower SV youth film competition focused on climate resiliency, and additional support for outreach initiatives and programs.
The added benefit of working with a defined fellowship program is that much of the recruitment effort and liability for the fellows is managed by SEI, and fellows receive professional development opportunities. The scope of work for SEI includes:
- Recruitment assistance
- Ongoing training and support of selected fellows
- Development of metrics for fellows to measure and track progress
- Monthly follow-ups to review progress
- Receipt of a Climate Protection Professional Career Certificate with Skyline College at conclusion of fellowship

The 2021-2022 fellowship cycle starts in September 2021 and runs until June 2022. With the proposed agreement, SVCE plans to host two fellows under the Account Services and Community Relations team during the cycle.

The Community Outreach Fellow, supervised by SVCE Communications Manager Pamela Leonard, will mainly focus on youth engagement activities and the DIY Energy Savings Toolkit program. Other duties may include supporting the community relations team with outreach events and initiatives.

The Programs Funding and Finance Fellow supervised by SVCE Manager of Account Services Zoe Elizabeth will focus on unlocking access to finance by supporting the development and implementation of strategic fundraising strategy to enable decarbonization of buildings and transportation across SVCE’s territory.

**STRATEGIC PLAN**

Hiring two climate corps fellows will help achieve the following goals from the October 2020 Board-adopted Strategic Plan.
- Goal 1: Build and maintain a high-performing team
- Goal 10: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices
- Goal 11: Engage a full range of public, private and non-profit stakeholders to leverage our decarbonization efforts.

By utilizing SEI’s support in recruitment and hiring, SVCE can act on Goal 1 with reduced staff time. With the Outreach Fellow’s role to conduct and assist with youth engagement, the DIY Energy Savings Toolkit program and outreach initiatives, the fellow will support the team in continuing to reach the metrics set in Goal 10. The Programs Funding and Financing Fellow will also work in supporting SVCE’s relationships with a wide array of stakeholders by providing research on funding and resources available to local partners and stakeholders.

**ALTERNATIVE**

The alternative is to not hire two Climate Corps fellows, hire only one fellow, or do not hire any fellows and the work outlined within the fellow job descriptions will be led by staff.

**FISCAL IMPACT**

The fiscal impact of this agreement would be $129,000, which will be included in the 2021-2022 FY budget, should it be approved by the SVCE board. The current 2020-2021 FY budget does account for temporary staff, inclusive of the annual Climate Corps fellowship.

**ATTACHMENTS**

1. SEI Climate Corps Fellowship Agreement
2. Outreach Fellow Job Description
3. Programs Funding and Finance Fellow Job Description
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND STRATEGIC ENERGY INNOVATIONS FOR CLIMATE CORPS FELLOW HOSTING SERVICES

THIS AGREEMENT, is entered into this 1st day of September, 2021, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority" or “Partner”), and STRATEGIC ENERGY INNOVATIONS, a nonprofit organization whose address is 899 Northgate Dr #401, San Rafael, CA 94903 (hereinafter referred to as "Consultant") (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for Climate Corps fellow hosting upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM
   The term of this Agreement shall commence on September 1, 2021, and shall terminate on June 30, 2021, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED
   Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference. Exhibit A also includes tasks to be performed by Authority. For purposes of this Agreement, fellow is an employee/agent of Consultant.

3. COMPENSATION TO CONSULTANT
   Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred and twenty-nine thousand dollars and no/100 ($129,000.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

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

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

6. **INDEPENDENT PARTIES**

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

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

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority’s constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for
employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

   B. **Intellectual Property Indemnification.** Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party’s IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys’ fees of counsel of Authority’s choice, expert fees and all other costs and fees of litigation.

   C. The acceptance of the services by Authority shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

   D. Consultant’s indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.
10. **INSURANCE**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant’s indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

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

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

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

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

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

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

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers’ compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

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

14. **REPORTS**
   A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared for Authority by Fellow, as defined in Exhibit A, pursuant to or in connection with this Agreement, shall be the exclusive property of Authority, and all publication rights are reserved to Authority. All training and professional development materials and documents prepared by Consultant shall remain the exclusive property of Consultant.

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

16. **PARTY REPRESENTATIVES**
   The Chief Executive Officer ("Authority Representative") shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Nathan McKenzie (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **INFORMATION AND DOCUMENTS**
   A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.
B. Consultant shall promptly notify Authority should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Authority. Authority may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with Authority and to provide Authority with the opportunity to review any response to discovery requests provided by Consultant. However, Authority’s right to review any such response does not imply or mean the right by Authority to control, direct or rewrite the response.

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

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

18. **NOTICES**

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

**TO AUTHORITY:**
333 W. El Camino Real
Suite 330
Sunnyvale CA 94087
Attention: Chief Executive Officer

**TO CONSULTANT:**
Nathan McKenzie
Strategic Energy Innovations
899 Northgate Drive, Suite 410
San Rafael, CA 9403

19. **TERMINATION**

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

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

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

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

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

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

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

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

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

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

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

28. **AUTHORITY’S RIGHTS TO EMPLOY OTHER CONSULTANTS**
Authority reserves the right to employ other consultants in connection with the subject
matter of the Scope of Services.

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

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

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

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

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

34. **SUCCESSORS AND ASSIGNS**
The terms and conditions of this Agreement shall be binding on the successors and assigns
of the Parties to this Agreement.

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

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

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

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

RECOMMENDED FOR APPROVAL

_______________________________
Don Bray, Director of Account Services and Community Relations
Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
Strategic Energy Innovations

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

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: ________________________
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _________________________

APPROVED AS TO FORM:

_____________________
Counsel for Authority

ATTEST:

_____________________
Authority Clerk
**Exhibit A**  
**Scope of Services**

通过Climate Corps，SEI同意：

- 招募并协助在1,756小时的承诺期间选拔两位实习生。
  - 1,464小时的现场服务与合作伙伴（“现场服务”）
  - 132小时的SEI培训（“培训时间”）
  - 160小时的个人时间（“PTO时间”）
- 培训并支持所选实习生，提供一个全面的培训计划，包括一份培训手册，为期多日的由专家团队领导的定向培训，每月培训，中期两天的培训，以及两个专业发展评估审查。
- 与合作伙伴一起开发特定的实习计划，以适合特定合作伙伴的项目，并定义培训计划。
- 提供协助定义和开发实习生用于衡量和跟踪项目活动进度的指标。
- 提供每月跟进以审查与站点监督员和实习生的进度。
- 定义并实施任何由实习生和合作伙伴决定的纠正措施。

合作伙伴同意：

- 参与招募和面试过程以确定最适合特定项目需求的实习生，合作伙伴有权拒绝任何提出的实习生。
- 提供一到三个具体的气候韧性倡议，每个实习生都可以在任期执行。
  - 倡议必须明确定义，批准实施，并包括具体的学习目标。
  - 合作伙伴机构将与SEI合作，就实习生的倡议确定一个共同同意的实习计划。
- 指派站点监督员，他们将每周至少与实习生进行一次一对一的项目会议，协调其他必要的监督。
- 分配站点监督员，他们将每周至少与实习生进行一次一对一的项目会议，协调其他必要的监督。
- 支持实习生完成每月报告SEI，以确认他们在倡议方面是否取得进展。
- 提供反馈，以评估项目的有效性和实习生的绩效。
  - 填写并提交专业发展评估，为实习生的活动提供反馈，每年两次；
  - 参加全项目范围的会议讨论项目进展；
  - 响应合作伙伴的反馈调查。

**[ADD UPDATED EXHIBIT A PROJECT PLAN]**

- 执行Climate Corps，SEI同意：
  - 招募并协助在1,756小时的承诺期间选拔两位实习生。
  - 1,464小时的现场服务与合作伙伴（“现场服务”）
  - 132小时的SEI培训（“培训时间”）
  - 160小时的个人时间（“PTO时间”）
- 培训并支持所选实习生，提供一个全面的培训计划，包括一份培训手册，为期多日的由专家团队领导的定向培训，每月培训，中期两天的培训，以及两个专业发展评估审查。
- 与合作伙伴一起开发特定的实习计划，以适合特定合作伙伴的项目，并定义培训计划。
- 提供协助定义和开发实习生用于衡量和跟踪项目活动进度的指标。
- 提供每月跟进以审查与站点监督员和实习生的进度。
- 定义并实施任何由实习生和合作伙伴决定的纠正措施。

合作伙伴同意：

- 参与招募和面试过程以确定最适合特定项目需求的实习生，合作伙伴有权拒绝任何提出的实习生。
- 提供一到三个具体的气候韧性倡议，每个实习生都可以在任期执行。
  - 倡议必须明确定义，批准实施，并包括具体的学习目标。
  - 合作伙伴机构将与SEI合作，就实习生的倡议确定一个共同同意的实习计划。
- 指派站点监督员，他们将每周至少与实习生进行一次一对一的项目会议，协调其他必要的监督。
- 分配站点监督员，他们将每周至少与实习生进行一次一对一的项目会议，协调其他必要的监督。
- 支持实习生完成每月报告SEI，以确认他们在倡议方面是否取得进展。
- 提供反馈，以评估项目的有效性和实习生的绩效。
  - 填写并提交专业发展评估，为实习生的活动提供反馈，每年两次；
  - 参加全项目范围的会议讨论项目进展；
  - 响应合作伙伴的反馈调查。
• Refrain from using the Fellows for displacement of a Partner Agency employee during the Fellowship term.
• Allow SEI to share results from this program through grant reporting, program marketing, and fundraising.
• Provide program-wide support through either:
  o Sponsoring a venue and staff presentations for a monthly training event for all Fellows; or
  o Participating in a program sponsored training session or professional development event.
  o Being receptive to informational interview requests from 1 or more current Fellow

Program Plan

Fellow service information

<table>
<thead>
<tr>
<th>[A] Number of Fellows</th>
<th>2</th>
</tr>
</thead>
</table>

Service Term

Full Cycle: September 1, 2021 to June 30, 2022

Standard Hours

Full Cycle: 1,764 total hours, allocated as follows:
- 1,464 hours of on-site service with Partner (“on-site hours”)
- 140 hours of training led by SEI (“training hours”)
- 160 hours of vacation, holiday and sick time (VHS)

Position fee

<table>
<thead>
<tr>
<th>[B] Amount</th>
<th>$41,500 per non-profit Fellow</th>
</tr>
</thead>
</table>

Additional funding

<table>
<thead>
<tr>
<th>[C] Amount</th>
<th>$20,000</th>
</tr>
</thead>
</table>

Use of additional funds

- **Living Stipend**: Additional funds will go towards enhancing Fellow’s Living Stipend. Funds will be paid out to Fellow twice a month as part of the Fellow’s regular stipend checks.]
- **End-of-Program Award**: Additional funds will go towards enhancing Fellow’s end of program award.
- **Expense reimbursements**: Additional funds will be held by SEI in a reimbursement account for Program-related costs such as commuting, trainings, and other benefits. For Fellow to be reimbursed, Fellow must submit a Partner-approved Climate Corps Expense Report and to SEI. SEI will disburse the funds to Fellow within 30 days after receiving the request and following
Partner approval. If, at the end of the Service Term, any funds remain in the account, SEI will transfer the remaining funds to Partner.

<table>
<thead>
<tr>
<th>[D] Administration fee</th>
<th>Partner will pay to SEI a fee equal to 15% of the amount of additional funds.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Timing</strong></td>
<td>[Additional funds to be held in a reimbursement account are due at the same time as the first installment of the Program fee.] [Partner will pay additional funds and the administration fee promptly following receipt of an invoice from SEI.]</td>
</tr>
</tbody>
</table>

| **Total fee** |
|------------------|------------------------------------------------------------------|
| **Amount**       | $ (A*B)+(C*(1+D))                                                |
| **Timing**       | Partner will pay the fee in two installments:                     |
|                  | ● $96,750 due October 15, 2021                                  |
|                  | ● $32,250 due February 15, 2022                                 |
### Partner contact information

<table>
<thead>
<tr>
<th><strong>Contact person and title</strong></th>
<th>Pamela Leonard</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Email address</strong></td>
<td><a href="mailto:pamela.leonard@svcleanenergy.org">pamela.leonard@svcleanenergy.org</a></td>
</tr>
<tr>
<td><strong>Phone number</strong></td>
<td>(408) 721-5301 x1004</td>
</tr>
<tr>
<td><strong>Mailing address</strong></td>
<td>333 W. El Camino Real, Ste. 333 Sunnyvale, CA 94087</td>
</tr>
<tr>
<td><strong>Billing contact information</strong>&lt;br&gt;(if different from above)</td>
<td></td>
</tr>
<tr>
<td><strong>P.O. Number (if applicable)</strong></td>
<td></td>
</tr>
</tbody>
</table>

### SEI contact information

<table>
<thead>
<tr>
<th><strong>Contact person and title</strong></th>
<th>Nathan McKenzie, Program Director</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Email address</strong></td>
<td><a href="mailto:nathan@seiinc.org">nathan@seiinc.org</a></td>
</tr>
<tr>
<td><strong>Phone number</strong></td>
<td>415-507-1432</td>
</tr>
<tr>
<td><strong>Mailing address</strong></td>
<td>899 Northgate Drive, Suite 410 San Rafael, CA 94903</td>
</tr>
<tr>
<td>Additiona l Terms</td>
<td>Program Initiation</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td><strong>Recruitment and Selection</strong></td>
<td>SEI will recruit, screen, and select a Fellow to serve at Partner during the service term set out in the Program Plan (“Service Term”). Partner will assist in the recruitment and selection of Fellow, including, without limitation, developing a job description specific to Partner’s activities and needs, conducting interviews, and participating in the final selection. If Partner ultimately fails to select a Fellow, Partner will pay to SEI a $2,500 fee for the recruiting effort promptly following receipt of an invoice from SEI.</td>
</tr>
<tr>
<td><strong>Employment Relationship</strong></td>
<td>SEI and Partner acknowledge that Fellow is an employee of SEI. SEI will notify each Fellow that Fellow is not an employee of Partner.</td>
</tr>
<tr>
<td><strong>Fellow Orientation</strong></td>
<td>At the start of the Service Term, SEI will provide Fellow with an orientation to the Program. Partner will provide Fellow with an orientation to Partner’s mission, programs, operations, systems, and facilities.</td>
</tr>
<tr>
<td><strong>Fellowship Scope</strong></td>
<td>Partner will cooperate with SEI to develop a written scope of work (“Fellowship Scope”) for each Fellow. The Fellowship Scope will: (a) outline the training plan for the Fellow, (b) describe one to three specific climate change resiliency projects that the Fellow will work on during the Service Term, and (c) define anticipated deliverables and Fellow performance and learning goals. Partner and SEI will complete the Fellowship Scope within one month after the Fellow’s first day of service.</td>
</tr>
<tr>
<td><strong>Training and Support</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Fellow Training</strong></td>
<td>SEI will train and support the Fellow with a training program that includes: monthly trainings, a mid-year two-day retreat, an end of program symposium, and two professional development assessment reviews. Time spent by the Fellow in this training program will count as training hours under the Program Plan.</td>
</tr>
<tr>
<td><strong>Training Calendar</strong></td>
<td>SEI will provide a calendar of training activities to Partner and will notify Partner of any schedule changes in advance.</td>
</tr>
<tr>
<td><strong>Ongoing Support and Assistance</strong></td>
<td>SEI will help Partner and Fellow develop metrics for evaluating the Fellow’s progress. SEI will schedule monthly sessions with Fellow and Partner to review the Fellow’s progress, and will assist the Fellow and Partner with defining or implementing any changes to the Fellowship Scope or other documents as appropriate.</td>
</tr>
<tr>
<td><strong>Partner’s Program-wide Support</strong></td>
<td>Partner will carry out Program-wide activities reasonably requested by SEI, such as: (a) sponsoring a venue and staff presentations for a monthly training event for all Fellows, (b) participating in a Program-sponsored training session or professional</td>
</tr>
</tbody>
</table>
development event, or (c) accepting informal interview requests from one or more other Fellows in the Program.

Ownership of Materials
For clarity, SEI owns all training and professional development materials and documents.

Fellow Responsibilities, Scheduling, and Supervision

Fellow Responsibilities
Partner may assign specific responsibilities to Fellow so long as they are consistent with the Fellowship Scope.

Fellow shall be required to attend or complete training as directed by Partner regarding data security, and confidentiality and other Partner policies and comply with such policies for the duration of the Term.

Payment to Fellow; Additional Funding
SEI will pay a living stipend (“Living Stipend”) and end of program award (“End of Program Award”) to Fellow during the Service Term. Partner may provide additional funding for Fellow as may be set out in the Program Plan.

Hours and Work Schedule
The standard number of service hours for Fellows (“Standard Hours”) is set out in the Program Plan. Partner will provide Fellow with a reasonably consistent schedule during the Service Term so that Fellow can fulfill his or her Target Hours. If a Fellow is required serve as a juror, they will log that time as on-site hours with Partner and continue receiving a living allowance, healthcare coverage and, if applicable, childcare coverage regardless of any reimbursements for incidental expenses received from the court.

Work Environment and Resources
When in-person work is allowed, Partner will provide Fellow with adequate workspace, a reasonably comfortable work environment, access to a computer with internet connectivity, and other support resources reasonably necessary for Fellow to complete his or her work.

While working remotely, individual Site Supervisors will plan for IT logistics like computer, WiFi, and other technological equipment needed at the Fellows’ home, account and software access, and/or setting up remote VPNs. Fellows should alert their Site and Regional Supervisors immediately if they face any logistical hurdles to remote work, such as WiFi challenges, remote account access or VPNs.

We recognize that sites will have different timelines and protocols for reopening. Site Supervisors, please notify your Climate Corps Regional Supervisor in advance via email if your site plans to reopen and you will be expected to physically report to service. Please share: (1) Date of expected reopening and date you will begin to report to work on site; (2) Health and safety measures in place to minimize the threat of exposure (i.e. distancing, availability of PPE and disinfecting supplies). If your site organization has a COVID-19 policy, please share.
Fellow Attendance at Climate Corps Events
Partner will allow Fellow to attend all Program events, including, without limitation, orientation, monthly trainings, retreats, field trips to other Climate Corps partner sites, and the Climate Corps Symposium, so that Fellow can fulfill his or her Program training requirements and enhance his or her professional development. Time spent by the Fellow at these events will count as training hours under the Program Plan.

Site Supervisor
Partner will designate a paid staff supervisor ("Site Supervisor") to supervise Fellow's day-to-day activities and performance. The responsibilities of Site Supervisor include, without limitation: (a) guiding Fellow towards achieving the goals set out in the Fellowship Scope, (b) meeting with Fellow one-on-one at least weekly to discuss project(s), and (c) helping Fellow complete monthly reporting to SEI to track the progress made on the project(s). If Partner changes the Site Supervisor, Partner will provide SEI with at least 30 days’ written notice setting out the name and title of the new Site Supervisor, the reason for the change, and the expected impact, if any, on the Fellowship Scope or Fellow.

Reporting and Recordkeeping

Program Reports
Partner will complete and submit all Program forms, surveys, assessments, progress reports, Fellow evaluations, and other documents requested by SEI, including a biannual professional development assessment providing feedback on Fellow activities. SEI may share results related to the Program for the purpose of grant reporting, program marketing, and fundraising.

Site Visits
SEI may visit Partner sites and film, photograph, and otherwise document Program and Fellow activities during normal business hours and with reasonable advance notice.

Recordkeeping
SEI and Partner will each maintain records relating to its Program responsibilities in a manner such that the other can evaluate compliance with this MOU. SEI and Partner will make those records available for review by the other on reasonable notice during the term of this MOU and for a period of three years after its termination.

Communication

Program Contacts
SEI and Partner will each appoint one individual to act as principal contact person and to coordinate activities in connection with the Program. The initial appointees are identified in the Program Plan. SEI and Partner each may change its contact person at any time and will so advise the other.

Cooperation
SEI and Partner acknowledge Fellow’s success in the Program depends in large part on the effectiveness of collaboration between the parties. Both parties will provide timely access to data, information, and personnel, ensure the accuracy and
completeness of data and information provided, and promptly notify one another about challenges, concerns, and successes.

**Fellow Performance**
SEI cannot guarantee specific performance results for any Fellow. Partner will notify SEI immediately of any significant problems with Fellow’s professional performance or conduct, including, without limitation, failure to report to a site or unprofessional behavior. SEI will work with Partner to provide assistance or discuss an appropriate response.
Exhibit B
Schedule of Performance

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

<table>
<thead>
<tr>
<th>Task</th>
<th>Begin</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fellow Interview and Recruitment</td>
<td>May 2021</td>
<td>August 2021</td>
</tr>
<tr>
<td>2. Fellowship Cycle</td>
<td>September 2021</td>
<td>June 2021</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Exhibit C
Compensation

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of one hundred and twenty-nine thousand dollars and no/100 ($129,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fellow Position Fee – Fellow 1</td>
<td>$41,500</td>
</tr>
<tr>
<td>2. Fellow Living Stipend – Fellow 1</td>
<td>$20,000</td>
</tr>
<tr>
<td>3. SEI Administrative Costs – Fellow 1</td>
<td>$3,000</td>
</tr>
<tr>
<td>4. Fellow Position Fee – Fellow 2</td>
<td>$41,500</td>
</tr>
<tr>
<td>5. Fellow Living Stipend – Fellow 2</td>
<td>$20,000</td>
</tr>
<tr>
<td>6. SEI Administrative Costs – Fellow 2</td>
<td>$3,000</td>
</tr>
<tr>
<td>Total</td>
<td>$129,000</td>
</tr>
</tbody>
</table>

Invoices
Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

Reimbursable Expenses
Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority.

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

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

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

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

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

(5) **Privacy and Cybersecurity Liability**
Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least $2,000,000 US per occurrence.)
Climate Corps Description – Community Outreach Fellow

Do you want to be a part of an organization that is fighting climate change, accelerating electric innovation and reinvesting locally? Silicon Valley Clean Energy (SVCE) is the community choice electricity provider for 13 communities in Santa Clara County. By providing carbon-free electricity, SVCE has reduced local emissions by 24% from the 2015 baseline and are continuing to reduce emissions through innovative community programs focused on electrification of buildings and transportation.

Under staff direction, the fellow’s main tasks will be to develop, coordinate and plan SVCE’s youth climate engagement initiatives and DIY Energy Savings Toolkits. Other tasks include supporting the community relations team by engaging in community outreach to inform and engage residents and businesses to build awareness of Silicon Valley Clean Energy and available offers and services. This position also requires research and analytical tasks for projects and assignments that utilize specific and acquired academic skills and knowledge for a variety of outreach and marketing-related activities.

The work performed for this fellowship requires strong communication, public speaking, creative and independent research skills. Under the direction and guidance of staff, fellows will research opportunities to support outreach and business development.

Essential Duties:
The successful fellow will:
- Develop and coordinate youth climate engagement initiatives
- Perform tasks of an analytical or research nature for suitable projects or ongoing assignments which call for specific acquired academic skills and knowledge.
- Locate sources of information and collect and organize data, as directed.
- Assist with the development of written, graphic and/or oral reports and material.
- Create messaging and graphics for social media, write news releases, staff reports, newsletter articles, and other presentation materials.
- Attend virtual, and tentatively in-person, community events where SVCE is present (given that it is safe and in accordance with state and county COVID-19 guidelines to attend in-person events)
- Gain knowledge of community choice energy providers and of the energy industry as a whole.

Qualifications:
Qualified candidates should be a recent graduate from an academic institution with a degree that will provide the specific skills and knowledge that will contribute to available work assignments.

Additionally, we are looking for someone who is passionate about learning, not afraid to be challenged and excited by the opportunity to apply acquired academic knowledge to real world business endeavors.

The following skills are also highly desired:
- Exceptional writing skills
- Detail-oriented and organized
- Understanding and passion for the traditional and social media landscape
- Strong interviewing, public speaking and presentation skills
- Working with youth
- Graphic design skills highly desired
- Ability to work with a team, as well as independently motivated
• Passion to help build our brand while building your career
• Knowledge of Santa Clara County and its communities
• Bilingual Spanish or Chinese languages is strongly desired
• Applicants must be able to perform the essential job functions with or without a reasonable accommodation.
Climate Corps Description – Funding & Finance Programs Fellow

Do you want to be a part of an organization that is fighting climate change, accelerating electric innovation and reinvesting locally? Silicon Valley Clean Energy (SVCE), the community choice electricity provider for 13 communities in Santa Clara County. In providing carbon-free electricity, SVCE has reduced local emissions by 24% from the 2015 baseline and are continuing to reduce emissions through innovative community programs focused on electrification of buildings and transportation.

Under staff direction, the fellow will play a pivotal role in development of a funding and financing strategy to accelerate decarbonization across Silicon Valley. Unlocking access to finance is key to solving the climate crisis and driving an equitable clean energy transition. Interfacing with local government representatives from sustainability and public works, private sector transportation companies and state agency leaders. The research performed during this fellowship will directly inform current and near-term program design.

The fellow will work under the direction of SVCE staff to research, assess and analyze funding and finance opportunities. The work performed for this fellowship requires strong research skills, organization, and a self-starter attitude.

**Essential Duties:**
The successful fellow will:
- Track regional, state, and federal funding opportunities relevant to SVCE and our member agencies, customers, and community at large;
- Research finance models and opportunities for building and transportation electrification projects, particularly for low-income and disadvantaged customer segments.
- Identify complementary rate structures and utility bill protection mechanisms to accelerate equitable electrification.
- Identifying successful financing and incentive programs that other utilities or CCAs have implemented
- Perform literature reviews across professional and research publications.
- Create a network map of funders and financiers active in the field
- Assist with grant writing

Help develop a process for identifying shovel-ready projects for funding and fund matching process for potential future state and/or federal stimulus

**Qualifications:**
Qualified candidates should be a recent graduate from an academic institution with a degree that will provide the specific skills and knowledge that will contribute to available work assignments.

Additionally, we are looking for someone who is passionate about learning, not afraid to be challenged and excited by the opportunity to apply acquired academic knowledge to real world business endeavors.

The following skills are also highly desired:
- Basic understanding of principles of transportation and building decarbonization
- Excel and PowerPoint experience
- Exceptional research skills
- Ability to run cost-benefit analysis, Net Present Value calculations, and risk analyses
• Develop other qualitative and quantitative metrics to compare and prioritize opportunities
• Knowledge of California regulatory and legislative bodies and processes governing energy, transportation, and climate change
• Educational focus of finance, economics, public policy, business administration or related field

Check out the Decarbonization Strategy Programs Roadmap and Building Decarbonization Joint Action Plan for more insights on SVCE’s finance and funding plans in relation to customer programs:
Staff Report – Item 1h

Item 1h: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Liz Gibbons, Chair of the Executive Committee

Date: 5/12/2021

At the April 23, 2021 Executive Committee meeting, the committee received a presentation from CEO Girish Balachandran on an update to California Community Power’s policies.

Director of Account Services and Community Relations Don Bray provided a presentation on increased customer utility bill debt associated with COVID-related impacts and SVCE’s Delinquent Payment Policy, which the committee discussed in great length. Of the three possible options for resumption of the Delinquent Payment Policy presented, the Executive Committee generally favored a gradual resumption approach which would include devoting SVCE time to outreach in making delinquent customers aware of available debt relief programs and payment plans. This item was also presented to the Finance and Administration Committee on May 3, 2021, and is on the regular calendar for the May Board of Directors meeting for discussion.

The committee received a presentation on updates to the SVCE Net Energy Metering (NEM) Policy, and provided feedback to staff on changing the current NEM cashout policy; this item is also on the regular calendar for discussion at the May Board of Directors meeting.

The last item discussed at the meeting addressed future remote work policies and transition ideas as SVCE begins to prepare for post-COVID operations of in-person meetings and a possible hybrid work structure. This item will be presented to the full board for discussion on the regular calendar of the May Board of Directors meeting.

Materials from the April 23, 2021 meeting can be found here: [SVCE Executive Committee Meeting Materials, 4/23/21](#)

The next meeting of the Executive Committee will be May 28, 2021 at 2:30 p.m.; materials will be posted no later than 72 hours in advance of the meeting.
Staff Report – Item 1i

Item 1i: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Rob Rennie, Chair of the Finance and Administration Committee

Date: 5/12/2021

The Finance and Administration Committee met May 3, 2021 and discussed a variety of topics that will be presented to the Board of Directors at the May 12, 2021 Board of Directors meeting.

The committee received a presentation from Director of Account Services and Community Relations Don Bray regarding increased customer utility bill debt related to COVID impacts and Customer Delinquent Payment Policy. The committee discussed the issue and provided feedback on potential changes to SVCE’s delinquent payment policy, including changing the threshold of the delinquency amount, and the number of days allotted before SVCE returns customers to PG&E for non-payment. Ideas received from this meeting in addition to suggestions received at the April Executive Committee will be brought to the full board for discussion on the regular calendar of the May Board of Directors meeting.

Staff provided a presentation on Future Remote Work Policies, which addressed ideas for the SVCE organization post-COVID, including public meetings and a possible hybrid workforce. This will also be a discussion item for the full board at our May Board of Directors meeting.

The committee received a presentation from Administrative Services Manager Kevin Armstrong on SVCE Organizational Chart and Title Amendments requests, which included broad banding a number of positions and changing the titles of two existing positions. Given the requests did not increase the overall headcount of positions, had a minimal budget impact, and the requests contributed to the need for SVCE to be flexible to reflect the changing needs of the organization, the Finance and Administration Committee was in consensus that the item could be placed on the Consent Calendar of the May Board of Directors meeting for approval.

Meeting materials from the May 3, 2021 meeting can be found here: SVCE Finance and Administration Committee Meeting, 5/3/21

The next meeting of the Committee will be in August; materials will be posted no later than 72 hours in advance of the meeting.
Staff Report – Item 1j

Item 1j: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/12/2021

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.
Staff Report – Item 1k

Item 1k: Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

From: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/12/2021

No report as the Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee has not met since April 1, 2021.

The next meeting of the Legislative and Regulatory Responses to Industry Transition for 2021 Ad Hoc Committee will be June 3, 2021, 10:00 a.m. A report will be provided on the Consent Calendar of the June 9, 2021 Board of Directors meeting.
Staff Report – Item 1

Item 1: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 5/12/2021

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 board meeting on Wednesday, April 21, 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, 4/21/21](#)

The next meeting of the board will be May 19, 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, April
The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, 4/21/21, 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://cacommunitypower.org

Highlights of the meeting included the following:

- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the 3/17/21 Regular Board Meeting

- **Ad hoc Committee Report – Selection of General Manager and General Counsel**
  - **Interim General Manager Selection**
    The ad hoc Committee has finalized the posting for the Interim General Manager position, and it has been posted on the CC Power and member websites as well as listed on LinkedIn. Outreach to potential candidates has been initiated and initial responses of interest have been received. The goal is to have a recommendation to the Board by no later than the June meeting.
  - **General Counsel Selection**
    The ad hoc Committee has issued and received responses on an RFQ for this service. Interviews with respondents are being scheduled. The goal is to have a recommendation to the Board by the May meeting.

- **Ad hoc Committee Report – CC Power Policy Development**
  The ad hoc Committee reported that it met with representatives from the unions and environmental groups on issues these groups believe should be addressed in the long-term policies for CC Power. The discussions were productive, and the ad hoc Committee will use this input as part of its considerations for the long-term policies which will be brought back to the Board in the next couple of months. Staff also provided a recommendation to the Board on additional procurement conditions for the LDS Project regarding workforce, environmental, and environmental justice issues. These recommendations were supported by both the ad hoc Committee and the LDS Project Oversight Committee. Comments were received from the public on some suggested changes to the proposed language. After discussions, the Board approved a modification of the recommendations that included greater specificity around prevailing wage code sections and requesting non-disparagement language be included in any project labor agreements that might be executed.

- **Interim General Manager’s Report** - Mr. Shetler provided an update on the status of the LDS Project effort. In addition, Mr. Shetler brought forward the following action items for Board consideration:
- Request by Clean Power San Francisco (CPSF) and Valley Clean Energy (VCE) to become members of CC Power, which was approved unanimously by the Board.
- Request to approve the Revised 2021 Annual Budget for CC Power to reflect adjustments in expected costs and the addition of the two new members. This was approved unanimously by the Board.
- Request to accept the proposed process for future project development for CC Power and to approve the specific proposals for delegations for the LDS Project, which was approved unanimously by the Board.
- Request to approve the Non-disclosure Agreement and Exclusivity Agreement for the LDS Project and to authorize the Interim General Manager to execute those agreements with the shortlisted projects. This was approved unanimously by the Board.

The slides for this update are included at the website noted above.

- Discussion on Individual Member Items – The Board had a general discussion on possible items that CC Power should be considering for opportunities in the future. Some of new concepts discussed included:
  - Financing authority for electrification programs
  - Joint program for demand response
  - Back-office support (e.g. – data management, customer services)
  - Central administration of CPUC mandated programs.

Staff will maintain a list of these and prior proposals and factor these into discussions for future projects.

Please feel free to contact me if you have any questions on this report.
REPORT

SVCE Staff Update
Bena Chang joined SVCE April 19th as our new Senior Government Affairs Manager. Bena is bringing her extensive legislative and local experience to the SVCE team. Bena most recently joins SVCE from the City of San Jose where she served as Director of Intergovernmental Relations in the City Manager's Office. Bena also spent more than a decade at the Silicon Valley Leadership Group where she lead transportation, housing and health policy. Bena is an alumni of Wellesley College where she graduated magna cum laude with a BA in English.

We’re pleased to announce that Zoe Elizabeth has been promoted to be SVCE’s new Account Services Manager. Since joining SVCE in late 2019 as an Energy Services Lead in the Account Services group, Zoe has been instrumental in working with our member agencies, customers, and other regional stakeholders to deploy EV infrastructure and Resiliency programs. Prior to SVCE, she served as Sustainability Manager for the County of Santa Clara, and helped launch the California Center for Sustainable Communities at UCLA (where she received a Master Degree in Urban Planning, focusing on regional climate action).

Deadline Extension for Community Energy Resilience Grants to Member Agencies
SVCE will extend the deadline for both the Community Energy Resilience Planning and Capex Grants for one year—to the end of 2022 and 2023, respectively. A number of our member agencies’ staff recommended the extension because the original timeline would not allow the inclusion of a number of priority projects due to longer construction lead times. The extension will also enable jurisdictions to more fully leverage the tools and analysis developed in the Community Energy Resilience Roadmap (anticipated draft June 2021). Staff will announce the extension through email to the MAWG and update the program website.

Power Resources – Master Consultant Agreement Update
As approved at the November 14, 2018 Board of Directors Meeting, Resolution 2018-15 granted authority to the CEO to execute a Master Consultant Agreement between Ascend Analytics, Flynn Resources Consulting, Inc., and Hanover Strategy Advisors, LLC to provide various strategic consulting, support, and risk management services to SVCE in an amount up to $1,000,000, through the end of FY2021. In October 2020, via Resolution 2020-27, the Board of Directors approved an increase in the total budget to $1,500,000, and extended the term until March 31, 2022. SVCE has a target budget of $400,000 for FY2021. and the following table outlines the remaining balance of the master agreement:
An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

**Programs – Master Consultant Agreement Update**

As approved at the June 12, 2019 Board of Directors Meeting, Resolution 2019-10 granted authority to the CEO to execute a Master Consultant Agreement between Sacramento Municipal Utility District (SMUD), Center for Sustainable Energy (CSE), and ADM Associates, Inc. (ADM) to provide consulting and support related to decarbonization and innovation program design, implementation, management, and evaluation to SVCE in an amount up to $1,000,000, through the end of FY2021. In September 2020, via Resolution 2020-25, the Board of Directors approved an increase in the total budget up to $2,500,000 and extended the term until Dec. 31, 2022. The following table outlines the remaining balance of the master agreement:

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<td>Hanover Strategy Advisors, LLC</td>
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An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

**CEO Agreements Executed**

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

1. ADM, Task Order: ev.energy Pilot Evaluation, not to exceed $6,080
2. Ascend Analytics, Amendment: Business Continuity Support, expires 9/30/21
3. Abbot, Stringham & Lynch, Agreement: IT Audit and Focused Security Assessment, not to exceed $19,178, expires 6/30/21
5. EV.Energy, Amendment: EV Charging pilot management, not to exceed $112,500, expires 7/31/21
CEOs Power Supply Agreements Executed

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<th>Counterparty Name</th>
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<th>Transaction Type</th>
<th>Product</th>
<th>Start Date</th>
<th>End Date</th>
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<td>AES North America Development, LLC</td>
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<td>12/31/2042</td>
<td>$128,000,000</td>
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</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
- CC Power Board Meeting, April 21st, report included on the Consent Calendar
- Silicon Valley Youth Climate Action Earth Day Event, April 19th, featured speaker

Staff Presentations

- April 8th: Morgan Hill Town Hall presentation on Time of Use transition; Director of Account Services and Community Relations Don Bray and Senior Energy Services Specialist Peyton Parks
- May 10th: Los Altos Environmental Commission presentation on SVCE products, service and direction; Director of Account Services and Community Relations Don Bray

ATTACHMENTS

1. Summer 2021 Readiness Plan, May 2021
2. Power Supply Update, May 2021
3. Decarb & Grid Innovation Programs Update, May 2021
4. Account Services & Community Relations Update, May 2021
5. Regulatory and Legislative Update, May 2021
6. Agenda Planning Document, May 2021– August 2021
7. SVCE Director Requests Update - May
Summer 2021 Readiness Plan

May 12, 2021
Summer 2021 Readiness Overview

1. State Actions
2. SVCE Energy Supply Cost & Risk Management
3. Programs and Demand Response
4. Communications
## 1. State Actions

The CPUC, CEC and CAISO took several actions since summer 2020 to ensure adequate supplies and reserve margins are available for summer 2021 and beyond.

<table>
<thead>
<tr>
<th>Area</th>
<th>Action/Description</th>
<th>Impact to SVCE</th>
</tr>
</thead>
</table>
| CPUC Emergency OIR – Power Procurement    | • Orders IOUs to procure additional capacity starting in summer 2021 to an interim planning reserve margin (PRM) from 15% to 17.5%.  
• Ordered IOU’s to procure 1,000 MW of additional capacity - 450 MW in PG&E area  
• Requires all LSEs to submit a non-binding resource adequacy (RA) filing for summer 2021  | • SVCE is not subject to increased PRM, however all ratepayers will pay through cost allocation mechanism  
• SVCE submitted a non-binding RA filing                                                                                                                                           |
| Demand Response & Programs                | • Emergency load reduction program (ELRP) - IOUs ordered to expand CPP, CPP is voluntary for CCAs  
• Critical Pricing Program (CPP)                                                                                                                                                                                                             | • SVCE to promote ELRP to certain customers                                                                                                                                                                 |
| Extension of once-through-cooling units    | • Requested the State Water Board delay the retirement once-through cooling (OTC) units for up to three years to meet summer 2021 demand.                                                                                                                                                        | • OTC units are intended serve as a backstop if CCAs and other LSEs cannot meet RA requirements                                                                                                           |
| Flex Alert Media Campaign                 | • Reinstated the “Flex Alert” Campaign, which educates customers on conservation and demand reduction during peak times.                                                                                                                                                                        | • CCAs can amplify Flex Alert messaging to customers                                                                                                                                                       |
| CAISO                                     | • Development of Summer Readiness initiatives including updates to business processes and tariffs; acceleration of interconnection for projects in the queue; expansion of behind-the-meter resources; use of demand responses resources; requirements for storage resources; treatment of import capacity; and updates to flex alerts and communication. | • SVCE to monitor changes and impacts to power resources and scheduling of load                                                                                                                             |
# 2. Energy Supply Cost & Risk Management

<table>
<thead>
<tr>
<th>Area</th>
<th>Action/Description</th>
<th>Next Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Assessment &amp; Monitoring</td>
<td>Conducted an in-depth, stochastic assessment of risk to net revenues associated with changes in load, supply and market prices. Staff monitors market and credit risk on an on-going basis.</td>
<td>Stress test power supply portfolio under extreme weather conditions and prices</td>
</tr>
<tr>
<td>Risk Management Options</td>
<td>Evaluated standard hedging tools including procuring fixed price energy to maximum level allowed under Energy Risk Management Policy, use of physical call options, and/or deployment of demand response programs.</td>
<td>Complete market assessment of product availability and cost vs. impact to net revenues</td>
</tr>
<tr>
<td>Scheduling Coordination</td>
<td>Staff to assess accuracy of forecasting models used to determine day ahead load projections for scheduling and strategies for mitigating risk exposure in real-time market</td>
<td>Work with scheduling coordinator to complete assessment and implement protocols</td>
</tr>
<tr>
<td>Counterparty Credit Risk</td>
<td>Assessing credit exposure to counterparties with large positions in summer of 2021 and measures to mitigate risk.</td>
<td>Complete assessment and implement credit control measures.</td>
</tr>
<tr>
<td>CAISO Non-energy Cost</td>
<td>Assessing non-energy related charges from CAISO associated with system reliability, congestion and losses to understand possible supply cost deviations.</td>
<td>Complete assessment and recommend measures to mitigate.</td>
</tr>
</tbody>
</table>
## 3. Programs and Demand Response

<table>
<thead>
<tr>
<th>Area</th>
<th>Action/Description</th>
<th>Next Steps</th>
</tr>
</thead>
</table>
| **Commercial & Industrial (C&I) Programs** | • Support marketing & outreach of PG&E’s Emergency Load Reduction Program (ELRP) to C&I customers who may be interested and could benefit  
• Do not move forward with a critical peak pricing (CPP) program at this time, given outcomes from prior program on customer value | • Targeted outreach to C&I customers for the ELRP program  
• Evaluate other C&I program opportunities for 2022                                                                                                                                                                                                                                         |
| **Residential Programs**          | • Scale GridShift EV Charging Pilot to full-scale program, targeting thousands of participants (see consent item for more information)  
• Discuss with Sunrun using assets for ELRP in 2021/2022  
• Launch flagship pilot with Span.IO to pilot smart panels at 50 households  
• Pilot a smart home load management app, targeting dozens of participants in 2021 that could scale to thousands in 2022 | • Contingent on BOD approval of contract, scale GridShift program  
• Hold meeting with Sunrun  
• Launch demo installations for Span.IO pilot in May 2021  
• Contract with pilot partner for smart home load management app |
5. Communications

1. Establishing a protocol for internal communications on different types of reliability events and when to send notifications to customers to modify load.
2. Preparing messaging to send out via Nextdoor, social media and email to target audiences
3. Developing digital toolkits for member agencies to help amplify conservation messaging

Next Step:
Develop a comprehensive Communication Action Plan
Power Supply Update

May 2021
### Executed Power Purchase Agreement Update:

- **10 PPAs**
  - Executed AES Mountain View Wind, executed April 2021
  - 46% RPS in 2024
  - 41% RPS in 2030
  - 40-50 MW geothermal
  - 403 MW Solar PV
  - w/ 133 MW storage (498 MWh)
  - 33 MW Wind
  - 65% Solar + 28% Geo + 8% Wind

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

**$1.3B+ worth of RPS/PCC1 Renewable Contracts**
## Power Purchase Agreements (PPA) Update

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<th>PPA</th>
<th>City</th>
<th>County</th>
<th>State</th>
<th>Contract Term</th>
<th>Technology</th>
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<th>Battery Nameplate Capacity (MW)</th>
<th>Battery Discharge (MWh)</th>
<th>Permitting</th>
<th>Financing</th>
<th>Guaranteed Construction Start Date</th>
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<td>Solar + Storage Total</td>
<td>353</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solar Total</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wind</td>
<td>33.3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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>1 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>2 Big 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>3 Ormat 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>4 Coso</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>5 Rabbitbrush</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>6 Yellow 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>7 Aratina</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>
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<tr>
<td>8 Atlas</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>9 Angela</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>10 AES Mountain View</td>
<td>Existing Wind</td>
<td>3%</td>
<td>20</td>
<td>$128</td>
<td>$6</td>
<td>3%</td>
<td>Apr-21</td>
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<tr>
<td><strong>Sub Total</strong></td>
<td></td>
<td><strong>46%</strong></td>
<td></td>
<td><strong>$1,324</strong></td>
<td><strong>$79</strong></td>
<td><strong>33%</strong></td>
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**SVCE Board approved execution of the San Luis West solar plus storage PPA on 4/14/21. Execution is pending resolution of CAISO interconnection status.**
# RPS Under SB100 and SB350 Long-term Contracting Requirement 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 RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>50%</td>
<td>57%</td>
</tr>
<tr>
<td>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>SVCE: Current Compliance with Row #3: Existing RPS Achieved with Executed Long-term Contracts</td>
<td>29.3%</td>
<td>44.2%</td>
<td>41.5%</td>
</tr>
<tr>
<td>Open Position relative to State Mandate (Row #3) +Above/ (-) Short</td>
<td>+3.3%</td>
<td>+11.2%</td>
<td>+4.5%</td>
</tr>
</tbody>
</table>
## SVCE IRP Long-term Contracting Targets per Compliance Period

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<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 TGP Cameron Crest wind PPA and Victory Pass solar with storage PPA in May 2021
Clean Energy Goal based on energy purchase forecast which accounts for losses of 6% above retail sales
**New Report for Monthly Updates**

To communicate progress on key programs, staff will provide updates in a new format. This report highlights key program updates from the previous month and tracks deployment of funding and infrastructure.

**April Community Advocate Meeting**

On April 21, 2021, programs staff met with local community advocates to provide updates and solicit input on program initiatives. This quarterly meeting covered topics including building decarbonization, GHG emissions accounting, community resilience, and opportunities for engagement.

**Electric Vehicle Charging During Low-Carbon Events Through GridShift**

In March and April, GridShift: EV Charging pilot participants opted into low-carbon events, shifting their EV charging towards off-peak daytime hours of abundant solar, wind and/or hydro power. SVCE is the first CCA to introduce this type of program.

GridShift participants reduced their carbon footprints by an average of 60% compared to charging overnight. They collectively saved over 4,400 lbs of CO2, as much as a round-trip flight from San Francisco to Tokyo.
Heat Pump Water Heater
Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters.

Funding: 1.15M
Goal: 220 HPWH by 2022

Lights On Silicon Valley
Provide incentives for enrolling solar and battery systems in the SVCE grid services program.

Funding: ≤ $7.4M
Goal: 750 Single-Family + 5 Multi-Family Projects Completed by 2023

Completed Installations

COMING SOON!
CALeVIP
Provide incentives for electric vehicle (EV) chargers as part of a regional program

FutureFit Fundamentals
Provide financial relief to contractors by expanding their knowledge of electrification technologies

Funding: $11.58M
Goal: 1K Level 2 + 85 DC Fast Chargers by 2023

Funding: $1.5M
Goal: 150 Participants (Phase 1)
## PROGRAMS AT A GLANCE  MAY 2021

### Power Supply
- C&I Clean Power Offerings
- Reach Codes
- All-Electric Showcase Grants
- FutureFit Heat Pump Water Heater
- Streamlining Community-Wide Electrification
- Building Decarb Joint Action Plan
- Resilience at Community Facilities
- FutureFit Fundamentals
- CRCR Bill Relief
- FutureFit Homes & Buildings
- Regional Coordination
- Accessible Financing
- Local Policy to Decarbonize Existing Buildings
- Feasibility Assessment - Natural Gas Phase Out By 2045

### Built Environment
- EV Infrastructure Strategy & Plan
- CA Electric Vehicle Infrastructure Project (CALeVIP)
- Priority Zone DCFC
- MUD Technical Assistance
- Fleet Electrification Grants
- SV Transportation Electrification Clearinghouse (SVTEC)
- Regional Recognition

### Mobility
- Virtual Power Plant

### Grid Integration
- Customer Resource Center (eHub)
- Community Engagement Grants

### Innovation
- Innovation Partners
- Innovation Onramp
  - UtilityAPI
  - EVmatch
  - Ecology Action
  - Extensible Energy / Community Energy Labs
  - ev.energy
  - Span.IO
  - Outthink
  - Electron
  - Stanford
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>April 19</td>
<td>7:00 – 8:30 PM</td>
<td>Silicon Valley Youth Climate Action Earth Day Event – <em>presented</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 21</td>
<td>1:00 – 2:00 PM</td>
<td>Facebook Live Event with Univision 100.3 Amor Radio – <em>presented</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 28</td>
<td>11:00 AM – 12:00 PM</td>
<td>Morgan Hill Chamber of Commerce Environmental Webinar – <em>presented</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>May 10</td>
<td>7 PM</td>
<td>Los Altos Environmental Commission - <em>presentation</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>May 19-20</td>
<td>3:00 – 5:00 PM</td>
<td>Sustainable Silicon Valley's Sustain-A-Palooza – <em>sponsoring and presenting</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>May 23</td>
<td>8:00 – 8:30 PM</td>
<td>Leading Youth for Ecology – <em>presenting</em></td>
<td>Virtual</td>
</tr>
</tbody>
</table>

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.
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>96.29%</td>
</tr>
</tbody>
</table>

Acct. Services & Comm. Relations Update, May 2021
3. Member Agency Working Group Update

The recent MAWG meeting was held virtually on April 22, 2021 and was attended by nine different agencies with a total of 21 participants.

The following agenda items were presented and discussed:

• Carbon Free Attributes and PG&E Nuclear Allocation
• Potential Projects for Infrastructure Stimulus
• Community Energy Resilience Update
• 2020 GHG Inventory Update and GHG Models & Method
• NEM Successor Tariff and Arrearage 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)

- **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 Communications

- Customers are receiving 30-day transition notices mid-April through May
- 90-day notices included 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/ratecomparison/) to figure out which rate plan is best for them
4. Time-of-Use Communications (Continued)

- Additional SVCE communications
  - Time-of-Use video: [youtube.com/watch?v=EWVVFF173g4](https://www.youtube.com/watch?v=EWVVFF173g4)
  - Social media and Nextdoor posts about transition and energy saving tips *(ongoing)*
  - SVCE newsletter stories
  - Advertising and outreach collaboration with San Jose Clean Energy, deploying ads in Spanish, Mandarin and Vietnamese across digital, print and radio
  - SVCE Time-of-Use webpage with FAQs and energy saving tips: [svcleanenergy.org/time-of-use](https://www.youtube.com/watch?v=EWVVFF173g4)
5. Electrification & eHub Ads

Out-of-home ads placed in transit shelters throughout service area promote electrification and SVCE eHub resources. Placement includes Volta EV chargers in Sunnyvale and Cupertino. These are in addition to digital, social media and print ads that are running, in various languages, through May.
6. Latest SVCE News

- Rebates Available for Solar and Battery System Installations Through Program to Support a Cleaner Grid, Press Release, 04-21-21

7. Media

- Clean Energy Alliance will not join newly formed JPA before launch, The Coast News Group, 04-13-21
- California CCA membership surpasses 200 communities, 28% of utility load, S&P Global Platts, 04-15-21
- Valley Clean Energy joins California Community Power, Davis Enterprise, 04-22-21
SVCE Legislative and Regulatory Update

May 12, 2021
Policy Updates

• Regulatory Update
  • Power Charge Indifference Adjustment (PCIA)
  • Integrated Resource Planning (IRP)
  • Resource Adequacy (RA)
  • Renewables Portfolio Standard (RPS)

• Legislative Update – Priority Bills
  • SB 612 Overview and Status
  • SB 67
  • Additional SVCE Supported bills: SB 31 and SB 68
Regulatory Update
PCIA: CPUC proposes new rules that don’t go as far as SB 612

The Power Charge Indifference Adjustment (PCIA) is the CPUC-authorized mechanism for PG&E to recover uneconomic or legacy procurement costs via a fee that is charged to CCA customers.

Proposed rules for legacy energy resources
In April 2020, CPUC issued a proposed decision addressing CCA access to legacy energy resources. The decision does the following:

- Removes the “cap” and “trigger” mechanism which address the PCIA's 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.

The proposed decision doesn’t provide full access to legacy resources that is provided in SB 612.

Next Steps: CalCCA and other parties provided feedback on the decision. The proposed decision is scheduled to be voted on by the CPUC on May 20th at the earliest.
IRP: CPUC issues new short and midterm procurement mandates for IOUs and CCAs

*Integrated Resource Planning (IRP) is a two-year process to ensure that the electricity sector is on track to meet its portion of the State’s GHG reduction and reliability goals.*

**Focus on “keeping the lights on”**: The Governor ordered an analysis to determine cause of August 2020 blackouts

- Analysis recommended short-term, midterm and long-term energy procurement targets to avoid blackouts in the future.

**Summer Readiness for 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:**
  - CCAs and IOUs will be offering expanded and revised customer programs that help reduce demand during peak times this summer.

**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.

- **Next Steps:**
  - Q2 2021: CPUC will issue a decision establishing mid-term procurement targets for CCAs and IOUs.
Resource Adequacy: The CPUC is considering revisions to its reliability program.

Resource Adequacy (RA) is a program developed to ensure that there will be sufficient resources available to serve electric demand under most conditions.

Resource Adequacy Reform

• CPUC is currently revisiting its rules to ensure grid reliability and considering changes to RA requirements.
  • Parties, including CalCCA, submitted proposals with recommended revisions to the RA program.
  • Proposals were discussed in workshops and revised based on feedback.

• Next steps:
  • A proposed decision on RA reform is expected in May followed by a final decision in June.
RPS: The 2021 RPS Procurement Plan

The Renewables Portfolio Standard (RPS) requires 60% of electrical sales by CCAs and IOUs to be served by renewable energy by 2030 and requires all the state's electricity to come from carbon-free resources by 2045.

2020 RPS Procurement Plan

• February 2021: SVCE filed its final plan.

• March 2021: CPUC approved the SVCE plan.

2021 RPS Procurement Plan

• June 2021: Due date

• **Next Steps:**
  • Plan development in progress
Legislative Update
– Priority Bills
SB 612 (Portantino)

*SB 612 provides fair and equal access to benefits of legacy resources for CCA and Direct Access providers.*

- Bill passed Senate Energy, Utilities, and Communications Committee on 4/26 on a 11 – 1 vote.
- Senator Portantino accepted committee amendments to remove some of the specificity in the bill.

**Status**
- In Senate Appropriations Committee.
SB 67 (Becker)

**SB 67 establishes California 24/7 Clean Energy Standard Program with annual clean energy requirements for load serving entities.**

- SVCE adopted a support if amended position, with the following amendments:
  - Allow CCAs to recover costs through an exit fee.
  - Allow load-serving entities to count RPS and large hydro resources toward Clean Energy Standard.
  - Include an "off-ramp" if procurement requirements lead to material increase in rates.

- **Status**
  - SB 67 is now a two-year bill.
Additional SVCE Supported Bills

*SB 31 and 68 establish new requirements to support building decarbonization.*

- **SB 31 (Cortese)**
  - Directs the CA Energy Commission to implement building decarbonization programs.
  - **Status:**
    - In Senate Appropriations Committee
- **SB 68 (Becker)**
  - Establishes timeframes for when IOUs must respond to applications for service upgrades for building decarbonization projects and EV charger installations.
  - **Status:**
    - In Senate Appropriations Committee
Our Memo

**Legislative and Regulatory Update, May 2021**

- **Benefits to Community**
- GHG Reduction
  - Community Choice Energy = single most effective and large-scale action our communities can take to combat climate change
- A True Choice
  - More than one choice of electricity in volume and products
- Competition
  - Replacing the local energy market with new and different clean energy services
- Local Investment
  - Reduced net revenue to keep rates low, offer energy programs and promote local clean energy infrastructure
<table>
<thead>
<tr>
<th>MAY 2021</th>
<th>JUNE 2021</th>
<th>JULY 2021</th>
<th>AUGUST 2021</th>
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<tbody>
<tr>
<td><strong>Board of Directors, May 12:</strong></td>
<td><strong>Board of Directors, June 9:</strong></td>
<td><strong>Board of Directors: CANCELLED</strong></td>
<td><strong>Board of Directors, August 11:</strong></td>
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<tr>
<td>Consent:</td>
<td>Minutes</td>
<td>Consent:</td>
<td>Consent:</td>
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<tr>
<td>Regular Calendar</td>
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<tr>
<td>Strategic Plan Update</td>
<td>Strategic Plan Update</td>
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<td>2022 Budget Kick-off</td>
<td>2022 Budget Kick-off</td>
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<td>2022 Budget Kick-off</td>
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<td>Promotion (ASCR/DGI) - in development</td>
<td>Promotion (ASCR/DGI) - in development</td>
<td>Promotion (ASCR/DGI) - in development</td>
<td>Promotion (ASCR/DGI) - in development</td>
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<td><strong>Executive Committee, May 28:</strong></td>
<td><strong>Executive Committee, June 25:</strong></td>
<td><strong>Executive Committee: CANCELLED</strong></td>
<td><strong>Executive Committee, August 27:</strong></td>
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<tr>
<td>Intro to Strategic Plan Updates</td>
<td>75% RPS Discussion</td>
<td>TBD</td>
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<td>Equity framework</td>
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</tr>
<tr>
<td>Date</td>
<td>Meeting Where Requested</td>
<td>Request/Comment</td>
<td>Comments for Board Report</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>5/3/2021</td>
<td>Finance &amp; Admin</td>
<td>Request for breakdown of delinquent accounts by municipality (Alt. Dir. Klein)</td>
<td>This information is included in the presentation for Item 5 of the May 12, 2021 Board of Directors meeting</td>
</tr>
<tr>
<td>4/14/2021</td>
<td>Board Meeting</td>
<td>Request for cost per MW for SVCE's power supply projects (Dir. Ellahie)</td>
<td>The information requested by Director Ellahie was sent to him following the April board meeting</td>
</tr>
<tr>
<td>3/26/2021</td>
<td>Executive Committee</td>
<td>Is there an impact on the Power Charge Indifference Adjustment if SVCE transfers bad debt to PG&amp;E (Dir. Ellahie)</td>
<td>Staff is looking into the request</td>
</tr>
<tr>
<td>3/26/2021</td>
<td>Executive Committee</td>
<td>American Rescue Plan: Is there anything that could apply to SVCE re: customer debt? If so, SVCE to send a letter to member agencies requesting they consider SVCE for funds to assist with customer debt.</td>
<td>Staff is looking into the request</td>
</tr>
<tr>
<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>
</tr>
<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>
</tr>
<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>
Staff Report – Item 3

Item 3: Authorize the Chief Executive Officer to Execute a 15-Year Power Purchase Agreement with TGP Energy Management, LLC for Renewable Wind Supply (PCC1) and Any Necessary Ancillary Agreements and Documents and to Execute a 15-Year Power Purchase Agreement with Victory Pass I, LLC for Renewable Solar Supply (PCC1) and Battery Storage and Any Necessary Ancillary Agreements

From: Girish Balachandran, CEO

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

Date: 5/12/2021

RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy Authority (SVCE) Board authorize the Chief Executive Officer (CEO) to execute the attached Power Purchase Agreements (PPAs) in substantial form and any necessary ancillary agreements and documents as follows:

Victory Pass I, LLC ("Victory Pass")
- 100 megawatt (MW) new build solar facility with 25 MW Battery Storage qualifying as Portfolio Category Content One (PCC1) renewable resource;
- 15-Year term PPA with expected delivery from September 30, 2023 through September 29, 2038; and
- Total amount not-to-exceed $149,000,000.

TGP Energy Management, LLC ("Cameron Crest")
- 77.7 megawatt (MW) existing wind facility comprised of three sub-projects qualifying as Portfolio Category Content One (PCC1) renewable resource;
- 15-Year term PPA with expected delivery from January 1, 2023 through December 31, 2037; and
- Total amount not-to-exceed $150,000,000.

Execution of the Cameron Crest and Victory Pass PPAs 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. After conducting quantitative and qualitative analyses, six projects were shortlisted for negotiations of PPAs. One project dropped out. Since January 2021, the Board has approved four of the 2020 Joint RFO shortlisted PPAs for execution along with the Angela PPA which was shortlisted in the 2019 Joint RFO. The Origis San Luis West PPA is pending execution. The Cameron Crest and Victory Pass projects are the final two PPAs from the 2020 Joint RFO. Table 1 is a summary of the 2020 Joint RFO PPAs along with the Angela PPA.

Table 1: Status of 2020 Joint RFO Shortlisted Power Purchase Agreements

<table>
<thead>
<tr>
<th>Project</th>
<th>Project/ Technology</th>
<th>Board Approval</th>
<th>% of load in 2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Atlas</td>
<td>Alta Solar</td>
<td>January 2021</td>
<td>3.80%</td>
</tr>
<tr>
<td>2 Angela (from 2019 RFO)</td>
<td>New Solar + Storage</td>
<td>March 2021</td>
<td>1.40%</td>
</tr>
<tr>
<td>3 Mountain View</td>
<td>Existing Wind</td>
<td>April 2021</td>
<td>3.30%</td>
</tr>
<tr>
<td>4 San Luis West</td>
<td>New Solar + Storage</td>
<td>April 2021 - execution pending</td>
<td>4.10%</td>
</tr>
<tr>
<td>5 Victory Pass</td>
<td>New Solar + Storage</td>
<td>Pending May 2021</td>
<td>7.00%</td>
</tr>
<tr>
<td>6 Cameron Crest</td>
<td>Existing Wind</td>
<td>Pending May 2021</td>
<td>4.60%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>24.20%</strong></td>
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</tbody>
</table>

SVCE’s current RPS in 2024 is estimated at 50 percent. With the addition of Cameron Crest and Victory Pass, SVCE’s RPS increases to 62 percent. Table 2 is a summary of all Board approved PPAs along with the proposed Cameron Crest wind and Victory Pass solar PPAs.

Table 2: SVCE Long-term Executed/Pending & Proposed Power Purchase Agreements

<table>
<thead>
<tr>
<th>Developer</th>
<th>Project Name</th>
<th>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>1 Recurrent Energy</td>
<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>2 EDF</td>
<td>Big 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>3 Ormat</td>
<td>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>4 Middle River Power</td>
<td>Coso</td>
<td>Existing Geothermal</td>
<td>9.6%</td>
<td>15</td>
<td>$331</td>
<td>$22</td>
<td>5%</td>
<td>Mar-20</td>
</tr>
<tr>
<td>5 First Solar</td>
<td>Rabbitbrush</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>6 Nextera</td>
<td>Yellow 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>7 8 Minute Energy</td>
<td>Arentina</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>8 174 Power Global</td>
<td>Atlas</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>9 Samsung</td>
<td>Angela</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>10 AES</td>
<td>Mountain View</td>
<td>Existing Wind</td>
<td>3%</td>
<td>20</td>
<td>$128</td>
<td>$6</td>
<td>3%</td>
<td>Apr-21</td>
</tr>
<tr>
<td>11 Origis</td>
<td>San Luis West</td>
<td>New Solar + Storage</td>
<td>4%</td>
<td>15</td>
<td>$74</td>
<td>$5</td>
<td>2%</td>
<td>Apr-21</td>
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<tr>
<td><strong>Sub Total</strong></td>
<td></td>
<td></td>
<td><strong>50%</strong></td>
<td></td>
<td><strong>$1,398</strong></td>
<td><strong>$84</strong></td>
<td><strong>35%</strong></td>
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<tr>
<td>12 Clearway</td>
<td>Victory Pass</td>
<td>New Solar + Storage</td>
<td>8%</td>
<td>15</td>
<td>$149</td>
<td>$10</td>
<td>4%</td>
<td>pending</td>
</tr>
<tr>
<td><strong>Total with Victory Pass</strong></td>
<td></td>
<td></td>
<td><strong>57%</strong></td>
<td></td>
<td><strong>$1,547</strong></td>
<td><strong>$94</strong></td>
<td><strong>39%</strong></td>
<td></td>
</tr>
<tr>
<td>13 Terra-gen</td>
<td>Cameron Crest</td>
<td>Existing Wind</td>
<td>5%</td>
<td>15</td>
<td>$150</td>
<td>$10</td>
<td>4%</td>
<td>pending</td>
</tr>
<tr>
<td><strong>Total with Cameron Crest</strong></td>
<td></td>
<td></td>
<td><strong>62%</strong></td>
<td></td>
<td><strong>$1,697</strong></td>
<td><strong>$104</strong></td>
<td><strong>43%</strong></td>
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DISCUSSION/ANALYSIS:

1. **Victory Pass**

Victory Pass I, LLC is a subsidiary of Clearway Energy Group, one of the largest developers and operators of...
clean energy in the United States with over 4.7 gigawatts of wind, solar and storage in operation. The Victory Pass facility is a newbuild solar plus storage project.

<table>
<thead>
<tr>
<th>Counterparty</th>
<th>Victory Pass I, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent Company</td>
<td>Clearway Energy Group</td>
</tr>
<tr>
<td>Product</td>
<td>New build solar + battery storage</td>
</tr>
<tr>
<td></td>
<td>Bucket 1 (PCC1) Renewable Energy with Resource Adequacy</td>
</tr>
<tr>
<td>Delivery Term</td>
<td>15 years</td>
</tr>
<tr>
<td></td>
<td>September 30, 2023 through September 29, 2038</td>
</tr>
<tr>
<td>Project Name</td>
<td>Victory Pass</td>
</tr>
<tr>
<td>Contract Capacity</td>
<td>100 MW solar + 25 MW battery storage</td>
</tr>
<tr>
<td>Location</td>
<td>Riverside, CA</td>
</tr>
<tr>
<td>Percentage of Retail Load Served</td>
<td>~7.7%</td>
</tr>
</tbody>
</table>

Victory Pass is expected to generate enough clean energy to meet approximately 7.7 percent of SVCE’s energy needs providing PCC1 renewable resources which will count towards SVCE’s RPS requirements including long-term procurement mandates.

SVCE will be able to count a portion of the nameplate capacity towards its resource adequacy requirements (RA) starting in 2023, however the amount of capacity SVCE may count is expected to decrease over time with increased penetration of intermittent resources on California’s grid and restructuring of the RA requirements. Long term, SVCE does not expect to count much of the capacity from the solar PV towards its RA and reliability needs.

The addition of the storage battery component allows SVCE to better utilize the solar PV by shifting clean solar energy into the evening hours thus reducing risk of curtailing solar and increasing the energy value. Additionally, a portion of the battery capacity will count towards SVCE’s resource adequacy requirements and potential procurement mandates being considered by the CPUC.

2. Cameron West

TGP Energy Management, LLC is a subsidiary of Terra-gen, a large renewable developer who has developed, financed, and constructed over 1,739 MW of renewable energy in California over the last five years. The Cameron Crest wind project is owned by TGP Energy Management, LLC and is an existing wind facility comprised of three sub-projects (Ridgetop I and II and Morwind) providing 77.7 total MW capacity. The facilities were built between 1994 and 1999 and have been maintained with strict maintenance standards.
**Project Summary**

<table>
<thead>
<tr>
<th>Counterparty</th>
<th>TGP Energy Management, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parent Company</td>
<td>Terra-Gen</td>
</tr>
<tr>
<td>Product</td>
<td>Existing Wind Bucket 1 (PCC1) Renewable Energy with Resource Adequacy</td>
</tr>
<tr>
<td>Delivery Term</td>
<td>15 years January 1, 2023 through December 31, 2037</td>
</tr>
<tr>
<td>Project Name</td>
<td>Cameron Crest – an existing wind facility comprised of three sub-projects: 1. Ridgetop I 2. Ridgetop II 3. Morwind</td>
</tr>
<tr>
<td>Contract Capacity</td>
<td>77.7 MW</td>
</tr>
<tr>
<td>Location</td>
<td>Kern County, CA</td>
</tr>
<tr>
<td>Percentage of Retail Load Served</td>
<td>~4.8%</td>
</tr>
</tbody>
</table>

Cameron Crest is expected to generate enough clean energy to meet approximately 4.8 percent of SVCE’s energy needs providing PCC1 renewable resources which will count towards SVCE’s RPS requirements including long-term procurement mandates.

SVCE will be able to count the capacity towards its resource adequacy requirements (RA) starting in 2023, however the amount of capacity SVCE may count is expected to decrease over time with increased penetration of intermittent resources on California’s grid and restructuring of the RA requirements.

While the PPA cost of wind in general is higher than that of solar, wind may provide better energy value as it generates later in the afternoon through evening when market prices and grid emissions are at their highest. Additionally, wind’s generation profile is a compliment to solar’s generation profile providing a diversification of generation which better helps SVCE meet its hourly load needs.

**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. Cameron Crest and Victory Pass are expected to come on-line in 2023, thus providing up to one to two years of PCC1 energy in CP4. With the inclusion of the Cameron Crest and Victory Pass PPAs, SVCE’s long-term RPS is 35.0% in CP4, which is above California’s mandated long-term RPS requirement of 26%. For CP#5 and CP#6, SVCE’s long-term procurement is significantly above the minimum procurement targets set by the state. This number represents SVCE position assuming all contracts are operational based on the on-line dates specified in the PPAs and that the resources perform consistent with the generation profiles provided in the PPAs as well.

Table 3 shows SVCE’s progress towards meeting the long-term RPS goals and mandates.
Table 3: RPS Under SB100 and SB350 Long-term Contracting Requirement 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>1. State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>50%</td>
<td>57%</td>
</tr>
<tr>
<td>2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)</td>
<td>26%</td>
<td>33%</td>
<td>37%</td>
</tr>
<tr>
<td>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts (per Table 2)*</td>
<td>30.3%</td>
<td>48%</td>
<td>45%</td>
</tr>
<tr>
<td>5. SVCE: RPS Achieved with Victory Pass</td>
<td>32.6%</td>
<td>55.8%</td>
<td>53.0%</td>
</tr>
<tr>
<td>6. SVCE: RPS Achieved with Cameron Wind &amp; Victory Pass</td>
<td>35.0%</td>
<td>60.6%</td>
<td>57.7%</td>
</tr>
</tbody>
</table>

Open Position relative to State Mandate (Row #3) +Above/ (-) Short +9% +27.6% +20.7%

*includes the San Luis West PPA which has not been executed which represents CP#4 1.1% and 4.0% in CP#5 and CP#6.

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.

Figure 1 illustrates SVCE’s progress towards meeting the Board-approved and state mandated annual RPS targets.

Figure 1: SVCE Annual Renewable Portfolio with All Executed, Pending and Proposed Victory Pass and Cameron Wind PPAs (2021-2030)
While SVCE has made significant progress towards meeting its RPS goals, additional procurement is needed to meet SVCE’s 100% clean goals between now and 2030. And, while RPS is measured as a percent of retail sales, SVCE’s clean goals must account for transmission and distribution losses which are six percent above retail load. In 2024 53% of SVCE’s clean energy needs are expected to be met with RPS eligible resources. The additional 47% will be a combination of additional long-term RPS resources, short-term RPS resources, and/or carbon-free non-RPS eligible resources such as large hydroelectricity. And with the majority of SVCE’s RPS coming from solar and solar with storage resources, managing this large portfolio of intermittent resources and storage will create new operational challenges including how to meet grid reliability needs. SVCE expects the CPUC to impose further procurement mandates through the IRP process which may require additional geothermal resources and long-duration storage.

Figure 2 illustrates the mix of clean energy resources expected in 2024 when all projects are planned to be in operation.

**Figure 2: SVCE Clean Energy Mix with All Executed, Pending and Proposed Victory Pass and Cameron Wind PPAs in 2024**

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 and how to best meet SVCE’s affordability, reliability, and clean goals beyond 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 Cameron Crest and Victory Pass PPAs helps SVCE achieve Goal #5.

ALTERNATIVE
The Joint RFO selection criteria considered all submitted offers against quantitative and qualitative criteria. The Cameron Crest wind project and Victory Pass solar plus storage projects were selected as part of this competitive process. 3CE and SVCE have conducted and completed good faith negotiations with these developers over the last ten to twelve months, all with the intent to execute the attached PPAs.

Alternatives to the staff recommendation is to reject the TGP Energy Management, LLC and Victory Pass I, LLC PPAs 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 TGP Energy Management, LLC and Victory Pass I, LLC PPAs to SVCE’s portfolio of supply resources is a decrease in expected supply costs since procuring long-term and bundled resources such as Cameron Crest wind and Victory Pass solar plus storage are significantly less expensive than procuring short-term renewable products.

The fiscal impact of the Victory Pass I, LLC PPA will not exceed $149,000,000 over the term. All costs associated with the PPA will be included in the budget beginning in fiscal year 2023-2024.

The fiscal impact of the TGP Energy Management, LLC PPA will not exceed $150,000,000 over the term. All costs associated with the PPA will be included in the budget beginning in fiscal year 2023-2024.

ATTACHMENTS
1. Victory Pass I, LLC Power Purchase Agreement (Redacted version)
2. TGP Energy Management, LLC Power Purchase Agreement (Redacted version)
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Victory Pass I, LLC, a Delaware limited liability company

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

Description of Facility: A 200 MW solar photovoltaic generating facility, along with a co-located and dedicated 50 MW/200 MWh battery energy storage facility, all located in Riverside County, in the State of California, as further described in Exhibit A and subject to adjustment under Sections 2.5, 2.6 and Exhibit B, Section 5.

Milestones:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>04/30/2022</td>
</tr>
<tr>
<td>CEC Precertification Obtained</td>
<td>3/31/2021</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required: [X] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X] EIR</td>
<td>3/30/2022</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>03/31/2023</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>09/30/2023</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>08/01/2023</td>
</tr>
<tr>
<td>Network Upgrades completed</td>
<td>09/30/2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>09/30/2023</td>
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</table>

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

Expected Energy:

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

Storage Contract Capacity: □ MW

Storage Facility Total Capacity: □ MW

Storage Facility Loss Factor: □

Guaranteed Storage Availability: □

Maximum storage facility cycles per year: □

Delivery Point: □

**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>□</td>
</tr>
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The Storage Rate shall be:

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

☒ PV Energy
☒ Discharging Energy
☒ Green Attributes (Portfolio Content Category 1)
☒ Storage Capacity
☒ Capacity Attributes (select options below as applicable)
☐ Energy Only Status
☒ Full Capacity Deliverability Status on and after the RA Guarantee Date
☒ 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 May 12, 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 3.11(d).

"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, the definition of "Change of Control," 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 (including, if such Person is a limited liability company, the right to act as the manager or managing member of such limited liability company). For purposes of this Agreement, Clearway Energy, Inc. and its wholly-owned subsidiaries shall be deemed to be an Affiliate of Seller.
“Agreement” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Alternative Storage Capacity Methodology” has the meaning set forth in Section 4.9(d).

“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).

“Automated Dispatch System” or “ADS” has the meaning set forth in the CAISO Tariff.

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

“Availability Adjustment” 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.

“Average Expected Energy Report” means the annual report delivered by Seller pursuant to Section 4.3(a).

“Bankrupt” or “Bankruptcy” 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, including through ADS, 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, Facility Energy, or Ancillary Services, 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 delivered to the Delivery Point.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Instruction” has the same meaning as “Operating Instruction” as defined in the CAISO Tariff.

“CAISO Resource ID” has the same meaning as “Resource ID” as defined in 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 Storage 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) 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 any circumstance in which Ultimate Parent ceases to control Seller or own, directly or indirectly through one or more intermediate entities, more than fifty
percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

   (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

   (b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) 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 or in connection with a Storage Capacity Test. 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, including in connection with a Storage Capacity Test, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, 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.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

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

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

“Commercial Operation Delay Damages” means an amount equal to

“Compliance Actions” has the meaning set forth in Section 3.11(b).

“Compliance Costs” has the meaning set forth in Section 3.11(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.11(a).

“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 and 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 Cap**” is the yearly quantity per Contract Year, in MWh, equal to hours multiplied by the Guaranteed Capacity.

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

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, that such Party is required to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any 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 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 ordered by CAISO or the Participating Transmission Owner due to (i) a lack of available interconnection capacity for the Facility or (ii) in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

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

“Daily Delay Damages” means an amount equal to

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

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

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

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

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

“Deemed Delivered Energy” means Buyer’s Share of the amount of Energy expressed in MWh that theGenerating 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 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. 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. 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.

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

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

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

“**Electrical Losses**” means all transmission or transformation losses 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, 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.

“**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.
“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, as may be adjusted pursuant to Section 2.7 and Section 5 of Exhibit B.

“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(s), which meters 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), the product of (A) the absolute difference (if any) between (i) the Buyer’s Share of expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead Forecast, or if there is no Day-Ahead Forecast, then the Monthly Delivery Forecast, and (ii) the Buyer’s Share of 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 Storage 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 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 200 MW 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, 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 PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“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, as the same may be adjusted pursuant to Section 2.5 and 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 or has a tangible net worth of at least 

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(iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) executes and delivers a Guaranty for the benefit of Buyer.

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

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

“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).

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

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

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

“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-2 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, 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-1 hereto.

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

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

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

“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.
“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), tax equity financing, 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 or purchasing equity ownership interests of Seller or its Affiliates in connection with a tax equity transaction, 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, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (iv) acting as an issuing bank for any Letter(s) of Credit issued pursuant hereto or letters of credit in connection with 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.

“Limited Assignee” has the meaning set forth in Section 14.4.

“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 Equipment” means any inverter, transformer, enclosure, or battery comprising the Storage Facility, spares of which are not readily available to Seller for replacement acting in accordance with Prudent Operating Practice.

“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.

“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, local time, excluding North American Electric Reliability Council (NERC) holidays.

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

“Other Buyer” means the Buyer as defined in the Other PPA.

“Other PPA” means that certain Renewable Power Purchase Agreement between Seller and Central Coast Community Energy, a California joint powers authority, dated as of May 12, 2021 (as amended, restated or otherwise modified from time to time).

“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 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.

“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” means PCC1, PCC2 or PCC3, as applicable.

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

“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
“PV Energy” means 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 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, Buyer’s Share of the Net Qualifying Capacity of the Storage 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 Storage 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 Capacity, or Buyer’s Share of 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.

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

“Remedial Action Plan” has the meaning set forth 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 Green Attributes” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Storage 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 Storage 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 Storage 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” and “Scheduling” have 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.

“Scheduling Coordinator Instruction” has the meaning set forth in Section 4.13.

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

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).
“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that Seller may not add additional APNs without the consent of Buyer.

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

“Station Use” means:

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

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

“Storage Capacity” means 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 Contract 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” or “SCT” 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 Storage Facility Total Capacity, initially equal to the amount set forth on the Cover Sheet, as may be adjusted in accordance with adjustments to the Storage Facility Total Capacity.

“Storage Facility Total Capacity” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted (i) in accordance with Section 2.6 and Section 5(b) of Exhibit B and (ii) 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 50MW/200MWh energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“Storage Facility Loss Factor” is set forth on the Cover Sheet and represents the result of subtracting from the number one (1) the percentage of electrical losses associated with converting Charging Energy to Discharging Energy. For example, if the conversion of Charging Energy to Discharging Energy caused a ten percent (10%) loss in Energy, the Storage Facility Loss Factor would be (.90).

“Storage Facility Meter” means the bi-directional CAISO Approved Meter, 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) Buyer’s Share of Capacity Attributes, if any, (c) Storage Capacity, and (d) Buyer’s Share of 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, expressed in MWh.

“Supplementary Storage Capacity Test Protocol” has the meaning set forth in Exhibit O.
“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 or storage 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 [redacted]

“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

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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 certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity on the Commercial Operation Date, and (iii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Battery 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 (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans
with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 Guaranteed Capacity Adjustment.

Upon such Notice, each reference to the Guaranteed Capacity under this Agreement (except for purposes of calculating the Development Security) shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions.

2.6 Storage Contract Capacity Adjustment.

Upon such Notice, each reference to the Storage Facility Total Capacity and the Storage Contract Capacity under this Agreement (except for purposes of calculating the Development Security) shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions.

2.7 Expected Energy Adjustment. If Seller adjusts the Guaranteed Capacity pursuant to Section 2.5, then promptly following the later of (a) the Commercial Operation Date, and (b) if applicable, the Guaranteed Capacity build-out period described in Section 5 of Exhibit B, the Expected Energy shall be adjusted pro rata in proportion to such adjusted Guaranteed Capacity without the need for written amendment by the Parties.

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 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 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 or charges related to such Imbalance Energy shall be for the account of Buyer.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to 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 3.11); 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,
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. Seller’s obligations under this Section 3.7 are subject to the provisions of Section 3.11.

(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 Storage Facility.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, subject to Section 3.11, Seller hereby covenants and agrees to transfer all of Buyer’s Share 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

3.9 **CEC Certification and Verification.** Subject to Section 3.11, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the
current version of the *RPS Eligibility Guidebook* (or its successor). Seller 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 3.11, 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 **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 3.10 means efforts consistent with and subject to Section 3.11.

(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 CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC 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.

3.11 **Compliance Expenditure Cap.**

(a) If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (“**Compliance Costs**”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at **[REDACTED]** (“**Compliance Expenditure Cap**”). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.
(b) Any actions required for Seller to comply with its obligations set forth in Section 3.11(a) above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

(c) 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.

(d) 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.

(e) 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.

3.12 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 Buyer’s Share 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 local 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) Buyer’s Share of 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) Buyer’s Share of 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 (as Scheduling Coordinator) of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer (as Scheduling Coordinator) as soon as reasonably possible. Such Real-Time Forecasts of Available Generating Capacity and Storage Capacity shall be provided by Seller and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or Storage Capacity, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer (as Scheduling Coordinator). 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 (as Scheduling Coordinator) of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer (as Scheduling Coordinator) 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 (as Scheduling Coordinator); provided that Buyer (as Scheduling Coordinator) specifies the method no later than twenty (20) Business Days prior to the effective date of such requirement. In the event Buyer (as Scheduling Coordinator) fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone to Buyer.

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

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.
(g) CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

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

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

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

(d) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall, subject to the last sentence of this Section 4.4(d), take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with this Section 4.4(d). For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid
Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.11.

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 to the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) During the Delivery Term, Buyer will have the right to direct Seller 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, 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) During the Delivery Term, Buyer will have the right to direct Seller 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.

(f) Notwithstanding anything to the contrary in this Section 4.5 or this Agreement, the Parties acknowledge that Seller is responsible for providing all energy to serve Station Use, that Station Use may be supplied from a dedicated service from the Participating Transmission Owner or the Facility, that the supply of Station Use shall not be deemed a violation of this Agreement, and that Seller shall be responsible for the cost of any energy to serve such Station Use.

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. Unless otherwise agreed, 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 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 reasonably 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 Generating Facility by more than % during daylight hours or the Storage Capacity of the Storage Facility by more than % during daylight hours, 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*”), plus (3) the amount of undelivered Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages. 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 [Guaranteed Storage Availability] (the “**Guaranteed Storage Availability**”), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

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

4.9 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run 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 deviates from the then current Storage Facility Total Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Storage Facility Total Capacity as of the Effective Date, as may have been adjusted (if at all) pursuant to Section 2.6 and Section 5 of Exhibit B) shall become the new Storage Facility Total Capacity, effective as of the first day of the month following the completion of the test, for all purposes under this Agreement, including compensation under Exhibit C, until the next such Storage Capacity Test.

(d) Except for the initial Storage Capacity Test conducted prior to the Commercial Operation Date, Seller shall, in lieu of conducting a Storage Capacity Test, be permitted to demonstrate the Storage Facility Total Capacity in accordance with the Alternative Storage Capacity Methodology. “Alternative Storage Capacity Methodology” means a mutually agreed upon methodology for demonstrating the Storage Facility Total Capacity in lieu of a Storage Capacity Test by reference to the operational data reflecting the net output of the Storage Facility from the point of interconnection. At the request of Seller, Buyer, in coordination with Other Buyer, and Seller shall use commercially reasonable efforts to establish and agree upon the Alternative Storage Capacity Methodology. If Buyer, in coordination with Other Buyer, and Seller mutually agree on an Alternative Storage Capacity Methodology, the agreed Storage Facility Total Capacity shall become the Storage Facility Total Capacity for all purposes of this Agreement, including compensation under Exhibit C, at the beginning of the day following Notice thereof delivered by Seller to Buyer. Notwithstanding the foregoing, Buyer is not required to accept Seller’s proposal for an Alternative Storage Capacity Methodology and Buyer shall at all times have the right to request a Storage Capacity Test in accordance with Exhibit O, even if an Alternative Storage Capacity Methodology has been agreed to by the Parties pursuant to this Section 4.9(d). In the event of a conflict between the test results under an Alternative Storage Capacity Methodology and a Storage Capacity Test in accordance with Exhibit O, the results from the Storage Capacity Test in accordance with Exhibit O shall control.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.10(a), provided that Seller fulfills its obligations under Sections 4.10(a) through (f) below. In addition:
(a) Prior to the Commercial Operation Date or as soon as reasonably possible thereafter, 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) Subject to Section 3.11, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as
reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.11 **Interconnection Capacity.** During the Test Energy period and throughout the Delivery Term, Seller shall provide under the Interconnection Agreement interconnection capacity and rights to the Facility of not less than the Dedicated Interconnection Capacity to (i) interconnect the Facility with the CAISO Grid, and (ii) fulfill Seller’s obligations under the Agreement, including delivery of PV Energy and Discharging Energy to the Delivery Point. Seller shall not allow the interconnection capacity under the Interconnection Agreement that is associated with the Dedicated Interconnection Capacity to be used by any party other than Buyer and Other Buyer, including in connection with the Shared Facilities.

4.12 **Green-E Certification.** Seller shall, at its sole expense but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that the Facility is eligible for Green-e certification.

4.13 **Scheduling Coordinator Instructions.** During the Delivery Term, all Buyer instructions relating to the Facility’s interaction with the CAISO market, including (i) any instructions relating to bidding, offering or scheduling the Facility, the Energy or any Products; and (ii) the issuance of Charging Notices, Discharging Notices, and Buyer Curtailment Orders; (each such instruction described in (i) and (ii), a “Scheduling Coordinator Instruction”), shall be provided solely through a Scheduling Coordinator designated by Buyer, which shall be the same entity as the Scheduling Coordinator designated by Other Buyer under the Other PPA. The Scheduling Coordinator shall only issue Scheduling Coordinator Instructions to the Facility that convey the aggregated wishes of Buyer and Other Buyer with regard to the subject matter of each such Scheduling Coordinator Instruction.

**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.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a “service contract” within the meaning of Section 7701(e)(3) of the Code.

**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 Facility 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, including providing interconnection capacity for the Facility in accordance with Section 4.11 and in an amount not less than the Dedicated Interconnection Capacity, and (ii) continue to provide for separate metering and a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility, and (iii) shall not allow any Seller Affiliate or third party to use the interconnection capacity under the Interconnection Agreement associated with the Dedicated Interconnection Capacity.
ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. 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 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. If Buyer requests that Seller obtain one or more additional CAISO Resource IDs, then the Parties shall negotiate in good faith to amend this Agreement to accommodate such request, provided that any out of pocket costs associated with obtaining such additional CAISO Resource IDs incurred by Seller shall be reimbursed by Buyer, and further provided that Buyer shall be responsible for any incremental charges, costs or losses associated with such additional CAISO Resource IDs. Metering shall be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for 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 Generating Facility Meter, the amount of
Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility to the Delivery Point, in each case, as read by the Storage Facility Meter, the amount of Replacement RA 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 designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within twenty-five (25) 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, provided that Seller shall have no obligation to 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. 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):

(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; (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 Force Majeure Event, the claiming Party shall (a) use commercially reasonable efforts to provide the other Party with oral notice of any Force Majeure Event within two (2) Business Days of obtaining knowledge of such Force Majeure Event, and (b) provide Notice within two (2) weeks of obtaining knowledge of such Force Majeure Event to the other Party addressed to the person or persons identified on Exhibit N in the form of a letter on the claiming Party’s letterhead describing in detail the occurrence giving rise to the Force Majeure
Event, including the nature, cause, estimated date of commencement thereof, and the anticipated
extent of any delay or interruption in performance. Seller’s delivery of information related to
delays or Force Majeure Events pursuant to a Progress Report does not satisfy the requirements of
this Section 10.3. The claiming party shall promptly 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 claiming Party. The suspension of performance due to a claim of a Force Majeure Event must
be of no greater scope and of no longer duration than is required by the Force Majeure Event.
Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s
reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event
and did not result from Seller’s actions or failure to exercise due diligence or take reasonable
actions. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties’
performance hereunder may not be immediately or readily ascertainable, but that each Party shall
promptly notify the other in accordance with this Section 10.3 once any impacts of COVID-19
result in any delay or nonperformance hereunder.

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 Sections 11.1(b)(iv), (vi) and (vii), 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; 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 within [redacted] after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a reasonable Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit...
G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period based on the most recent Average Expected Energy Report provided by Seller, and Seller fails to either (x) demonstrate to Buyer’s reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum, or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [underline]ten (10) Business Days;

(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;

(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 (1) cash, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, 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

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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.

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. THE VALUE OF ANY TAX CREDITS LOST AND THE AMOUNT OF ANY RENEWABLE ENERGY INCENTIVES RECAPTURED, IN EITHER CASE DUE TO BUYER’S DEFAULT, 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 PASSEIVE. 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 all permits necessary to construct and operate the Facility.

(g) Seller does not have any knowledge of any delay in achieving Construction Start or the Commercial Operation Date that is caused by a Force Majeure Event related to COVID-19.

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for 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, either by Seller or its applicable contractors.

**ARTICLE 14
ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, 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 shall include, among others, the following provisions, unless otherwise agreed by Buyer, Seller and Lender:

(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), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition;

(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 (other than any Events of Default which relate to Seller’s bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller’s failure to perform obligations under other agreements, or which are otherwise personal to Seller); 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 a 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 Permitted Assignment by Seller. Seller may,
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 Santa Clara 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 has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder, and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party’s rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already
provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance with a minimum of liability limits in the amount of ______________ per occurrence and ______________ in the aggregate. 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 ______________.

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

(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 ______________ 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 ______________ 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 or new gradual pollution conditions.
Contractor Insurance. Seller shall require the contractor under its engineering, procurement and construction contract for the Facility to carry the same levels of insurance as Seller where exposure exists. Such engineering, procurement and construction contractor 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. Such engineering, procurement and construction contractor 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).

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 either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement 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.** 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.

VICTORY PASS I, LLC, a Delaware limited liability company

By: __________________________
Name: __________________________
Title: __________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: __________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Victory Pass Project

Site includes all or some of the following APNs: See attached Schedule 1.

County: Riverside County

CEQA Lead Agency: California Department of Fish and Wildlife

Type of Generating Facility: Solar photovoltaic electricity generating facility

Type of Storage Facility: A lithium-ion battery energy storage system which is capable of receiving Charging Energy from the Generating Facility and in the form of grid energy; provided, that the Storage Facility shall not receive Charging Energy from any source other than the Generating Facility without the prior written agreement of both Parties.

Guaranteed Capacity: See definition in Section 1.1.

Storage Facility Total Capacity: See definition in Section 1.1.

Maximum Facility Output: □ MW

Dedicated Interconnection Capacity for Facility: □ MW

Maximum Charging Capacity: □ MW

Maximum Discharging Capacity: □ MW

Maximum Stored Energy Level: □ MWh

Operating Restrictions of Storage Facility: See Exhibit Q

Delivery Point: PNode

PNode: PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder, to reflect the PNode then closest to the Facility.

Participating Transmission Owner: Southern California Edison
Schedule 1
List of APNs

Exhibit A - 2

Victory Pass I PPA
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. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2, subject to the limitation of liability set forth in Section 11.7.

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 from a Licensed Professional Engineer 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 (x) [REDACTED] and (y) [REDACTED].

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

   (b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall 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, subject to the limitation of liability set forth in Section 11.7.

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,

   (b) 

   (c) Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a) and 4(b) above under the Development Cure Period shall not exceed 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;

   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 [illegible] after Seller became aware of such delay, except that in the case of a delay occurring within [illegible] of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity**

   (a) **Guaranteed Capacity.** If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 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) [illegible] and (ii) each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

   (b) **Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity 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-2 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 the product of (i) [illegible] and (ii) each MW (or portion thereof) that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
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. Except as provided in Section 12.2, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date.

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

(c) CAISO Costs and Revenues. Except 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 imposed on Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) 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 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 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. Buyer agrees to pay costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes, except to the extent they relate to CAISO charges payable by Seller under this Agreement with respect to the Facility.

(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 DELIVERY FORECAST

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 – [MONTH]

| Day 1 | 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 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
- \( C \) = the Renewable Rate for the Contract Year, in $/MWh
- \( D \) = the Renewable Rate for the Contract Year, in $/MWh

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

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

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

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

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes.
No payment shall be due if the calculation of \((A - B)\) or \((C - D)\) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.
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 [Date] ("Agreement") by and between Victory Pass I, LLC, a Delaware limited liability company, 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 [xxx] of the Guaranteed Capacity.

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

4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than [xxx] 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 [xxx] 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 Owner, [Name of Participating Transmission Owner as appropriate] on [Date].

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

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].
EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__. 

[LICENSED PROFESSIONAL ENGINEER]

By: ____________________________

Printed Name: ____________________

Title: ____________________________
EXHIBIT I-1

FORM OF INSTALLED PV CAPACITY CERTIFICATE

This certification ("Certification") of Installed PV 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 [Date] ("Agreement") by and between Victory Pass I, LLC, a Delaware limited liability company, 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 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").

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Printed Name: ______________________

Title: ______________________________

Date: ______________________________

Victory Pass I PPA
EXHIBIT I-2

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification (“Certification”) of Installed Battery 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 [Date] (“Agreement”) by and between Victory Pass I, LLC, a Delaware limited liability company, 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 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”).

[LICENSED PROFESSIONAL ENGINEER]

By: __________________________

Printed Name: __________________

Title: __________________________

Date: __________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by Victory Pass I, LLC, a Delaware limited liability company ("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 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 full notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

2. the precise Site on which the Facility is located is, which must include some or all of the previously identified APNs (such description shall amend the description of the Site in Exhibit A): ____________________________________________

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

VICTORY PASS I, LLC

By: ________________________________

Printed Name: _______________________

Title: ______________________________

Exhibit J - 1
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expiry Date:

Beneficiary:

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 330
Sunnyvale, California 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. $[XXXXXXX] (United States Dollars [XXXXXXX] 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 [email 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

Victory Pass I PPA
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 to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority, a California joint powers authority

Name and Title of Authorized Representative

Date__________________________
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [Date] (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 Victory Pass I, LLC, a Delaware limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [Date].

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.
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), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms. 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
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.

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 Paragraph 9, 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 Paragraph 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 7.

If delivered to Buyer, to it at
\[
\text{Attn: [____]}
\]
\[
\text{Fax: [____]}
\]

If delivered to Guarantor, to it at
\[
\text{Attn: [____]}
\]
\[
\text{Fax: [____]}
\]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Santa Clara, California.

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

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

GUARANTOR:

[______]

By:______________________________
Printed Name:__________________
Title:____________________________

BUYER:

[______]

By:______________________________
Printed Name:__________________
Title:____________________________

By:______________________________
Printed Name:__________________
Title:____________________________
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by Victory Pass I, LLC, a Delaware limited liability company (“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:

```
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<thead>
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<th>Unit Information 1</th>
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<tbody>
<tr>
<td>Name</td>
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<tr>
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<tr>
<td>CAISO Resource ID</td>
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<td>Prorated Percentage of Unit Factor</td>
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<td>Resource Type</td>
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<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
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<td>Path 26 (North or South)</td>
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<td>LCR Area (if any)</td>
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<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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<tr>
<td>Run Hour Restrictions</td>
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<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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</tr>
<tr>
<td>December</td>
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<td></td>
</tr>
</tbody>
</table>
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1 To be repeated for each unit if more than one.
VICTORY PASS I, LLC

By: __________________________

Its: __________________________

Date: __________________________
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th><strong>VICTORY PASS I, LLC (“Seller”)</strong></th>
<th><strong>SILICON VALLEY CLEAN ENERGY AUTHORITY (“Buyer”)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 4900 Scottsdale Road, Suite 5000</td>
<td>Street: 333 W. El Camino Real, Suite 330</td>
</tr>
<tr>
<td>c/o Solar Asset Management LLC</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>City: Scottsdale, AZ 85251</td>
<td>Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Phone:</td>
<td>Email: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a>; and</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:monica.padilla@svcleanenergy.org">monica.padilla@svcleanenergy.org</a></td>
</tr>
<tr>
<td><strong>With a copy to:</strong></td>
<td><strong>Reference Numbers:</strong></td>
</tr>
<tr>
<td>Street: 5790 Fleet Street, Suite 200</td>
<td>Duns:</td>
</tr>
<tr>
<td>City: Carlsbad, CA 92008</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Phone:</td>
<td>Attn: Power Supply Group</td>
</tr>
<tr>
<td>Email:</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
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<td><strong>Scheduling:</strong></td>
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<tr>
<td>Federal Tax ID Number:  [redacted]</td>
<td>Attn: Jamil Labban and Nicole Ramos</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td>Phone: (916) 221-4064 and (916) 235-9193</td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Email: <a href="mailto:jlabban@zglobal.biz">jlabban@zglobal.biz</a> and</td>
</tr>
<tr>
<td>Phone:</td>
<td><a href="mailto:nramos@zglobal.biz">nramos@zglobal.biz</a></td>
</tr>
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<td><strong>Confirmations:</strong></td>
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<td><strong>Scheduling:</strong></td>
<td>Attn:</td>
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<td>Attn: VP Asset Management</td>
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<td><strong>Confirmations:</strong></td>
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<tr>
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<td>Attn:</td>
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<tr>
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<td>[redacted]</td>
</tr>
<tr>
<td><strong>VICTORY PASS I, LLC (&quot;Seller&quot;)</strong></td>
<td><strong>SILICON VALLEY CLEAN ENERGY AUTHORITY (&quot;Buyer&quot;)</strong></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td><strong>With additional Notices of an Event of Default or Force Majeure Event to:</strong></td>
<td><strong>With additional Notices of an Event of Default or Force Majeure Event to:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Hall Energy Law PC</td>
</tr>
<tr>
<td>Phone:</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>Email:</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><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
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</tr>
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<td></td>
<td>E-mail:</td>
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</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 Facility Total 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, in coordination with Other Buyer, shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer, in coordination with Other 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. For the sake of clarity, each request made for a Storage Capacity Test or retest by Buyer pursuant to this Paragraph B must be requested in conjunction with Other Buyer. 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. Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall have the right to schedule and complete a Storage Capacity Test. In addition, Seller shall have the right to schedule and complete a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Buyer if Seller provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test.

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 Facility Total Capacity set forth on the Cover Sheet, as such original Storage Facility Total Capacity set forth on the Cover Sheet may have been adjusted (if at all) pursuant to Section 2.6 and Exhibit B) shall become the new Storage Facility Total Capacity, effective as of the first day of the month following the completion of the test for calculating the monthly payment for the Storage Product and all other purposes under this Agreement.

Exhibit O - 1
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 Facility Total 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 Facility Total 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 Facility Total Capacity as of the commencement of the Storage Capacity Test;

(6) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate);

(7) The measurement of Energy, as measured by the Storage Facility Meter, that is discharged from the Storage Facility to the Delivery Point until a 0% Stored Energy Level is achieved as indicated by the battery management system.

E. Test Conditions.

(1) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation.

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

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

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

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

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

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

3. the current level of storage contract capacity, the amount of Energy required to fully charge the battery, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each determined by the SCT, including supporting calculations; and

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

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

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

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

I. Adjustment to Storage Facility Total 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 Facility Total Capacity set forth on the Cover Sheet, as such original Storage Facility Total 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 Facility Total Capacity, which shall be expressed in MW AC, and shall be the new Storage Facility Total 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 (as such unavailability is prorated for any Storage Contract Capacity that is available to deliver Storage Product at any given time) 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, the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in \( \text{UNAVAILHRS}_m \) for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

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

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

The applicable “**Availability Adjusted Storage Contract Capacity**” is calculated by multiplying the Storage Contract Capacity by the Availability Adjustment (“**Availability Adjustment**” or “**AA**”), which is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

\[
\text{AA} = 100\%
\]

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to \[\text{ }\], then:

(iii) If the Monthly Storage Availability is less than \[\text{ }\], then:
EXHIBIT Q
OPERATING RESTRICTIONS

The Storage Facility shall be subject to the following Operating Restrictions:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Storage Facility Total Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Maximum Stored Energy Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Minimum Stored Energy Level</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Maximum Charging Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Minimum Charging Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Maximum Discharging Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Minimum Discharging Capacity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Maximum State of Charge (SOC) during Charging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Minimum State of Charge (SOC) during Discharging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Annual Average State of Charge Range (SOC)</td>
<td></td>
<td>Measured during each Contract Year</td>
</tr>
<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 Facility Total 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 of the Storage Facility Total Capacity and discharge hours Not to exceed the stated value</td>
</tr>
<tr>
<td>13. Ramp rate</td>
<td>15/min, as may be reasonably adjusted by Seller to</td>
<td>Subject to any limitation imposed by applicable agreements, including the</td>
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</table>

Exhibit Q - 1

Victory Pass I PPA
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<th></th>
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<th>the extent the Storage Contract Capacity is adjusted pursuant to Section 2.6</th>
<th>Interconnection Agreement</th>
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<td>14.</td>
<td>Charging energy source</td>
<td>The Storage Facility will only be charged by the Generating Facility</td>
<td></td>
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<tr>
<td>15.</td>
<td>Manual Dispatch Commands</td>
<td>All manual dispatch commands by the Buyer or Buyer’s SC must use the Seller supplied energy management system</td>
<td></td>
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EXHIBIT R
METERING DIAGRAM
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** TGP Energy Management, LLC, a Delaware limited liability company

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

**Description of Facility:** An existing wind-powered electricity generating facility, comprised of three sub-projects located in Kern County, California, as further described in Exhibit A.

**Guaranteed Delivery Term Start Date:** January 1, 2023

**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 –15</td>
<td>77.7</td>
</tr>
</tbody>
</table>

**Guaranteed Capacity:** 77.7 MW

**Contract Price:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-15</td>
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**Product:**

- ☑ Energy
- ☑ Green Attributes (Portfolio Content Category 1)
- ☑ Generating Facility Capacity Attributes

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

**Pre-Delivery Term Security:**

- [Redacted]

**Performance Security:**

- [Redacted]
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Exhibit D  Scheduling Coordinator Responsibilities
Exhibit E  [Reserved]
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Exhibit N  Notices
Exhibit O  Operating Restrictions
Exhibit P  Metering Diagram
RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of May 12, 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 has contractual rights to one hundred percent (100%) of the output of the Facility for the Delivery Term; and

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.11.

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

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

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

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

“Annual Supply Plan” has the meaning set forth in the CAISO Tariff.
“Approved Forecast Vendor” means a vendor, which may be an Affiliate of Seller, selected by Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“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. Pacific Prevailing Time (PPT) for the Party sending a Notice, or payment, or performing a specified action.

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

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

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


“CAISO Approved Meters” means the CAISO approved revenue quality 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 Points.

“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 Points at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“CEC Certification and Verification” means that the CEC has certified that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Qualified Energy delivered to the Delivery Points qualifies as generation from an Eligible Renewable Energy Resource.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

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

“Co-Located Storage Facilities” has the meaning set forth in Section 3.1(b)(i).

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

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

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

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

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

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

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

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

“COVID-19” means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

“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 Points; or

(d) a curtailment in accordance with the Interconnection Agreements 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 to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.
“Damage Payment” means the amount of the Pre-Delivery Term Security.

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

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

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

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Points, but that is not produced by the Generating Facility during a Market 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 4.8(e).

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

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

“Delivery Term Start Date” means the first date on which the conditions precedent in Section 2.2(b) have been satisfied and Seller commences deliveries of Facility Energy to Buyer hereunder.

“Delivery Term Start Date Delay Damages” means an amount equal to

“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 Points, including losses associated with delivery of Energy to the Delivery Points.

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

“Energy” means electrical energy generated by the Generating Facility.

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

“Event of Default” has the meaning set forth in Section 11.1.
“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Energy” means the quantity of Facility Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year, which is the quantity specified on the Cover Sheet for each Contract Year.

“Facility” means the Generating Facility.

“Facility Energy” means the Energy, net of Electrical Losses and Station Use, as measured by the Facility Meters.

“Facility Meters” means the CAISO Approved Meters that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Points, the Facility Meters will be located, and Facility Energy will be measured, at the low voltage or high voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“FERC” means the Federal Energy Regulatory Commission.

“Fifteen Minute Market” or “FMM” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

“Generating Facility” means the wind-powered electric generating facility comprised of
three sub-projects described on the Cover Sheet and in Exhibit A, located at the Site and including
mechanical equipment and associated facilities and equipment required to deliver Energy to the
Delivery Points. For the avoidance of doubt, the “Generating Facility” does not include the Co-
Located Storage Facilities.

“Generating Facility Capacity Attributes” means any Capacity Attributes attributable to
the Generating Facility that the Generating Facility would be capable of providing independently
of the Co-Located Storage Facilities.

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

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

“Guaranteed Energy Production”

“Guaranteed Delivery Term Start Date” has the meaning set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, a Person that is reasonably acceptable to Buyer or any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least $100 million (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

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

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

“Installed Capacity” means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Points, 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 Agreements” means the interconnection agreements pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the 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 Agreements.
“Interest Rate” has the meaning set forth in Section 8.2.

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

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


“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.

“kW” means kilowatts in alternating current, unless expressly stated in terms of direct current.

“kWh” means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

“Limited Assignee” has the meaning set forth in Section 14.3.
“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, Generating Facility Capacity Attributes, and Renewable Energy Incentives.

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

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which (i) the LMP for the FMM at the Settlement Point for such Settlement Interval or Settlement Period is less than the Price Floor, (ii) the LMP for the Real-Time Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the Price Floor; provided that the Market Curtailment Period shall also include the time required for the Generating Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

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

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

“Moody’s” means Moody’s Investors Service, Inc.

“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.

“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.

“Offer Notice” has the meaning set forth in Section 3.1(b)(iii).

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

“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 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.

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

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

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

“Pre-Delivery Term Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Preliminary Interest Notice” has the meaning set forth in Section 3.1(b)(iii).

“Price Floor” means

“Product” means the Facility Energy, Generating Facility capacity, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Generating Facility, including renewable attributes, Renewable Energy Credits, Generating Facility Capacity Attributes and Green Attributes.

“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 co-located storage (if applicable) in the Western United States, or (b) any of the practices, methods and acts which, 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 co-located storage (if applicable) 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.

“QE WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(f).
“**Qualified Energy**” means, for each month of the Delivery Term, (a) the Facility Energy for such month, minus (b) the portion, if any, of the Co-Located Storage Facilities’ energy storage cycle losses for such month that are attributed to the Facility by the CEC or otherwise required to be subtracted or netted from the Facility Energy for purposes of the California RPS.

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

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

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

“**RA Negotiation Period**” has the meaning set forth in Section 3.1(b)(iii).

“**RA Shortfall Amount**” has the meaning set forth in Section 3.8(b).

“**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, or hourly expected Energy delivered by Seller pursuant to Section 4.3(d).

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

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

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

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

“**Replacement Energy**” has the meaning set forth in Exhibit G.

“**Replacement Product**” has the meaning set forth in Exhibit G.

“**Replacement Product Price**” has the meaning set forth in Exhibit G.

“**Replacement RA**” means (a) RA Capacity located within SP-15 with Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Generating Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, or (b) RA Capacity provided from the Co-Located Storage Facilities.
“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, 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.

“Resource ID” has the meaning set forth in the CAISO Tariff.

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

“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 4.8(a).

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

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

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

“**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 Agreements themselves, that are used in common with third parties.

“**Showing Month**” means the calendar month of the Delivery Term that is the subject of Buyer’s compliance with the requirements of the CPUC for Buyer’s resource adequacy requirements. For illustrative purposes only, pursuant to the applicable CPUC decisions in effect as of the Effective Date, the monthly compliance showing made in June is for the Showing Month of August.

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

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

“**Stand-Alone Qualifying Capacity**” means the Qualifying Capacity value that would be attributed to a stand-alone (without a co-located energy storage facility) electric generating facility employing the same technology as the Generating Facility and with a nameplate generating capacity equal to the Guaranteed Capacity.

“**Station Use**” means:

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

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

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

“**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.

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

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

“Ultimate Parent” means

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

“VER Forecast” means (a) the current (as of the Effective Date) CAISO forecast of expected generation for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time, or (b) an alternative forecast adopted by the Parties in writing as the replacement for the CAISO forecast described in clause (a).

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

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

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of 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 word or provision in respect of which such examples are provided;

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

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

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

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

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

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, however, that 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 five (5) 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) A Participating Generator Agreement(s) and a Meter Service Agreement(s) for the Facility shall be in full force and effect, and a copy of each such agreement delivered to Buyer;

(b) The Interconnection Agreements shall be in full force and effect and a copy of the Interconnection Agreements delivered to Buyer;

(c) Documentation demonstrating final CEC Certification and Verification for the Facility has been delivered to Buyer;

(d) Seller has delivered to Buyer a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Delivery Term Start Date;

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

(f) Seller has paid Buyer for all amounts owing under this Agreement as of the Delivery Term Start Date.

2.3 Delivery Term Start Date Delay Damages.

If Seller does not achieve the Delivery Term Start Date by the Guaranteed Delivery Term Start Date, Seller shall owe Delivery Term Start Date Delay Damages to Buyer for each day after the Guaranteed Delivery Term Start Date until the Delivery Term Start Date. Delivery Term Start Date Delay Damages, if any, shall be payable to Buyer by Seller until the Delivery Term Start Date;
tenth (10th) day of each month, Buyer shall invoice Seller for Delivery Term Start Date Delay Damages, if any, accrued during the prior month.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product.**

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to a Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

(b) **Co- Located Storage Facilities.**

(i) 

(ii)
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.** During the Delivery Term, CAISO payments and charges arising from Imbalance Energy shall be for the account of Seller.

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

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 Reserved.

3.7 Capacity Attributes.

(a) Throughout the Delivery Term, subject to Section 3.11, Seller grants, pledges, assigns and otherwise commits to Buyer all the Generating Facility Capacity Attributes from the Generating Facility.

(b) Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits and other Generating Facility Capacity Attributes associated with the Generating Facility to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Generating Facility Capacity Attributes committed by Seller to Buyer pursuant to this Agreement, including, if requested by Buyer, submitting Supply Plans in accordance with CAISO and CPUC requirements. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Term.
3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Generating Facility Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month occurring after the Delivery Term Start Date, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to [redacted].

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

3.10 **California Renewables Portfolio Standard.**

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.11.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an
Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.11.

(c) 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.

(d) Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including scheduling or delivery information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product.

3.11 **Change in Law.**

(a) If a change in Laws occurring after the Effective Date has increased Seller’s known or reasonably expected costs to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (“**Compliance Costs**”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] (“**Compliance Expenditure Cap**”). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to
exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Delivery Term Start Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Points, and Buyer shall take delivery of the Product at the Delivery Points 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 Points, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. 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 Points, including without limitation transmission costs and transmission line losses. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility 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, 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 applicable Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes 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 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 a non-binding forecast of each month’s average-day expected Energy and Facility Energy, by hour,
for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the Delivery Term Start Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Energy, Facility Energy, and Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s non-binding best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy.

(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) 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 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of the outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and Seller; 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 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.

4.4 **Reserved.**

4.5 **Reserved.**
4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided that, Seller shall provide Buyer one-hundred twenty (120) days’ prior Notice of any scheduled maintenance and, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than [redacted], in each case, 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 electrical practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreements or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

(f) **Market Curtailment Period.** Seller shall be permitted, but not obligated, in its sole discretion to reduce deliveries of Product during any Market Curtailment Period.

(g) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Buyer Default or other failure to perform, Curtailment Periods, or Market Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy delivered by Seller during the applicable Performance Measurement Period, 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, Buyer’s Default or other failure to perform, or Curtailment Periods (“**Lost Output**”) during the applicable Performance Measurement Period, and (3) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in
accordance with Exhibit G. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all 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 Delivery Term Start 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 designate 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 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A **“WREGIS Certificate Deficit”** means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the 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 Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of (i) calculating Buyer’s payment to Seller under Article 8, which
shall result in a credit to Buyer equal to

provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit as to such Deficient Month so that it takes effect for the calendar year during which Deficient Month occurred, but no later than May 1 of the following calendar year, or (y) provides Replacement Product pursuant to Section 4.8(f) or Section 4.8(g). Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) For the portion, if any, of the WREGIS Certificate Deficit for a Deficient Month that is attributable to the Qualified Energy for such month being less than the Facility Energy for such month (“QE WREGIS Certificate Deficit”), Seller may, as an alternative remedy for such shortfall and in its sole discretion, provide Replacement Product to Buyer, and Buyer will pay Seller the Replacement Product Price for such Replacement Product, provided that the Replacement Energy is generated within thirty (30) days after the conclusion of such month and the WREGIS Certificates associated with Green Attributes are delivered to Buyer no later than May 1 of the following calendar year. Seller, or the Scheduling Coordinator for the electric generating facility providing the Replacement Product, will receive compensation directly from the CAISO for the energy associated with the Replacement Product that is scheduled to the CAISO in real-time on Buyer’s behalf, and the Parties acknowledge and agree that Seller is entitled to retain all such CAISO compensation as full payment for the Index component of the Replacement Product Price.

(g) For the portion, if any, of the WREGIS Certificate Deficit for a Deficient Month that is not a QE WREGIS Certificate Deficit, Seller may, as an alternative remedy for such shortfall and in its sole discretion, provide Replacement Product to Buyer, and Buyer will pay Seller the Replacement Product Price for such Replacement Product, provided that the Replacement Energy is generated during the same calendar year as the Deficient Month and the WREGIS Certificates associated with Green Attributes are delivered to Buyer no later than May 1 of the following calendar year. Seller, or the Scheduling Coordinator for the electric generating facility providing the Replacement Product, will receive compensation directly from the CAISO for the energy associated with the Replacement Product that is scheduled to the CAISO in real-time on Buyer’s behalf, and the Parties acknowledge and agree that Seller is entitled to retain all such CAISO compensation as full payment for the Index component of the Replacement Product Price.

(h) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.9 **Interconnection Capacity.** During the Delivery Term, Seller shall have and maintain rights to interconnection capacity available or allocable to the Facility through the Interconnection Agreements that are no less than the Guaranteed Capacity for the Facility.
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 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 Facility Energy to Buyer.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and the interconnection customer’s rights and obligations under the Interconnection Agreements, 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, including providing interconnection capacity available or allocable to the Facility in an amount not less than the Guaranteed Capacity, and (ii) provide for separate metering of the Facility.

ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meters, 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. 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 all losses from such meters to the applicable Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit P, as such exhibit may be updated from time to time by Seller subject to Buyer’s prior written approval, not to be unreasonably withheld. 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 Interface (MRI-S) web or directly from the CAISO meter(s) at the Facility. Subject to Section 3.1(b)(ii), Seller shall obtain and maintain CAISO Resource IDs that are dedicated exclusively to the Generating 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 each 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 within ten (10) Business Days after the end of the prior monthly delivery 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, or the amount of Replacement Energy, as applicable, for any Settlement Period during the preceding month, including the amount of Energy delivered from the Generating Facility, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production, the LMP prices at the Settlement Point for each Settlement Interval, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO,
necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to 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 designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice, or the end of the prior monthly delivery 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 an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least three (3) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, either Party shall be granted 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, that there shall be no adjustments to prior invoices based upon meter inaccuracies that are corrected more than one (1) calendar year after the end of the period subject to correction. 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, 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 Pre-Delivery Term Security.** To secure its obligations under this Agreement, Seller shall deliver Pre-Delivery Term Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Pre-Delivery Term Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Pre-Delivery Term Security in the event Buyer collects or draws down any portion of the Pre-Delivery Term 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 Pre-Delivery Term Security to Seller, less the amounts drawn in accordance with this Agreement. If the Pre-Delivery Term 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 Delivery Term Start 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 Pre-Delivery Term 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 Delivery Term Start 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 Seller then due and payable under this Agreement, including compensation for
penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Pre-Delivery Term Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Pre-Delivery Term Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Pre-Delivery Term 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 Pre-Delivery Term Security or Performance Security; and

(c) Liquidate all Pre-Delivery Term Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including
a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

**ARTICLE 9
NOTICES**

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

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

**ARTICLE 10
FORCE MAJEURE**

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to promptly 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, or (b) 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) promptly 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) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event.
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;

(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) the occurrence of an RA Shortfall Month, 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)(iii), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G, and (3) any deficit or shortfall in delivery of WREGIS Certificates, 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;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

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

(ii) the failure by Seller to achieve the Delivery Term Start Date within after the Guaranteed Delivery Term Start Date;

(iii)
(iv) 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 Pre-Delivery Term 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;

(v) 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.

(vi) 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 five (5) 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 commencement of the Delivery Term, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withheld any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or
to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this
Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

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 2.3, 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR
ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. 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 has contractual rights to obtain the Product to be delivered hereunder from the Facility for the entire Delivery Term.

(g) Seller’s contracts to obtain the Product from the Facility meet the criteria of California Public Utilities Code Section 399.16(b)(1).
(h) This Agreement transfers only electricity and Renewable Energy Credits that have not yet been generated prior to the Effective Date.

(i) The electricity transferred by this Agreement is transferred to Buyer in real time.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).
(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

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

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

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

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

ARTICLE 14
ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided in this Section 14.1 or in Section 14.2 and Section 14.3 below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender including with respect to the provisions set forth below, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of
Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of 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 Limited Assignment.

14.4 Shared Facilities; Portfolio Financing.
ARTICLE 15
DISPUTE RESOLUTION

15.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 Mutual Indemnity. Each Party (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other Party (the “Indemnified Party”), its directors, officers, agents, attorneys, employees and representatives (collectively, the “Indemnified Group”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, however described, which arise out of or relate to or are in any way connected with a violation of applicable Laws, negligent or tortious acts, errors,
or omissions, or intentional acts or willful misconduct, in any of the foregoing cases, of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, or agents, excepting only such losses, to the extent caused by the willful misconduct or gross negligence of a member of the Indemnified Group (collectively, “Indemnifiable Losses”).

16.2 **Notice of Claim.**

   (a) **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 Party seeking indemnification hereunder (the “Indemnitee”) will promptly Notify the Party against whom indemnification is sought (the “Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee 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 the Indemnitee regarding the Indemnifiable Loss.

   (b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 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, the Indemnitor is not obligated to indemnify the Indemnitee 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.

16.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnitor pursuant to Section 16.2(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Claim as provided in the last sentence of Section 16.2(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnitee that the Indemnitor believes the Indemnitee has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor 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 the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee 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 the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Claim and, in such event,
the maximum liability of the Indemnitor to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

16.4 **Subrogation of Rights.** Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee’s rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.5 **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, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [Redacted] per occurrence, and an annual aggregate of not less than [Redacted] endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement, to the extent available in the commercial insurance market, and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer’s Liability Insurance.** Employers’ Liability insurance shall not be less than [Redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [Redacted] policy limit will apply to each employee.

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

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

(e) Umbrella Liability Insurance. Seller shall maintain umbrella liability insurance with limits of [redacted] per occurrence and in the aggregate. Such insurance shall respond excess to insurance identified in Sections 17.1(a), 17.1(b) and 17.1(d) above.

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

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “Disclosing Party”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for
any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Disclosure to Lenders, Etc. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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.

19.5 Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 Mobile-Sierra. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting sua sponte shall be subject to the most stringent standard permissible under applicable law.

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

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

19.9 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.

TGP ENERGY MANAGEMENT, LLC, a Delaware limited liability company

By: __________________________
Name: __________________________
Title: __________________________

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: __________________________
Name: __________________________
Title: __________________________

TGP Energy Management LLC PPA
EXHIBIT A

FACILITY DESCRIPTION

Site Name:

Site includes all or portions of the following APNs: [_______]

County: Kern

Type of Generating Facility: Wind

Guaranteed Capacity: [_______] MW

Settlement Point: Windhub Substation, Pnode: WINDHUB_2_B1

Delivery Points: The Pnodes set forth below:

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<th>CAISO Resource ID</th>
<th>Pnode</th>
<th>Guaranteed Capacity (MW)</th>
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Participating Transmission Owner: Southern California Edison Company
EXHIBIT B

[RESERVED]
EXHIBIT C

COMPENSATION

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

(d) During the Delivery Term, if during any Settlement Interval, the Facility Energy exceeds the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours (such excess, the “Excess MWh”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0).

(e) In addition to the compensation owed to Seller as described in this Exhibit C, Seller is responsible for CAISO costs and is entitled to retain all CAISO revenues in respect of the Facility as further described in Exhibit D.

(f) The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver 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) Seller to be Scheduling Coordinator. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point, and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) CAISO Market Participation. During the Delivery Term, Seller, as the party responsible for all Scheduling Coordinator activities and Imbalance Energy risk with respect to the Facility, shall (i) have the right, but not the obligation, in its sole discretion to submit Energy Supply Bids or Self-Schedules into the Day-Ahead Market, (ii) schedule in the Real-Time Market with a volume based on the VER forecast, its equivalent or any successor, provided by the CAISO, or such other forecast as developed by Seller and approved by Buyer, such approval not to be unreasonably withheld, provided, however, that Seller will have the right to elect in its sole discretion to submit either Energy Supply Bids or Self-Schedules or any combination thereof in the Real-Time Market with respect to such volume. Seller’s Day-Ahead Market and Real-Time Market participation will be conducted in accordance with this Agreement and the CAISO Tariff, including any requirements to remain in the VER program, its equivalent or any successor, and to the extent not inconsistent with the foregoing, Prudent Operating Practice.

(c) CAISO Costs and CAISO Revenues. Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, 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; provided, that, any net costs or charges assessed by the CAISO which are due to a failure of Buyer to perform its obligations hereunder shall be Buyer’s responsibility. The Parties agree that any Availability Incentive Payments, as defined in the CAISO Tariff, are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges, as defined in the CAISO Tariff, are the responsibility of the Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller’s responsibility.
EXHIBIT E

[RESERVED]
EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy (in MWh)]

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

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

AVAILABLE CAPACITY

[Available Generating Capacity (in MW)] – [Insert Month]

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

[insert additional rows for each day in the month]

| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

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
- \( C \) =
- \( D \) = the Contract Price for the Performance Measurement Period, in $/MWh

1. **Definitions.**

   - **Adjusted Energy Production** shall mean the sum of the following: 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 wind-powered generating facility other than the Facility that, at the time delivered to Buyer, qualifies as Portfolio Content Category 1 and has Green Attributes that have the same or comparable value, including, unless otherwise agreed by the Parties, with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.
“Replacement Product” means (a) Replacement Energy and (b) associated Green Attributes, including WREGIS Certificates.
EXHIBIT H

[RESERVED]
EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“Certification”) of Installed Capacity is delivered by [licensed professional engineer] (“Engineer”) to Silicon Valley Community 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:

The performance test for the Generating Facility demonstrated peak electrical output of ___ MW AC at the Delivery Points, as adjusted for ambient conditions on the date of the performance test (“Installed Capacity”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: ______________________________

Its: ______________________________

Date: ______________________________
EXHIBIT J

[RESERVED]
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]

Beneficiary:

Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 330
Sunnyvale, California 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. $[XXXXXXX] (United States Dollars [XXXXX] and 00/100) (the "Available Amount"), 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 be of no further force or effect at 5:00 p.m., California time, on [Date] (as may be extended pursuant to the terms of this Letter of Credit, the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s 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").

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.
Issuer hereby agrees with the Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. All payments made under this Letter of Credit shall be made by means of wire transfer in immediately available United States dollars to Beneficiary’s bank account as indicated by Beneficiary in its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that 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 sixty (60) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. 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.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Silicon Valley Clean Energy Authority, 333 W. El Camino Real, Suite 330, Sunnyvale, CA 94087. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of [insert Applicant] (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 [DATE] (the “Agreement”).

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

OR

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

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

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Silicon Valley Clean Energy Authority

____________________________________
Name and Title of Authorized Representative

Date______________________________
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [DATE] (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 [type of entity and state of formation] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [DATE].

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,
any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

   (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

   (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

   (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

   (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or
affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[___]

Attn: [___]

Fax: [___]

If delivered to Guarantor, to it at

[___]

Attn: [___]

Fax: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Santa Clara, California.

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

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

GUARANTOR:

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:

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
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* To be repeated for each unit if more than one.

[Seller Entity]

By: ________________________________
Its: ________________________________
Date: ________________________________

Exhibit M - 1
# EXHIBIT N

## NOTICES

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<th>TGP Energy Management, LLC (“Seller”)</th>
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<tr>
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</tr>
<tr>
<td>City:</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:girish@svcleaneenergy.org">girish@svcleaneenergy.org</a>; and</td>
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<tr>
<td>Email:</td>
<td><a href="mailto:monica.padilla@svcleaneenergy.org">monica.padilla@svcleaneenergy.org</a></td>
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<td>Attn: Power Supply Group</td>
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<tr>
<td>Attn:</td>
<td>Attn: Jamil Labban and Nicole Ramos</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (916) 221-4064 and (916) 235-9193</td>
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<tr>
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<td>Email: <a href="mailto:jlabban@zglobal.biz">jlabban@zglobal.biz</a> and</td>
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<td>Email:</td>
<td><a href="mailto:nramos@zglobal.biz">nramos@zglobal.biz</a></td>
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<td>TGP Energy Management, LLC (“Seller”)</td>
<td>Silicon Valley Clean Energy Authority (“Buyer”)</td>
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<td><strong>With additional Notices of an Event of Default or Force Majeure Event to:</strong></td>
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<tr>
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<td>Hall Energy Law PC</td>
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<tr>
<td>Phone:</td>
<td>Attn: Stephen Hall</td>
</tr>
<tr>
<td>Email:</td>
<td>Phone: (503) 313-0755</td>
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<td>Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a></td>
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EXHIBIT O

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit O.
Staff Report – Item 4

Item 4: Update to SVCE Net Energy Metering Policy

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/12/2021

RECOMMENDATION
Receive a presentation from staff on proposed changes to SVCE’s Net Energy Metering (NEM) Policy.

BACKGROUND
In January 2017, the Board of Directors approved Net Energy Metering Rates and an annual cash-out policy by adoption of Resolution 2017-02 which indicated that all current SVCE NEM customers with a production credit balance of more than $100 would be compensated for the full value of the accrued credit balance, up to a maximum of $5,000.

Staff has discussed this topic with the Executive Committee on April 23, 2021.

ANALYSIS & DISCUSSION
Staff is proposing to make changes to the policy adopted in 2017. This item is intended to introduce the topic to the Board of Directors, address questions, and gather feedback; an action item will be brought to the June 9, 2021 Board of Directors meeting on the topic.

STRATEGIC PLAN
N/A

ALTERNATIVE
N/A

FISCAL IMPACT
N/A

ATTACHMENT
The presentation for this item is posted to SVCE’s website.
Staff Report – Item 5

Item 5: COVID-related Customer Debt and Delinquent Payment Policy

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/12/2021

RECOMMENDATION
Receive a presentation from staff on customer debt related to the COVID pandemic and SVCE’s delinquent payment policy.

BACKGROUND
In March 2020, PG&E announced a service disconnection moratorium, and SVCE suspended its delinquent payment policy. SVCE’s delinquent payment policy has been customers with an overdue balance of $100+ and 90+ days are sent a Late Payment Notice (LPN) regarding a return to PG&E unless they make a sufficient payment or set up a structured payment plan with PG&E.

Staff has discussed this topic with the Executive Committee on April 23, 2021, and the Finance and Administration Committee on May 3, 2021.

ANALYSIS & DISCUSSION
Due to the number of customers who have fallen behind on payments as a result of the COVID pandemic, staff would like to discuss the current policy and receive direction on resumption of the policy. This item is intended to introduce the topic to the Board of Directors, address questions, and gather feedback; an action item will be brought to the June 9, 2021 Board of Directors meeting.

STRATEGIC PLAN
N/A

ALTERNATIVE
N/A

FISCAL IMPACT
N/A

ATTACHMENT
The presentation for this item is posted to SVCE’s website.
Staff Report – Item 6

Item 6: Work Location Policies and Transition Issues Related to Post-COVID

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/12/2021

RECOMMENDATION
Receive a presentation from staff on future work location policies and transition following the COVID pandemic.

BACKGROUND
Given the availability of vaccinations and the Governor’s plan to reopen California’s economy on June 15th if current COVID-19 cases continue to decline, staff would like to discuss plans for the organization and in-person/remote work and public meetings.

Staff has discussed this topic with the Executive Committee on April 23, 2021, and the Finance and Administration Committee on May 3, 2021.

ANALYSIS & DISCUSSION
This item is intended to gather ideas and feedback from the Board of Directors.

STRATEGIC PLAN
N/A

ALTERNATIVE
N/A

FISCAL IMPACT
N/A

ATTACHMENT
The presentation for this item is posted to SVCE’s website.
Silicon Valley Clean Energy
Board of Directors Meeting

May 12, 2021

Appendix A

Power Resource Contracts Executed by CEO
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between Peninsula Clean Energy Authority, a California joint powers authority ("Seller") and Silicon Valley Clean Energy Authority ("Purchaser"), and each individually a "Party" and together the "Parties", dated as of April 20, 2021 (the "Effective Date"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "Transaction"). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the "WSPP Agreement"). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the "Agreement" and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1  Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.

(b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.

(d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser’s instructions, including Purchaser’s instructions to withhold all or part of the Expected Contract Quantity from Seller’s Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the
CCA WSPP Standard RA Confirmation
30 September 2020

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

(b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller’s Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for each Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units of the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a “Replacement Unit”) in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
CCA WSPP Standard RA Confirmation
30 September 2020

(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the Replacement Units from which such Alternate Capacity shall be provided before the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month; and

(b) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser’s receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser’s requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

2.5 Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity

(a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

(b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines
CCA WSPP Standard RA Confirmation
30 September 2020

or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller shall, and shall cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

ARTICLE 3 PAYMENTS

3.1 Payment

Purchaser shall pay for the Product as provided in Article 9 of the WSPP Agreement and this Confirmation; except that under Section 9.4 of the WSPP Agreement, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity

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Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

### 3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

### ARTICLE 4

**OTHER PURCHASER AND SELLER COVENANTS**

#### 4.1 CAISO Requirements

Seller shall schedule or cause the Shown Unit’s SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit’s SC, owner, or operator to perform all,
obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit’s SC, owner, or operator for noncompliance.

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller’s Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to
promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 **Market Based Rate Authority**

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

**ARTICLE 5**

**HOLDBACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser’s request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser’s use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Purchaser’s request under this Article Five.

**ARTICLE 6**

**ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

6.1 **Termination Payment**

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and
include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the
CCA WSPP Standard RA Confirmation
30 September 2020

Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 **Dodd-Frank Act**


6.4 **Change in Law**

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 **No Recourse to Members of Seller or Purchaser**

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of
CCA WSPP Standard RA Confirmation  
30 September 2020

Seller constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Sellers’s constituent members, in connection with this Confirmation.

6.8 **Other WSPP Agreement Changes**

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(b) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(c) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(d) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(e) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(f) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.
(g) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(h) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

(i) The phrase “arbitration or” is deleted from the first line of Section 34.4.

(j) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH,”
AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

(k) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.

(l) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine) and clarified in Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on [electronic,\textsuperscript{2}]
or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

PENINSULA CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Janis C. Pepper
Name: Jan Pepper
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
APPENDIX A

DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

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

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable...
environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.
“Notification Deadline” is ten (10) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” means has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.
“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

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

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR    ☐ Local RAR    ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: North
Resource Category (MCC Bucket): 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A

Delivery period:

Contract Quantity and Contract Price:

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>RAR Quantity (MW)</th>
<th>Capacity Area</th>
<th>FCR Quantity, if any (MW)</th>
<th>Flexible Capacity Category (1, 2, 3)</th>
<th>Contract Price ($/kW-month)</th>
<th>Resource ID</th>
<th>Resource Category (1, 2, 3, or 4)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
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## APPENDIX C
### NOTICE INFORMATION

<table>
<thead>
<tr>
<th>Seller: Peninsula Clean Energy Authority</th>
<th>Purchaser: Silicon Valley Clean Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Attn: Director of Power Resources</td>
<td>Attn: Girish Balachandran, CEO</td>
</tr>
<tr>
<td>Phone: 650-260-0005</td>
<td>Phone: 408 721-5301</td>
</tr>
<tr>
<td>Email: <a href="mailto:contracts@peninsulacleanenergy.com">contracts@peninsulacleanenergy.com</a></td>
<td>Facsimile: N/A</td>
</tr>
</tbody>
</table>

| **Invoices:**                            | **Invoices:**                                    |
| Attn: Director of Finance                | Attn: SVCE Power Settlements                     |
| Email: finance@peninsulacleanenergy.com;  | Phone: 408 721-5301                              |
| contracts@peninsulacleanenergy.com       | Facsimile:                                       |
| Phone: (650) 260-0005                    | E-mail: SVCEpowersettlements@svcleanenergy.org   |

| **Scheduling:**                          | **Scheduling:**                                  |
| Attn: Director of Power Resources        | Attn: Z-Global                                   |
| Email: contracts@peninsulacleanenergy.com| : Jamil Labban & Nicole Ramos                    |
| Phone: (650) 260-0005                    | Tel: 916 221-4064 & 916 235-9193 Email: )        |
|                                           | jlabban@zglobal.biz                             |
|                                           | nramos@zglobal.biz                              |

| **Credit and Collections:**              | **Credit and Collections:**                      |
| Attn: Director of Finance                | Attn: SVCE Power Settlements                     |
| Email: finance@peninsulacleanenergy.com  | Phone: 408 721-5301                              |
| Phone: (650) 260-0005                    | Facsimile: N/A                                  |
|                                           | E-mail: SVCEpowersettlements@svcleanenergy.org   |

<p>| <strong>Defaults:</strong>                            | <strong>Defaults:</strong>                                    |
| Attn: Janis Pepper, CEO                  | Attn: Girish Balachandran, CEO                  |
| Phone: (650) 260-0100                    | Phone: 408 721-5301                              |
| Email: <a href="mailto:jpepper@peninsulacleanenergy.com">jpepper@peninsulacleanenergy.com</a>  | Facsimile: N/A                                  |
| Address: 2075 Woodside Road,             | E-mail: <a href="mailto:girish@svcleanenergy.org">girish@svcleanenergy.org</a>                 |
| Redwood City, CA 94061                   | Attn: Steve Hall                                 |
|                                           | (email) <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>                 |</p>
<table>
<thead>
<tr>
<th>Supply Plan Contact: Matthew Sasaki</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-mail: <a href="mailto:msasaki@acespower.com">msasaki@acespower.com</a></td>
</tr>
<tr>
<td>Phone: 520-586-5507</td>
</tr>
<tr>
<td>818-687-4415</td>
</tr>
</tbody>
</table>
## APPENDIX D
### PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</tbody>
</table>
EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: AES North America Development, LLC, a Delaware limited liability company

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

Description of Facility: A 66.6 MW wind-powered electricity generating facility, located in Riverside 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>4/30/2021</td>
</tr>
<tr>
<td>Execute Interconnection Agreement</td>
<td>08/31/2021</td>
</tr>
<tr>
<td>CEC Pre-Certification Obtained</td>
<td>04/01/2022</td>
</tr>
<tr>
<td>Conditional Use Permit</td>
<td>07/31/2021</td>
</tr>
<tr>
<td>Network Upgrades Completed</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>10/1/2022</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status Obtained</td>
<td>On and after the RA Guarantee Date</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>11/01/2022</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>01/01/2023</td>
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</table>

Delivery Term: The period for Product delivery will be for twenty (20) Contract Years.

Expected Energy:

<table>
<thead>
<tr>
<th>Contract Year</th>
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<td>11 – 20</td>
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Guaranteed Capacity: 66.6 MW
**Contract Price:**

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<th>Contract Price ($/MWh)</th>
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**Product:**

- ☒ Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Facility Capacity Attributes
- ☐ Energy Only Status
- ☒ Full Capacity Deliverability Status on and after the RA Guarantee Date

**Scheduling Coordinator:** Seller/Seller 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 April 21, 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 owns, is repowering, and will operate the Facility; and

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.11.

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

“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”, “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.

“After-Tax Basis ” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal
Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

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

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

“Annual Forecast” has the meaning set forth in Section 4.3(a).

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

“Approved Forecast Vendor” means a vendor, which may be an Affiliate of Seller or the CAISO (including CAISO VER), selected by Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

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

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

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

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

“Buyer’s Share”

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


“CAISO Approved Meters” means the CAISO approved revenue quality 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 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 that the 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.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.
“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

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

“**Compliance Costs**” has the meaning set forth in Section 3.11(a).

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

“**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.

“**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 pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

“**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 Agreements 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 Facility is reduced 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 amount of the Development Security.

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

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

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.
“Deemed Delivered Energy” means Buyer’s Share of the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be calculated using the most recent VER Forecast, expressed in MWh, applicable to the Market Curtailment Period, less the amount of Energy delivered to the Delivery Point during the Market Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

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

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

“Development Cure Period” has the meaning set forth in Exhibit B.

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

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

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

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

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

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

“Energy” means electrical energy generated by the Facility.

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

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

“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 Facility Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year, which is equal to Buyer’s Share of the quantity specified on the Cover Sheet for each Contract Year.

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

“Facility Energy” means Buyer’s Share of the Energy, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage or high voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“FERC” means the Federal Energy Regulatory Commission.

“Fifteen Minute Market” or “FMM” has the meaning set forth in the CAISO Tariff.

“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.

“Forecasted Product” has the meaning set forth in Section 4.3(a).

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

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

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

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

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

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

“**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 Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, multiplied by Buyer’s Share.

“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.

“Guarantor” means, with respect to Seller, a Person that is reasonably acceptable to Buyer or any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars ($100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

“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.

“Indemnitee” has the meaning set forth in Section 16.1.

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

“Installed Capacity” means Buyer’s Share of the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, 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 Agreements” means the interconnection agreements 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 Agreements.
“Interest Rate” has the meaning set forth in Section 8.2.

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

“Investment Grade Credit Rating” means a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s.

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


“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.

“kW” means kilowatts in alternating current, unless expressly stated in terms of direct current.

“kWh” means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank 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, in a form substantially similar to the letter of credit set forth in Exhibit K or in form and substance reasonably satisfactory to Buyer.

“Limited Assignee” has the meaning set forth in Section 14.3.
“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.

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which the LMP for the Day-Ahead Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the DA Price Floor; provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

“Milestone” means each of the milestones set forth on the Cover Sheet.

“Monthly Settlement Amount” has the meaning set forth in Exhibit C.

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

“Moody’s” means Moody’s Investors Service, Inc.

“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.

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

“**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 (a) any Affiliate of Seller, or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred seventy-five million dollars ($175,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

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

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

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

“**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.

“Potential Storage Facility Site” has the meaning set forth in Section 4.10.

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4.

“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 in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

“PTC Rate” means the PTC Reimbursement Rate (on a per MWh basis) for the applicable calendar year as set forth in Exhibit Q.

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

“RA Deficiency Amount” has the meaning set forth in Section 3.8(b).

“RA Guarantee Date” means the date that is seventy-five (75) days after the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, 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 Resource Adequacy 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.

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

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

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

“Related PPA” means that certain Renewable Power Purchase Agreement, dated as of the date hereof, by and between Central Coast Community Energy, a California joint powers authority and Seller as such agreement may be amended, restated, amended or restated and any successor agreement entered into on a substantially similar basis.

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

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

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP-15.

“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.
“Restricted Period” has the meaning set forth in Section 10.4(b).

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

“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.

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

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

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

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

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

“Settlement Price” has the meaning set forth in Exhibit C.

“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 Agreements themselves, that are used in common with third parties.

“Showing Month” means the calendar month of the Delivery Term that is the subject of Buyer’s compliance with the requirements of the CPUC for Buyer’s resource adequacy requirements. For illustrative purposes only, pursuant to the applicable CPUC decisions in effect
as of the Effective Date, the monthly compliance showing made in June is for the Showing Month of August.

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

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

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

“Station Use” means:

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

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

“Supply Plan” means a Monthly Supply Plan or an Annual Supply Plan, as applicable.

“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 any Energy generated by the Facility prior to the Commercial Operation Date.
“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

“Ultimate Parent” means the AES Corporation, a Delaware corporation.

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

“VER Forecast” means (a) the current (as of the Effective Date) CAISO forecast of expected generation for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time, or (b) an alternative forecast adopted by the Parties in writing as the replacement for the CAISO forecast described in clause (a).

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

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

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of 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 word or provision in respect of which such examples are provided;

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for three (3) years.
following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

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

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

   (b) The Interconnection Agreements between Seller and the PTO shall be in full force and effect and a copy of the Interconnection Agreements delivered to Buyer;

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

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

   (e) Seller has paid Buyer for all amounts owing under this Agreement as of the 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 shall hold regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event, 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
ARTICLE 2

MILESTONES AND SAFETY

2.1 Missed Milestones. Seller shall provide to Buyer a Remedial Action Plan within thirty (30) days after any Milestone is missed. Seller shall use commercially reasonable efforts to develop and implement a Remedial Action Plan, in accordance with best practices, to achieve the next Milestone and to ensure that all subsequent Milestones are achieved. Seller shall provide to Buyer copies of all documents submitted to the Governmental Authority in support of the Remedial Action Plan within ten (10) days after receipt of the same from the Governmental Authority. If Seller fails to provide the Remedial Action Plan within the thirty (30) day period, or fails to implement the Remedial Action Plan in accordance with the requirements of the Governmental Authority, Buyer may, in its sole discretion, provide Notice to Seller stating that Seller is not in compliance with this Agreement. If Seller fails to cure the non-compliance in accordance with this Agreement within thirty (30) days after receipt of the Notice, Buyer may provide Notice to Seller terminating this Agreement;

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 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. At its sole discretion, Buyer may during the Delivery Term, and at no additional cost to Seller, re-sell or use for another purpose (other than for its own use) 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. Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to a 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. During the Delivery Term, CAISO payments and charges arising from Imbalance Energy shall be for the account of Seller.

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

3.5 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes. If Future Environmental Attributes are created by a Governmental Authority through Laws enacted after the Effective Date, Buyer may, at its option, provide Notice to Seller of Buyer’s intent to claim such Future Environmental Attributes. In the event Buyer does not provide such Notice within sixty (60) days after any such Future Environmental Attributes are created, Buyer will be deemed to have elected to not claim such Future Environmental Attributes and Seller shall thereafter be
entitled to claim any such Future Environmental Attributes. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility 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, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller Buyer’s Share of all Test Energy and any associated Products on an as-available basis. As full compensation for such Test Energy and associated Product, Seller shall be entitled to retain one hundred percent (100%) of the CAISO revenues received by Seller from the CAISO for the Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of Buyer’s Share of the Capacity Attributes from the Facility and covenants and agrees to transfer all of Buyer’s Share of Resource Adequacy Benefits and other Capacity Attributes associated with the Facility to Buyer.

(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.

(c) For the duration of the Delivery Term, Seller shall take all reasonable actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes, including, if requested by Buyer, submitting Supply Plans in accordance with CAISO and CPUC requirements. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines for submitting Supply Plans are as follows: (A) forty-five (45) days prior to
the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Term.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity of the Facility for such month, minus (B) the Net Qualifying Capacity of the Facility for such month, multiplied by (ii) the lesser of (A) price for CPM Soft Offer Cap (in $/kW as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor) or (B) the actual price paid by Buyer to replace such shortfall; provided that Seller may, as an alternative to paying some or all of the 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 to Buyer substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting. For purposes of this Section 3.8(b) and the definition of RA Shortfall Month, the Net Qualifying Capacity of the Facility shall be deemed to be the Net Qualifying Capacity of the Facility as determined pursuant to the Resource Adequacy Rulings and other Laws in effect as of the date hereof, and without giving effect to any changes in the Resource Adequacy Rulings or other Laws after the date hereof that have the effect of reducing the Net Qualifying Capacity of the Facility.

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

3.10 **California Renewables Portfolio Standard.**

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be
materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.11.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.11.

(c) 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.

(d) Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including scheduling or delivery information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product.

### 3.11 Change in Law

(a) 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 ("Compliance Expenditure Cap"). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) 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”; provided, Compliance Actions shall not require Seller to install any additional MW of generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Laws after the Effective Date.

If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.
Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

**ARTICLE 4
OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. 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. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator for the Facility) 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 will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the applicable Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
Appendix A

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format 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 each 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 hourly expected Energy from the Generating Facility (the “**Forecasted Product**”), by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the **Annual Forecast**).

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than ten (10) Business Days before the beginning of each month of the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Energy, Facility Energy, and Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 (“**Monthly Delivery Forecast**”).

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s non-binding best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy. Seller’s delivery of the VER Forecast shall satisfy the requirements of this Section 4.3(c).

(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) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity 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. 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 and Seller; 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. Seller’s delivery of the VER Forecast shall satisfy the requirements of this Section 4.3(d).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer 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.

4.4 Reserved.

4.5 Reserved.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided that, Seller shall provide Buyer one-hundred twenty (120) days’ prior Notice of any scheduled maintenance and, 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%), in each case, 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 electrical practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “Planned Outage”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(f) Market Curtailment Periods. Seller has the right, in its sole discretion, to curtail deliveries of Facility Energy during Market Curtailment Periods.
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, Curtailment Periods, or Market Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy delivered by Seller during the applicable Performance Measurement Period, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy, and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, outage of the Transmission System, Buyer Event of Default, Curtailment Periods during the applicable Performance Measurement Period (the sum of the actual Facility Energy delivered plus the Deemed Delivered Energy plus such amounts that could reasonably have been delivered pursuant to clause (2) above, the “**Adjusted Energy Production**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all 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 WREGISCertificates 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 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the 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 Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of (i) calculating Buyer’s payment to Seller under Article 8, which shall result in a credit to Buyer equal to the product of the WREGIS Certificate Deficit multiplied by the Contract Price, and (ii) the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit as to such Deficient Month so that it takes effect for the calendar year during which Deficient Month occurred, but no later than May 1 of the following calendar year. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

4.9 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 Guaranteed Capacity for the Facility during 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 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 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 Facility 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, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) provide for separate metering of the Facility.
ARTICLE 7
METERING

7.1 Metering. Seller shall measure the amount of Facility Energy using the Facility Meters, 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. 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 all losses from such meters to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit P, as such exhibit may be updated from time to time by Seller subject to Buyer’s prior written approval, not to be unreasonably withheld. 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 Seller’s Scheduling Coordinator shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface—Settlements Interface (MRI-S) web or directly from the CAISO meter(s) at the Facility. Seller shall obtain and maintain CAISO Resource IDs that are dedicated exclusively to the Facility.

7.2 Meter Verification. If Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall make commercially reasonable efforts test each meter annually. 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 for Buyer’s Share of Product to Buyer within ten (10) Business Days after the end of the prior monthly delivery 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 Energy delivered from the Facility, the amount of Replacement RA delivered to Buyer (if any), the calculation of Deemed Delivered Energy, and Adjusted Energy Production, the LMP prices at the Settlement Point for each Settlement Interval, and the Settlement Price and Monthly Settlement Amount applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from
time to time for Buyer to verify the accuracy of all invoices.

8.2 **Payment.** Buyer or Seller, as applicable, shall make payment of the Monthly Settlement Amount to the other Party for the Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. If a payment is due from Buyer to Seller, Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If a payment is due from Seller to Buyer, Seller shall make such payment within 45 days after the end of the prior monthly delivery period. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least three (3) years or as otherwise required by Law. Upon five (5) 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 [redacted].

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, that (a) adjustments to prior invoices based upon meter inaccuracies verified pursuant to Section 7.2 shall only be made if a meter is determined to have been inaccurate by more than one percent (1%) and (b) no adjustments shall be made for meter inaccuracies for periods earlier than one (1) calendar year prior to a meter verification. 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,
interest, and payments or credits, shall be netted so that only the excess amount remaining due
shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement,
Seller shall deliver Development Security to Buyer within thirty (30) days after the Effective Date.
Seller shall maintain the Development Security in full force and effect, subject to any draws made
by Buyer in accordance with this Agreement. Upon the earlier of (i) Seller’s delivery of the
Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return
the Development Security to Seller, less the amounts drawn in accordance with this Agreement.
If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to
maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates
its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the
Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw
on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash
or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of
Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement,
Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.
If the Performance Security is in the form of a Guaranty, it shall be substantially in the form set
forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject
to any draws made by Buyer in accordance with this Agreement, until the following have occurred:
(A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller
then due and payable under this Agreement, including compensation for penalties, Termination
Payment, indemnification payments or other damages are paid in full (whether directly or
indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall
promptly return to Seller the unused portion of the Performance Security. If the Performance
Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the
minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to
renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term,
or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and collateral assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 Seller 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.

8.11 Buyer Financial Statements. During any period where Buyer does not maintain an Investment Grade Credit Rating, to the extent such items are (a) not readily accessible on Buyer’s website, Buyer shall provide to Seller the following upon Seller’s reasonable request: (i) within ninety (90) days following the end of its first, second and third fiscal quarters, unaudited
quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (ii) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (ii) as available, Buyer’s annual report, which shall include an overview of customer rate classes and retention rates (and may include opt-out rates), customer programs, and a list of Buyer’s member agencies and board members; (iv) committed, unused bank line of credit as of the end of each fiscal quarter; and (v) other financial and operational information for the prior fiscal quarter as may be reasonably requested by Seller’s financing parties.

ARTICLE 9
NOTICES

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

9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means), at the time indicated by the time stamp upon delivery and, if sent after 5 PM Pacific Prevailing Time, 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to promptly 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 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 Section 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

10.3 Notice. In the event of any Force Majeure Event, the claiming Party shall (a) use commercially reasonable efforts to provide the other Party with oral notice of any Force Majeure Event within two (2) Business Days of obtaining knowledge of such Force Majeure Event, and (b) provide Notice within two (2) weeks of obtaining knowledge of such Force Majeure Event to the other Party addressed to the person or persons identified on Exhibit N in the form of a letter on the claiming Party’s letterhead describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Seller’s delivery of information related to delays or Force Majeure Events pursuant to a Progress Report does not satisfy the requirements of this Section 10.3. The claiming party shall promptly 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 claiming Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller’s actions or failure to exercise due diligence or take reasonable actions.

10.4 Termination Following Force Majeure Event.

(a) If a Force Majeure Event has occurred prior to the Commercial Operation Date that has caused Seller to be unable to perform its obligations hereunder, and Seller has claimed and received relief from performance of its obligations for a cumulative period of one hundred twenty (120) days or more, then either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, Seller’s liability to Buyer shall be limited to one-half of the Damage Payment and neither Party shall have any other liability to the other Party, save and except for those obligations specified in Section 2.1(b) and Section 10.4(b) (in the event of a termination by Seller), and Buyer shall promptly return to Seller any remaining portion of the Development Security then held by Buyer after deducting one-half of the Damage Payment therefrom and any other amounts drawn in accordance with this Agreement.

(b) If this Agreement is terminated by Seller in accordance with Section 10.4(a), then Seller may not sell, or enter into a contract to sell, the Facility or energy derived therefrom to a party other than Buyer for a period of eighteen (18) months following the effective date of such termination (the “Restricted Period”); provided, that the foregoing prohibition on contracting and sale will not apply if, at some point during the Restricted Period, Seller has provided Buyer with a written offer to sell the Facility or the energy output therefrom to Buyer for a price that is equal to or less than the price at which Seller proposes to transact with a third party, and Buyer fails to accept such offer within thirty (30) days after Buyer’s receipt thereof, or Buyer accepts such offer within such thirty (30) day period but is unable to finalize the terms of, and enter into a definitive agreement therefor, within sixty (60) days after accepting such offer. For the avoidance of doubt, this Section 10.4(b) shall not be applicable in the event of a termination by Buyer in accordance with Section 10.4(a).

(c) 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 either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.
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;

(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) the occurrence of an RA Shortfall Month, the exclusive remedies for which are set forth in Section 3.8, and (2) failures to achieve the Guaranteed Energy Production, the exclusive remedies for which are set forth in Section 4.7 and Exhibit G), and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

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

(ii) the failure by Seller to achieve the Commercial Operation Date within ninety (90) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after receipt of Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the date that is ninety (90) days after the Guaranteed Commercial Operation Date;
(iv) the failure by Seller to achieve the Construction Start Date within ninety (90) days after the Guaranteed Construction Start Date;

(v) Reserved;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after receipt of Notice and expiration of the cure periods set forth therein;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

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

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

(viii) 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 commencement of the Delivery Term, including an Event of Default under Section 11.1(b)(ii) or (iv)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.
11.3 **Termination Payment.** The Termination Payment ("Termination Payment") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of 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.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of this Agreement, Seller’s liability 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 PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES, 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 AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES
BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) The Facility is located in the State of California.

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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 necessary for it to legally perform its obligations under this Agreement; and

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

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). 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.** Except as provided in this Section 14.1 or in Section 14.2 and Section 14.3 below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer’s prior written consent is not required for an assignment of this Agreement (including a Change of Control) where the assignee or transferee meets the definition of a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility (including any tax equity financing or investment), Buyer shall work in good faith with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”), estoppel or other agreement reasonably requested by any Lender in connection with such financing. Any such Collateral Assignment Agreement, estoppel or other agreements shall be upon terms and conditions customary for non-recourse project financings for comparable projects and shall be
form and substance agreed to by Buyer, Seller and such Lender, with such agreement not to be unreasonably withheld, conditioned or delayed.

14.3 **Buyer Limited Assignment.** Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("**Limited Assignee**") that has a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s or provides a parent guaranty from an entity with such Credit Rating, in form and substance reasonably acceptable to Seller, of Buyer’s right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee’s timely payment of amounts due under this Agreement, 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 a form reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence and parent guaranty, as applicable, Seller agrees to (i) comply with Limited 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 Limited 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 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 with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Santa Clara County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.
ARTICLE 16
INDEMNIFICATION

16.1 Mutual Indemnity. Each Party (in its capacity as Indemnitor (as defined below)) shall defend, indemnify and hold harmless the other Party its directors, officers, agents, attorneys, employees and representatives (collectively, the “Indemnitee”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, however described, which arise out of or relate to or are in any way connected with a violation of applicable Laws, negligent or tortious acts, errors, or omissions, or intentional acts or willful misconduct, in any of the foregoing cases, of the Indemnitor, its Affiliates, its or their directors, officers, employees, or agents, excepting only such losses, to the extent caused by the willful misconduct or gross negligence of any Indemnitee (collectively, “Indemnifiable Losses”).

16.2 Notice of Claim.

(a) 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 Indemnitee will promptly Notify the Party against whom indemnification is sought (the “Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee 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 the Indemnitee regarding the Indemnifiable Loss.

(b) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 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, the Indemnitor is not obligated to indemnify the Indemnitee 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.

16.3 Defense of Claims. If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnitor pursuant to Section 16.2(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Claim as provided in the last sentence of Section 16.2(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnitee that the Indemnitor believes the Indemnitee has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor 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 the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder;
provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee 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 the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitor fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnitor to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

16.4 Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnitor recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee’s rights against such third party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.5 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, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than policy limit will apply to each employee.
(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of California Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted]. 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) **Umbrella Liability Insurance.** Seller shall maintain umbrella liability insurance with limits of [redacted] per occurrence and in the aggregate. Such insurance shall respond excess to insurance identified in Sections 17.1(a) and 17.1(d) above.

(f) **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 with the exception of non-payment of premium, in which case notice shall be ten (10) days. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system...
operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19**

**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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.

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

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

19.9 **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.

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

19.14 **Related PPA.** Buyer acknowledges that this Agreement is being entered into substantially concurrently with the Related PPA, pursuant to which Seller shall sell to the counterparty under the Related PPA all of the Product produced by the Project other than Buyer’s Share of the Product. The Parties expressly acknowledge and agree that such sales are permitted hereunder and that nothing in this Agreement restricts Seller from complying with its obligations under the Related PPA.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

AES NORTH AMERICA DEVELOPMENT, LLC, a Delaware limited liability company

By: [Signature]
Name: Lisa Krueger
Title: President

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Mountain View

Site includes all or portions of the following APNs: 522070027, 668290003, 668290008, 668300001, 668300003, 668300005, 668300008, 668300009, 668300010, 668300011, 668300012, 668300013, 668300014, 668300015, 668310014, 668310015, 668310017, 668310019, 668310023, 668310024, 668310025, 668310026, 668310027, 668310028, 668310029, 668310030, 668310032, 668310033, 668310034, 668310036, 668310037, 668310038, 668310039, 668310040, 668310043, 668310045, 668310046, 668310047, 668412001, 669020007 (partial), 669020008, 669040006, 669040017, 669040018 (partial)

County: Riverside

Type of Generating Facility: Wind

Guaranteed Capacity: See definition in Section 1.1.

Interconnection Point: SCE’s 115kV Mount Wind Substation

CAISO Point of Interconnection: Devers Substation

Settlement Point: Facility Pnode

Delivery Point: Facility Pnode

Participating Transmission Owner: Southern California Edison Company

Facility Pnode: MTWND1-2_7_N101
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 (including, at a minimum, excavation for foundations or the installation or erection of improvements). 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 Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; provided that in no event shall Seller be obligated to pay aggregate Construction Delay Damages in an amount greater than the amount of the Development Security. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction 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 Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2, subject to the limitation of liability set forth in Section 11.7.

2. **Commercial Operation of the Facility. “Commercial Operation”** means the condition existing when (a) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**), and (b) 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 date when each of the above conditions have been satisfied; provided, that the Commercial Operation Date shall not occur earlier than ninety (90) days before the Expected Commercial Operation Date without Buyer’s consent, which shall not be unreasonably withheld.
a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by one or more days prior to the Construction Delayed COD Date, then Buyer shall refund to Seller a pro rata amount of Construction Delay Damages equal to the number of days by which the actual Commercial Operation Date preceded the Construction Delayed COD Date, not to exceed the aggregate amount of Construction Delay Damages previously paid. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation. For purposes of this Section 2(b) of this Exhibit B, the “Construction Delayed COD Date” means the Guaranteed Commercial Operation Date plus the number of days for which Seller has paid Construction Delay Damages in accordance with Section 1(b) of this Exhibit B.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate COD Delay Damages in an amount greater than the COD Delay Damages Cap. COD Delay Damages shall be paid to Buyer on a monthly basis at the end of each calendar month. The Parties agree that Buyer’s receipt of COD 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 not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2, subject to the limitation of liability set forth in Section 11.7.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) 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.** Independent of Seller’s extension rights under Sections 1 and 2 of this Exhibit B, 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;

   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 taken actions or made the necessary arrangements required to receive the Product.

Notwithstanding anything in this Agreement to the contrary, the extension granted under Section
4(a) and 4(b) above under the Development Cure Period shall not exceed one hundred twenty (120) days for any reason, including a Force Majeure Event. Notwithstanding anything to the contrary, no extension under Sections 4(a) and 4(b) 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 Notice to Buyer of a Force Majeure Event under Section 4(a) in accordance with Section 10.3 and for delays under Section 4(b) and 4(c) above within two (2) weeks of the commencement of the circumstance described in Section 4(b) and 4(c) above in the form of a letter on Seller’s letterhead describing in detail the delay, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that each day of the claimed delay was not the result of Seller’s actions or failure to exercise due diligence or take reasonable actions. To the extent Seller fails to provide timely Notice and requested documentation as required above, the Development Cure Period for such delay is waived. Seller’s delivery of information related to delays or Force Majeure Events pursuant to a Progress Report does not satisfy the requirements of this Exhibit B.
EXHIBIT C

COMPENSATION

1. The Parties shall settle payment for Buyer’s Share of the Product in accordance with this Exhibit C.

   (b) For each Settlement Period, subject to Sections 1(d) and 1(e) of this Exhibit C, Seller shall calculate the “Monthly Settlement Amount,” which shall be a single amount due from Buyer to Seller, or from Seller to Buyer, as appropriate. The Monthly Settlement Amount shall equal the sum of:

      An example of the Monthly Settlement Amount calculation is provided as Exhibit R.

   (e) During the Delivery Term, if during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy and Deemed Delivered Energy,
(f) Seller is responsible for CAISO costs and is entitled to retain all CAISO revenues in respect of the Facility as further described in Exhibit D.

(g) The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver 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) **Seller to be Scheduling Coordinator.** During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point, and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) **CAISO Market Participation.** Seller (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. Seller’s Day-Ahead Market and Real-Time Market participation will be conducted in accordance with this Agreement and the CAISO Tariff, including any requirements to remain in the VER program, its equivalent or any successor, and to the extent not inconsistent with the foregoing, Prudent Operating Practice.

(c) **CAISO Costs and CAISO Revenues.** Seller shall be responsible for all CAISO costs (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, and other payments), including costs and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. In addition, Seller shall be responsible for any costs, charges or revenues assessed by the CAISO which are due to a failure of Seller to perform its obligations hereunder, including costs associated with (i) Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (ii) any other failure by Seller to abide by the CAISO Tariff. The Parties agree that any Availability Incentive Payments, as defined in the CAISO Tariff, are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges, as defined in the CAISO Tariff, are the responsibility of the Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller’s responsibility.
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

AVERAGE EXPECTED ENERGY – CONTRACT YEARS 1 THROUGH 10

Average Expected Energy (in MWh)

<table>
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<tr>
<th>Hour</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
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<th>Jul</th>
<th>Aug</th>
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<th>Oct</th>
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<th>Dec</th>
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</thead>
</table>

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
# AVERAGE EXPECTED ENERGY – CONTRACT YEARS 11 THROUGH 20

Average Expected Energy (in MWh)

<table>
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<th>Hour</th>
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</table>

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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

- \(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- \(B\) = the Adjusted Energy Production (as defined in Section 4.7 of the Agreement) amount for the Performance Measurement Period, in MWh
- \(C\) = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all hours and all days in the Performance Measurement Period, as published by the CAISO, for the Delivery Point, plus (b) the market value of Replacement Green Attributes, as reasonably determined by Buyer and Seller
- \(D\) = the Contract Price for the Performance Measurement Period, in $/MWh

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

Within sixty (60) days after each Performance Measurement Period, 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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

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

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

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [DATE].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ______________________________

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 [Date] (“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.

I hereby certify the performance test for the Facility demonstrated peak electrical output of [ ] MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“Installed Capacity”).

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Printed Name: ________________________________

Title: ________________________________

Date: ________________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

2. the Construction Start Date occurred on ____________ (the “Construction Start Date”); and

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: ________________________________.

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

[SELLER ENTITY]

By: ________________________________

Its: ________________________________

Date: ________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]
Expire Date:

Beneficiary:
Silicon Valley Clean Energy Authority, a California joint powers authority
333 W. El Camino Real, Suite 330
Sunnyvale, California 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, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of __________ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on December 31, 2024 (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-XXXXX]] 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 documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the

Exhibit K - 1
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.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Silicon Valley Clean Energy Authority, Attn: Girish Balachandran, 333 W. El Camino Real, Suite 330, Sunnyvale, CA 94087. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Silicon Valley Clean Energy Authority, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of [ ] (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of [DATE] (the “Agreement”).

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

OR

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

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

You are hereby directed to make payment of the requested amount to Silicon Valley Clean Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

SILICON VALLEY CLEAN ENERGY AUTHORITY,
a California joint powers authority

Name and Title of Authorized Representative

Date ________________________________

Exhibit K - 3
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [DATE] (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 [type of entity and state of formation] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [DATE].

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 earliest of the following: (x) all Guaranteed Amounts due and payable, if any, have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller); (y) the end of the Delivery Term if no Guaranteed Amount is payable at such time, or (z) 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 (other than 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 waive 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 material 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, materially adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[___]
Attn: [___]
Fax: [___]

If delivered to Guarantor, to it at

[___]
Attn: [___]
Fax: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Santa Clara, California.

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

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

GUARANTOR:

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:

<table>
<thead>
<tr>
<th>Unit Information¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Location</td>
</tr>
<tr>
<td>CAISO Resource ID</td>
</tr>
<tr>
<td>Unit SID</td>
</tr>
<tr>
<td>Prioritized Percentage of Unit Factor</td>
</tr>
<tr>
<td>Resource Type</td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
</tr>
<tr>
<td>LCR Area (if any)</td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
</tr>
<tr>
<td>Delivery Method</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
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<tr>
<td>March</td>
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<td>April</td>
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<td>May</td>
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<td>June</td>
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<td>July</td>
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<td>August</td>
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<td>October</td>
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<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ To be repeated for each unit if more than one.

[Seller Entity]

By: ____________________________

Its: ____________________________

Date: ____________________________

Exhibit M - 1
**EXHIBIT N**

**NOTICES**

<table>
<thead>
<tr>
<th><strong>AES North America Development, LLC</strong></th>
<th><strong>Silicon Valley Clean Energy Authority</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>&quot;Seller&quot;</strong></td>
<td><strong>&quot;Buyer&quot;</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>All Notices:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Street: 2180 South 1300 East, Suite 600</td>
<td>Street: 333 W. El Camino Real, Suite 330</td>
</tr>
<tr>
<td>City: Salt Lake City, Utah 84106</td>
<td>City: Sunnyvale, California Zip: 94087</td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td>Attn: Girish Balachandran, CEO and Monica Padilla, Director of Power Resources</td>
</tr>
<tr>
<td>Phone: 801-679-3506</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile: 801-679-3501</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>
<tr>
<td>Email: <a href="mailto:acedlegalnotices@aes.com">acedlegalnotices@aes.com</a></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Invoices:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Accounts Payable</td>
<td>Attn: Power Supply Group</td>
</tr>
<tr>
<td>Phone: 801-679-3512</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:svceinvoices@svcleanenergy.org">svceinvoices@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:accountspayableace@aes.com">accountspayableace@aes.com</a></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Scheduling:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Control Room</td>
<td>Attn: Jamil Labban and Nicole Ramos</td>
</tr>
<tr>
<td>Phone: 801-679-3553</td>
<td>Phone: (916) 221-4064 and (916) 235-9193</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:jlabban@zglobal.biz">jlabban@zglobal.biz</a> and <a href="mailto:nramos@zglobal.biz">nramos@zglobal.biz</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:controlroom@spower.com">controlroom@spower.com</a></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Confirmations:</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Director, Origination</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone: 415-692-7572</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Facsimile:</td>
</tr>
<tr>
<td>Email: <a href="mailto:Trupti.kalbag@aes.com">Trupti.kalbag@aes.com</a></td>
<td>Email:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Payments:</strong></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Attn: Account Payable</td>
<td>Attn: Finance Group</td>
</tr>
<tr>
<td>Phone: 801-679-3512</td>
<td>Phone: (408) 721-5301</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:svceinvoices@svcleanenergy.org">svceinvoices@svcleanenergy.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:accountspayableace@aes.com">accountspayableace@aes.com</a></td>
<td></td>
</tr>
</tbody>
</table>
| **AES North America Development, LLC**
| (“Seller”) | **Silicon Valley Clean Energy Authority**
|  | (“Buyer”) |

**With additional Notices of an Event of Default to:**
- Attn: Legal
- Phone: 801-679-3506
- Email: aecedlegalnotices@aes.com

**With additional Notices of an Event of Default or Force Majeure Event to:**
- Hall Energy Law PC
- Attn: Stephen Hall
- Phone: (503) 313-0755
- Email: steve@hallenergylaw.com

**Emergency Contact:**
- Attn: Tracy Jarvis
- Phone: 325-480-0831
- Facsimile: 
- Email: tracy.jarvis@aes.com

**Emergency Contact:**
- Attn: 
- Phone: 
- Facsimile: 
- Email:
EXHIBIT O

OPERATING RESTRICTIONS
EXHIBIT P
METERING DIAGRAM

SCE Devers (CAISO Tariff & Control)

SCE 115 kV Distribution System (SCE WDAT)

SCE 115 kV Mountwind Substation (SCE WDAT)

AES 115/34.5 kV Mountwind Substation

Station Aux Loads: 750 kW

Mountain View II Redeveloped Wind Project

SCE 115 kV Devers Bus (CAISO POI)

Mountain View Wind Simplified One Line
R Sims 4/14/2021 Rev 0

CAISO POI

CAISO Meters

SCE Meters

AES Check Meters

Existing Mountain View III Project

Mountain View II Redeveloped Wind Project

Exhibit P - 1
EXHIBIT Q

PTC RATE
EXHIBIT R
EXAMPLE SETTLEMENT CALCULATION