



Liz Gibbons, Chair
City of Campbell

George Tyson, Vice Chair
Town of Los Altos Hills

Jon Robert Willey
City of Cupertino

Zach Hilton
City of Gilroy

Neysa Fligor
City of Los Altos

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, February 9, 2022
7:00 pm

Teleconference Meeting
Webinar:

<https://svcleanenergy-org.zoom.us/j/89588837313>

Telephone (Audio Only):
US: +1 669 219 2599
Webinar ID: 895 8883 7313

This meeting will be conducted in accordance with California Government Code Section 54953(e), in consideration of the Coronavirus (COVID-19). All members of the Silicon Valley Clean Energy Board of Directors and staff will participate in this meeting by teleconference.

Members of the public may observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting to Board Clerk Andrea Pizano at Andrea.Pizano@svcleanenergy.org and will be read within the public comment period or the applicable agenda item. The public will also have an opportunity to provide comments during the meeting. Members of the public using Zoom may comment during public comment or the applicable agenda item by using the Raise Hand feature and you will be recognized by the Chair. Those using the telephone (audio only) feature should press star 9 on your phones to initiate the "Raise Hand" function in Zoom. You will then be announced, unmuted, and your time to speak will begin.

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

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

AGENDA

Call to Order



Liz Gibbons, Chair
City of Campbell

Roll Call

George Tyson, Vice Chair
Town of Los Altos Hills

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.

Jon Robert Willey
City of Cupertino

Zach Hilton
City of Gilroy

Consent Calendar (Action)

Neysa Fligor
City of Los Altos

1a) Approve Minutes of the January 12, 2022, Board of Directors Meeting

1b) Receive December 2021 Treasurer Report

Rob Rennie
Town of Los Gatos

1c) Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings

Evelyn Chua
City of Milpitas

1d) Adopt Resolution Modifying Delegation of Authority to the Chief Executive Officer to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers, to Include Customer-Provided Supply Agreements

Javed Ellahie
City of Monte Sereno

1e) Approve 2022 Updates to Exhibit C, Annual Energy Use, and Exhibit D, Voting Shares, of the SVCE Joint Powers Agreement

Yvonne Martinez Beltran
City of Morgan Hill

1f) Approve Cancellation of July 13, 2022 Board of Directors Meeting and Receive 2022 Board of Directors Regular Meeting Schedule

Margaret Abe-Koga
City of Mountain View

1g) Authorize the Chief Executive Officer to Extend the Contract Terms and Spending Under Innovation Onramp Participant Agreement with UtilityAPI, Inc. for Data Hive

Tina Walia
City of Saratoga

1h) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions

Larry Klein
City of Sunnyvale

1i) Executive Committee Report

Otto Lee
County of Santa Clara

1j) Finance and Administration Committee Report

1k) Audit Committee Report

1l) California Community Power Report

svcleanenergy.org

Regular Calendar

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

2) CEO Report (Discussion)

3) Appoint 2022 Board Committee Members (Action)



Liz Gibbons, Chair
City of Campbell

George Tyson, Vice Chair
Town of Los Altos Hills

Jon Robert Willey
City of Cupertino

Zach Hilton
City of Gilroy

Neysa Fligor
City of Los Altos

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

- 4) Adopt Resolution to Implement SVCE Generation Rate Changes Effective March 2022 (Action)
- 5) Authorize the Chief Executive Officer to Execute Necessary Agreements for Tumbleweed Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and LS Power's Tumbleweed LLC (Action)
- 6) Clean Energy Procurement Informational Update (Presentation)

Board Member Announcements and Direction on Future Agenda Items

Adjourn

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

SVCE GLOSSARY OF TERMS

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

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

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

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

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

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

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

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

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

DAC – Disadvantaged Community

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

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

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

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

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

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

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

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

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

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

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

EV – Electric Vehicle

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRDC – Natural Resources Defense Council

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

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

MWH – Megawatt-hour – measure of energy

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

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

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

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

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

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

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

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

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

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

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

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

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

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

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

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

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

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

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

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



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, January 12, 2022

7:00 pm

Pursuant to State of California Gov't Code Section 54953 (e) the meeting was conducted via teleconference.

DRAFT MINUTES

All present Board members participated via teleconference.

Call to Order:

Chair Abe-Koga called the Regular Meeting to order at 7:01 p.m.

Roll Call

Present:

Margaret Abe-Koga (Chair), Mountain View
Liz Gibbons (Vice Chair), Campbell
Jon Robert Willey, Cupertino
Zachary Hilton, Gilroy
Neysa Fligor, Los Altos
George Tyson, Los Altos Hills
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Javed Ellahie, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill (arrived at 7:06 p.m.)
Tina Walia, Saratoga
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County

Absent:

None.

Chair Abe-Koga welcomed new Director Larry Klein and Alternate Director Otto Lee.

Public Comment on Matters Not Listed on the Agenda

Arnold de Leon commented he had not seen a position from SVCE on the proposed Net Energy Metering 3.0.

CEO Girish Balachandran responded to de Leon; Chair Abe-Koga noted Director Martinez Beltran had joined the meeting.

Adopt Resolution Commending Margaret Abe-Koga for Her Dedicated Service as Chair of the Board of Directors in 2021

Vice Chair Gibbons introduced the item and recognized Chair Abe-Koga for her service as Chair of the Board for 2021.

Board Members thanked Chair Abe-Koga for her leadership.

Vice Chair Gibbons opened public comment.

Bruce Karney, Chair of Carbon Free Mountain View, recognized Chair Abe-Koga and shared the support Carbon Free Mountain View received from Chair Abe-Koga as a member of the Mountain View City Council in approval to fund the set up of SVCE and support carbon free electricity.

Vice Chair Gibbons closed public comment.

MOTION: Vice Chair Gibbons moved, seconded by Director Walia to adopt Resolution 2022-01 Commending Margaret Abe-Koga for Her Dedicated Service as Chair of the Board of Directors in 2021.

The motion carried unanimously by verbal roll call vote.

Chair Abe-Koga expressed her heartfelt thanks to the Board of Directors, staff, and members of the public.

Consent Calendar

- 1a) Approve Minutes of the December 8, 2021, Board of Directors Meeting
- 1b) Receive November 2021 Treasurer Report
- 1c) Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings
- 1d) Appoint SCVE Treasurer/Auditor and Board Secretary for 2022
- 1e) Receive Q4 2021 Decarbonization Programs Update
- 1f) Executive Committee Report
- 1g) Finance and Administration Committee Report
- 1h) Audit Committee Report
- 1i) California Community Power Report

There were no requests from the Board to pull a Consent Calendar Item for discussion; there were no requests from the public to speak on any matter on the Consent Calendar.

MOTION: Vice Chair Gibbons moved; seconded by Director Martinez Beltran to approve the Consent Calendar, Items 1a through 1i.

The motion carried unanimously by verbal roll call vote.

Regular Calendar

2) CEO Report (Discussion)

CEO Balachandran introduced Peter Mustacich, Energy Services Lead, who provided brief welcome comments. CEO Balachandran provided updates on the following:

- Personnel update: The position of Manager of Public Sector Services was filled by Tony Eulo, who is expected to start mid-February;
- The staff all-hands in-person meeting originally scheduled for January 14, 2022 has been postponed to April due to the rise of Covid cases;
- SVCE's first long-term contract, the Coso geothermal project, has come online January 1, 2022. The Slate solar plus storage project is expected to come online in the coming days. The first project through CC Power will be coming to the SVCE Board of Directors for approval in February, and
- PG&E Rates will be discussed at the February Board of Directors meeting.

Chair Abe-Koga opened Public Comment.
No speakers.
Chair Abe-Koga closed Public Comment.

Chair Abe-Koga welcomed Energy Services Lead Peter Mustacich.

3) Elect a Chair and Vice Chair of the SVCE Board of Directors for 2022 (Action)

Board Clerk Andrea Pizano provided a brief staff report, noting letters of interest were received for the role of Chair from Director Liz Gibbons, and from Director George Tyson for Vice Chair.

Chair Abe-Koga opened Public Comment.
No speakers.
Chair Abe-Koga closed Public Comment.

Chair Abe-Koga inquired if there were any nominations from the floor for the position of Chair; there were none.

Vice Chair Gibbons spoke to her interest of serving as Chair of the Board of Directors for 2022.

MOTION: Director Ellahie moved; seconded by Director Walia to appoint Director Liz Gibbons as Chair of the SVCE Board of Directors for 2022.

The motion carried unanimously by verbal roll call vote.

Following the appointment of Chair, the virtual gavel was passed to newly appointed Chair Gibbons to preside over the remainder of the meeting.

Chair Gibbons noted interest for the position of Vice Chair was received from Director George Tyson, and opened the floor for additional nominations. There were no nominations from the floor.

MOTION: Director Fligor moved; seconded by Director Rennie to appoint Director George Tyson as Vice Chair of the SVCE Board of Directors for 2022.

Directors shared their support of Chair Gibbons' new role as Chair and appointing Director Tyson as Vice Chair. Director Tyson thanked the Board of Directors for their support, and spoke to his interest for the position of Vice Chair.

The motion carried unanimously by verbal roll call vote.

4) Appoint Directors to the 2022 SVCE Executive Committee (Action)

Board Clerk Pizano introduced the item and summarized the interest received from Directors on joining the 2022 Executive Committee.

Chair Gibbons opened Public Comment.
No speakers.
Chair Gibbons closed Public Comment.

Director Abe-Koga spoke to withdrawing her name for consideration for the committee to allow others an opportunity to join.

MOTION: Director Abe-Koga moved; seconded by Director Chua to appoint the following Directors to the 2022 Executive Committee:

Director Yvonne Martinez Beltran
Director Javed Ellahie
Director Neysa Fligor
Director Liz Gibbons
Director George Tyson

The motion carried unanimously by verbal roll call vote.

5) Approve Policy Platform and Identify Focus Areas for the 2022 Legislative and Regulatory Ad Hoc Committee (Action)

Melicia Charles, Director of Regulatory and Legislative Policy, presented a PowerPoint presentation with a summary of staff's request to approve the following: SVCE's 2022 Policy Platform, creation of an Ad Hoc Committee of the Board to address legislative and regulatory responses to industry transition ("Leg/Reg Ad Hoc Committee), and approve the 2022 focus areas for the Leg/Reg Ad Hoc Committee.

Following the information presented by Director of Regulatory and Legislative Policy Charles on SVCE's policy platform, Chair Gibbons opened public comment.

Chair Gibbons opened Public Comment.

Bruce Karney commented he reviewed the greenhouse gas emissions of Southern California Edison, San Diego Gas and Electric, and Southern California CCAs, and was shocked to discover that, with one exception, all of the Southern California CCAs emit more greenhouse gasses per kWh or MWh than the investor-owned utilities. Karney commented due to the increasing cost of clean, green power in the open market, many CCAs have found it difficult to continue to price under the investor-owned utility. Karney commented his belief the CPUC is subject to regulatory capture and there is danger of CPUC decisions that disadvantage CCAs like SVCE and advantage PG&E and other investor-owned utilities. Karney suggested board members pay close attention to regulatory and legislative issues that Director of Regulatory and Legislative Policy Charles mentions because he thinks there are serious risks in 2022.

Chair Gibbons closed Public Comment.

Director of Regulatory and Legislative Policy Charles proceeded with the presentation and information relating to the 2022 focus areas for the Leg/Reg Ad Hoc Committee.

Chair Gibbons opened Public Comment.

Arnold de Leon commented he was pleased to see the emphasis on decarbonization for the Leg/Reg Ad Hoc Committee, and suggested SVCE take a close look at the NEM 3.0 proposal. Mr. de Leon noted he agreed with Mr. Karney's comment on the CPUC.

Chair Gibbons closed Public Comment.

Director Willey suggested the public speaker, Arnold de Leon, send his concerns regarding NEM 3.0 to staff; Chair Gibbons requested staff connect with Mr. de Leon. CEO Balachandran noted Mr. de Leon was in contact with Director of Regulatory and Legislative Policy Charles.

Chair Gibbons suggested for future consideration staff reword the 2022 Focus Area of "Expansion of Direct Access" to "Analyze the Potential Expansion of Direct Access".

MOTION: Director Rennie moved; seconded by Director Ellahie to approve SVCE's 2022 Policy Platform, the creation of the 2022 Leg/Reg Ad Hoc Committee, and the following six key focus areas for the 2022 Leg/Reg Ad Hoc Committee:

1. Expansion of Direct Access

2. Reliability Planning and Procurement
3. Transparency and Accountability in Ratemaking
4. Public Safety Power Shutoffs & Wildfire Prevention and Cost Recovery
5. Affordability and Equity
6. Decarbonization

The motion carried unanimously by verbal roll call vote.

Board Member Announcements and Future Agenda Items

Chair Gibbons announced staff started meeting with member agencies regarding Reach Codes 2.0, and encouraged Directors to engage Alternates in these discussions.

Chair Gibbons noted she had several requests to attend Acterra's *Code Red for Humanity* event on Friday, January 14, 2022; Chair Gibbons requested staff distribute the information on the event. Chair Gibbons mentioned the recent changes in representation based on new redistricting.

Chair Rennie added the City of Los Gatos and Monte Sereno has undergone representative changes as well, and confirmed the changes would become effective in the November 2022 elections.

Meeting Adjourned at 8:27 p.m.

ATTEST:

Andrea Pizano, Board Secretary

DRAFT



TREASURER REPORT

**Fiscal Year to Date
As of December 31, 2021**

(Preliminary & Unaudited)

Issue Date: February 9, 2022

Table of Contents

	<u>Page</u>
Summary	2
Statement of Net Position	4
Statement of Revenues, Expenses & Changes in Net Position	5
Statement of Cash Flows	6-7
Actuals to Budget Report	8-10
Monthly Change in Net Position	11
Investments Report	12
Customer Accounts	13
Accounts Receivable Aging Report	14

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

Financial Highlights for the month of December 2021:

- > SVCE operations resulted in a change in net position for the month of negative \$2.2 million and fiscal-year-to-date (FYTD) change in net position of negative \$5.2 million.
- > Retail GWh sales for the month landed at budget.
- > FYTD operating margin of negative \$1.0 million or negative 2.1% is above budget expectations of a negative 19.9% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are 14.4% below budget.
- > SVCE is investing ~95% of available funds generating FYTD investment income of \$0.06 million.

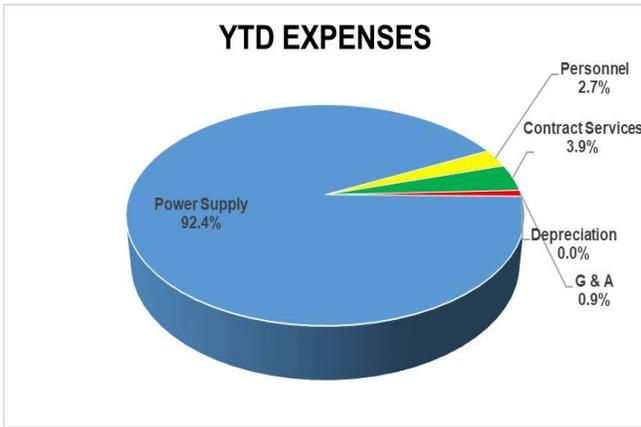
Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Actual	1,532	(4,526)	(2,237)										(5,231)	36,485

Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Energy & REC's	11,938	15,483	13,478										40,899	
Wholesale Sales	(195)	(15)	-										(210)	
Capacity	2,890	2,207	2,324										7,421	
CAISO Charges	(1,301)	205	2,286										1,191	
NEM Expense	3	152	(187)										(31)	
Charge/Credit (IST/Net Rev)	1,189	(125)	759										1,824	
Net Power Costs	14,525	17,908	18,660	-	-	-	-	-	-	-	-	-	51,092	273,561

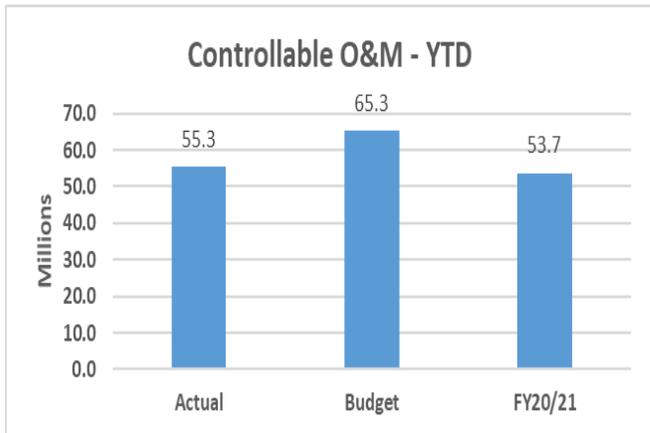
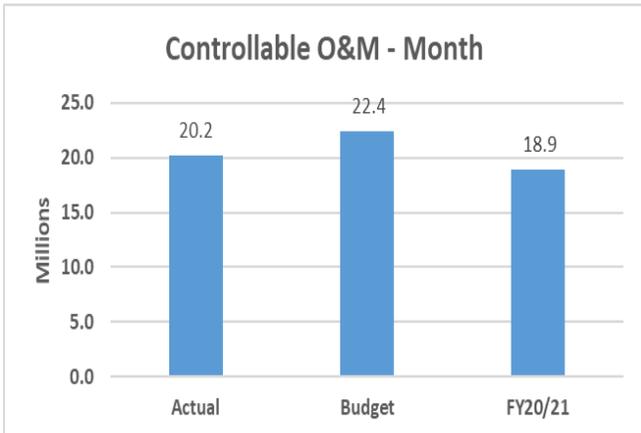
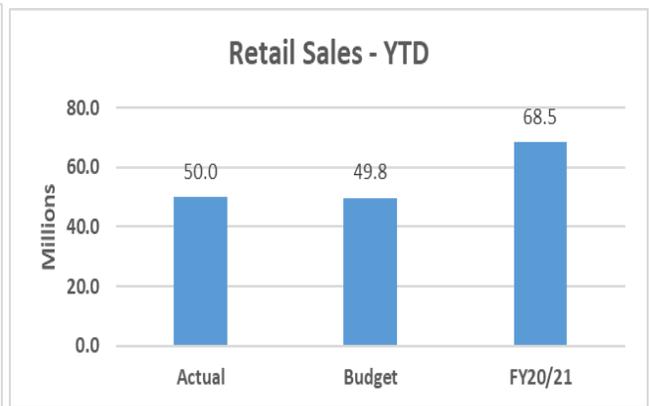
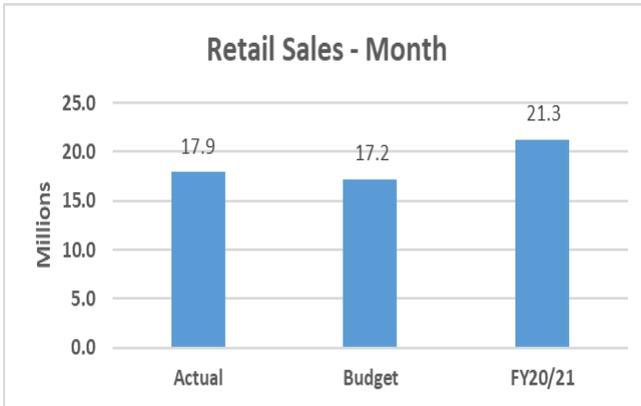
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Capital Expenditures	4	13	10										27	150
Energy Programs	68	123	116										307	7,334

Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Adopted Budget
Retail Sales Actual	302	288	327										917	
Retail Sales Budget	310	311	327	333	296	314	301	317	341	354	366	343	3,914	3,914

* The financial results in this report are preliminary and subject to change pending closing of the books for the fiscal year. Any potential changes are not expected to be significant.



Other Statistics and Ratios	
Working Capital	\$165,615,364
Current Ratio	7.0
Operating Margin	-2.1%
Expense Coverage Days	185
Long-Term Debt	\$0
Total Accounts	275,015
Opt-Out Accounts (Month)	25
Opt-Out Accounts (FYTD)	89
Opt-Up Accounts (Month)	194
Opt-Up Accounts (FYTD)	207



SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of December 31, 2021

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 160,167,424
Accounts Receivable, net of allowance	20,062,384
Accrued Revenue	10,216,725
Other Receivables	6,659
Prepaid Expenses	2,258,522
Deposits	728,108
Restricted cash	4,001,539

Total Current Assets **197,441,361**

Noncurrent assets

Capital assets, net of depreciation	320,624
Deposits	45,330

Total Noncurrent Assets **365,954**

Total Assets **197,807,315**

LIABILITIES

Current Liabilities

Accounts Payable	805,390
Accrued Cost of Electricity	25,501,163
Other accrued liabilities	688,224
User Taxes and Energy Surcharges due to other gov'ts	829,681

Total Current Liabilities **27,824,458**

Noncurrent Liabilities

Supplier security deposits	9,131,250
----------------------------	-----------

Total noncurrent liabilities **9,131,250**

Total Liabilities **36,955,708**

NET POSITION

Net investment in capital assets	320,624
Restricted for security collateral	4,001,539
Unrestricted (deficit)	156,529,444

Total Net Position **\$ 160,851,607**

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

October 1, 2021 through December 31, 2021

OPERATING REVENUES

Electricity Sales, Net	\$ 49,802,516
GreenPrime electricity premium	237,111
Other income	4,500

TOTAL OPERATING REVENUES **50,044,127**

OPERATING EXPENSES

Cost of Electricity	51,092,512
Contract services	2,176,834
Staff compensation and benefits	1,507,326
General & Administrative	496,711
Depreciation	23,225

TOTAL OPERATING EXPENSES **55,296,608**

OPERATING INCOME(LOSS) **(5,252,481)**

NONOPERATING REVENUES (EXPENSES)

Interest Income	56,297
Financing costs	<u>(34,695)</u>

TOTAL NONOPERATING REVENUES (EXPENSES) **21,602**

CHANGE IN NET POSITION **(5,230,879)**

Net Position at beginning of period 166,082,486

Net Position at end of period **\$ 160,851,607**

SILICON VALLEY CLEAN ENERGY AUTHORITY

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION**

October 1, 2021 through December 31, 2021

OPERATING REVENUES

Electricity Sales, Net	\$ 49,802,516
GreenPrime electricity premium	237,111
Other income	4,500

TOTAL OPERATING REVENUES **50,044,127**

OPERATING EXPENSES

Cost of Electricity	51,092,512
Contract services	2,176,834
Staff compensation and benefits	1,507,326
General & Administrative	496,711
Depreciation	23,225

TOTAL OPERATING EXPENSES **55,296,608**

OPERATING INCOME(LOSS) **(5,252,481)**

NONOPERATING REVENUES (EXPENSES)

Interest Income	56,297
Financing costs	<u>(34,695)</u>

TOTAL NONOPERATING REVENUES (EXPENSES) **21,602**

CHANGE IN NET POSITION **(5,230,879)**

Net Position at beginning of period 166,082,486

Net Position at end of period **\$ 160,851,607**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2021 through December 31, 2021

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

Operating Income (loss)	\$ (5,252,481)
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	23,225
(Increase) decrease in net accounts receivable	5,927,800
(Increase) decrease in energy settlements receivable	269,012
(Increase) decrease in other receivables	223,826
(Increase) decrease in accrued revenue	4,193,895
(Increase) decrease in prepaid expenses	119,714
(Increase) decrease in current deposits	(2,025)
Increase (decrease) in accounts payable	(739,999)
Increase (decrease) in accrued cost of electricity	(7,893,296)
Increase (decrease) in accrued liabilities	46,181
Increase (decrease) in energy settlements payable	2,567,368
Increase (decrease) in taxes and surcharges due to other governments	(225,354)
Increase (decrease) in supplier security deposits	2,100,000
Net cash provided (used) by operating activities	<u>\$ 1,357,866</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through December 31, 2021

	FYTD	FYTD	Variance		FY 2020-21	FY 2020-21
	<u>Actual</u>	<u>Adopted Budget</u>	<u>\$</u>	<u>%</u>	<u>Adopted Budget</u>	<u>Remaining Budget</u>
OPERATING REVENUES						
Energy Sales	\$49,802,516	\$49,675,003	\$127,513	0%	\$338,603,000	\$288,800,484
Green Prime Premium	237,111	113,882	123,229	108%	470,000	232,889
TOTAL OPERATING REVENUES	50,039,627	49,788,885	250,742	1%	339,073,000	289,033,373
ENERGY EXPENSES						
Power Supply	51,092,512	59,717,562	(8,625,050)	-14.4%	273,561,000	222,468,488
Operating Margin	(1,052,885)	(9,928,677)	8,875,792	-89%	65,512,000	
OPERATING EXPENSES						
Data Management	790,381	812,353	(21,972)	-3%	3,249,000	2,458,619
PG&E Fees	298,363	362,486	(64,123)	-18%	1,450,000	1,151,637
Salaries & Benefits	1,507,326	2,317,780	(810,454)	-35%	9,271,000	7,763,674
Professional Services	663,257	1,394,997	(731,740)	-52%	5,648,000	4,984,743
Marketing & Promotions	143,732	236,489	(92,757)	-39%	919,000	775,268
Notifications	50,835	32,813	18,022	55%	131,000	80,165
Lease	121,991	131,250	(9,259)	-7%	525,000	403,009
General & Administrative	295,762	303,266	(7,504)	-2%	1,213,000	917,238
TOTAL OPERATING EXPENSES	3,871,647	5,591,434	(1,719,787)	-31%	22,406,000	18,534,353
OPERATING INCOME/(LOSS)	(4,924,532)	(15,520,111)	10,595,579	-68%	43,106,000	48,030,532
NON-OPERATING REVENUES						
Other Income	4,500	12,500	(8,000)	-64%	50,000	45,500
Investment Income	56,297	75,000	(18,703)	-25%	300,000	243,703
TOTAL NON-OPERATING REVENUES	60,797	87,500	(26,703)	-31%	350,000	289,203
NON-OPERATING EXPENSES						
Financing	34,695	10,000	24,695	247%	40,000	5,305
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	27,174	112,500	(85,326)	-76%	150,000	122,826
Transfer to Programs Fund	344,705	344,705	-	0%	6,781,000	6,436,295
TOTAL OTHER USES	371,879	457,205	(85,326)	-19%	6,931,000	6,559,121
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	-\$5,270,309	-\$15,899,816	\$10,629,507	-67%	\$36,485,000	

**SILICON VALLEY CLEAN ENERGY AUTHORITY
PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through December 31, 2021**

	<u>ADOPTED BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund	\$ 6,781,000	\$ 344,705	\$ 6,436,295	5%
EXPENDITURES & OTHER USES:				
Program expenditures	7,333,950	306,526	7,027,424	4.2%
Net increase (decrease) in fund balance	<u>\$ (552,950)</u>	<u>\$38,179</u>		
Fund balance at beginning of period		<u>5,837,711</u>		
Fund balance at end of period		<u>\$5,875,890</u>		

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through December 31, 2021**

	<u>ADOPTED BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund *	\$ -	\$ -	\$ -	
EXPENDITURES & OTHER USES:				
Program expenditures *	3,000,000	2,698	2,997,302	0.1%
Net increase (decrease) in fund balance	<u>\$ (3,000,000)</u>	<u>(2,698)</u>		
Fund balance at beginning of period		<u>7,990,315</u>		
Fund balance at end of period		<u>\$7,987,617</u>		

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2021 through December 31, 2021

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ (5,270,309)
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(23,225)
Subtract program expense not in operating budget	(306,526)
Subtract CRCR expense not in operating budget	(2,698)
Add back transfer to Program fund	344,705
Add back capital asset acquisition	<u>27,174</u>
Change in Net Position	<u><u>(5,230,879)</u></u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2021 through December 31, 2021

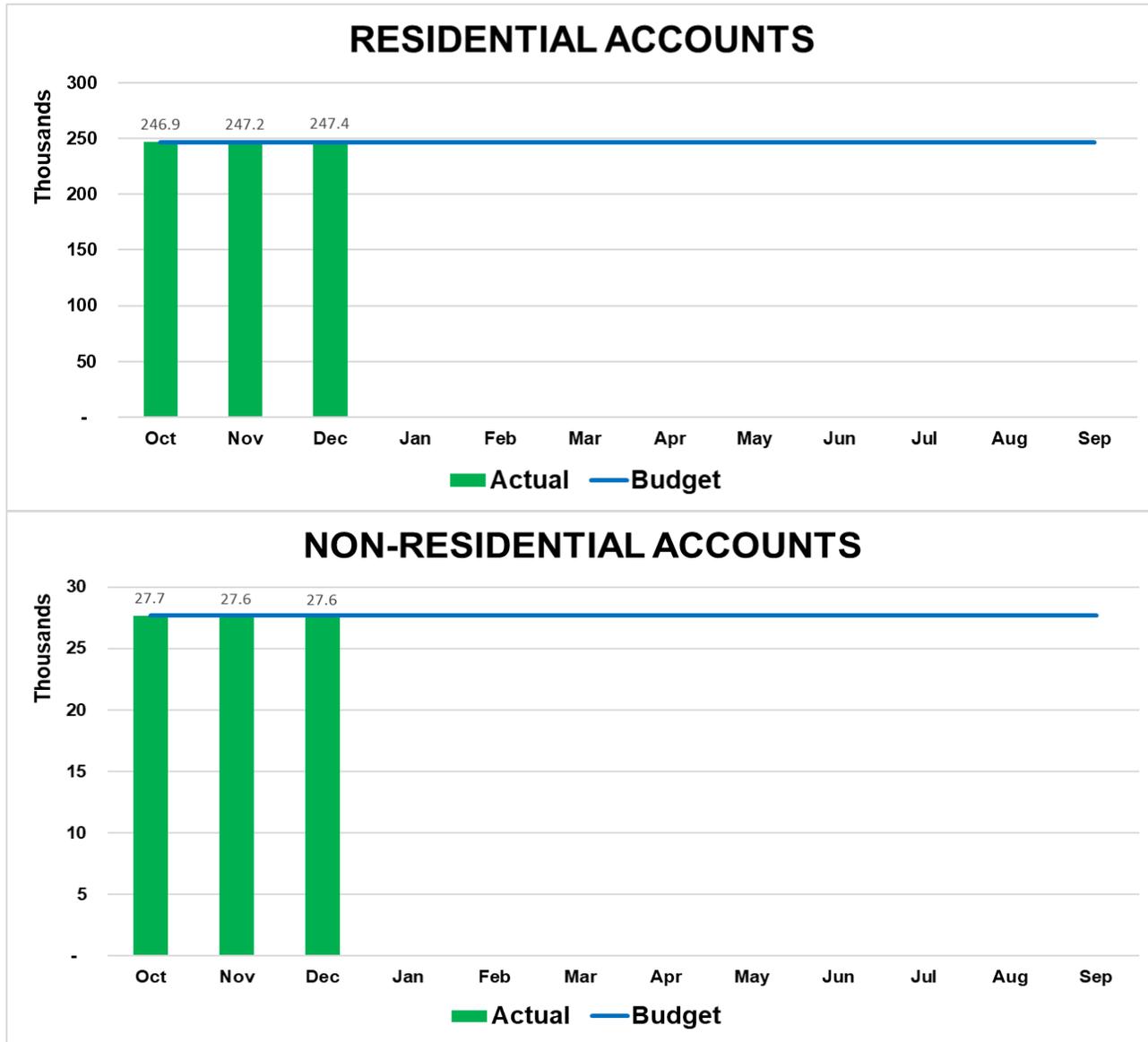
	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 17,365,080	\$ 14,621,707	\$ 17,815,729										\$ 49,802,516
Green electricity premium	80,961	\$ 60,556	\$ 95,594										237,111
Other Income	1,000	\$ 2,500	\$ 1,000										4,500
Total operating revenues	17,447,041	14,684,763	17,912,323	-	-	-	-	-	-	-	-	-	50,044,127
OPERATING EXPENSES													
Cost of electricity	14,524,607	17,907,845	18,660,060										51,092,512
Staff compensation and benefits	448,844	465,162	593,320										1,507,326
Data manager	263,759	263,759	262,863										790,381
Service fees - PG&E	97,254	96,768	104,341										298,363
Consultants and other professional fees	370,413	341,404	376,273										1,088,090
General and administration	209,985	134,289	152,437										496,711
Depreciation	7,289	8,162	7,774										23,225
Total operating expenses	15,922,151	19,217,389	20,157,068	-	-	-	-	-	-	-	-	-	55,296,608
Operating income (loss)	1,524,890	(4,532,626)	(2,244,745)	-	-	-	-	-	-	-	-	-	(5,252,481)
NONOPERATING REVENUES (EXPENSES)													
Interest income	18,545	18,382	19,370										56,297
Financing costs	(11,042)	(11,626)	(12,027)										(34,695)
Total nonoperating revenues (expenses)	7,503	6,756	7,343	-	-	-	-	-	-	-	-	-	21,602
CHANGE IN NET POSITION	\$ 1,532,393	\$ (4,525,870)	\$ (2,237,402)	\$ -	\$ (5,230,879)								

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2021 through December 31, 2021**

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>YTD Total</u>
	\$18,545	\$18,382	\$19,370	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	<u>\$56,297</u>
<hr/>													
Portfolio Invested													
<i>Average daily portfolio available to invest*</i>	152,976,979	155,897,345	155,743,105										
<i>Average daily portfolio invested</i>	141,994,910	145,456,026	148,530,962										
<i>% of average daily portfolio invested</i>	92.8%	93.3%	95.4%										
<hr/>													
Detail of Portfolio													
	<u>Opening Rate</u>	<u>December Rate</u>	<u>Carrying Value</u>	<u>Interest Earned</u>									
<i>Money Market - River City Bank</i>	1.26%	0.15%	\$144,258,952	\$18,924									

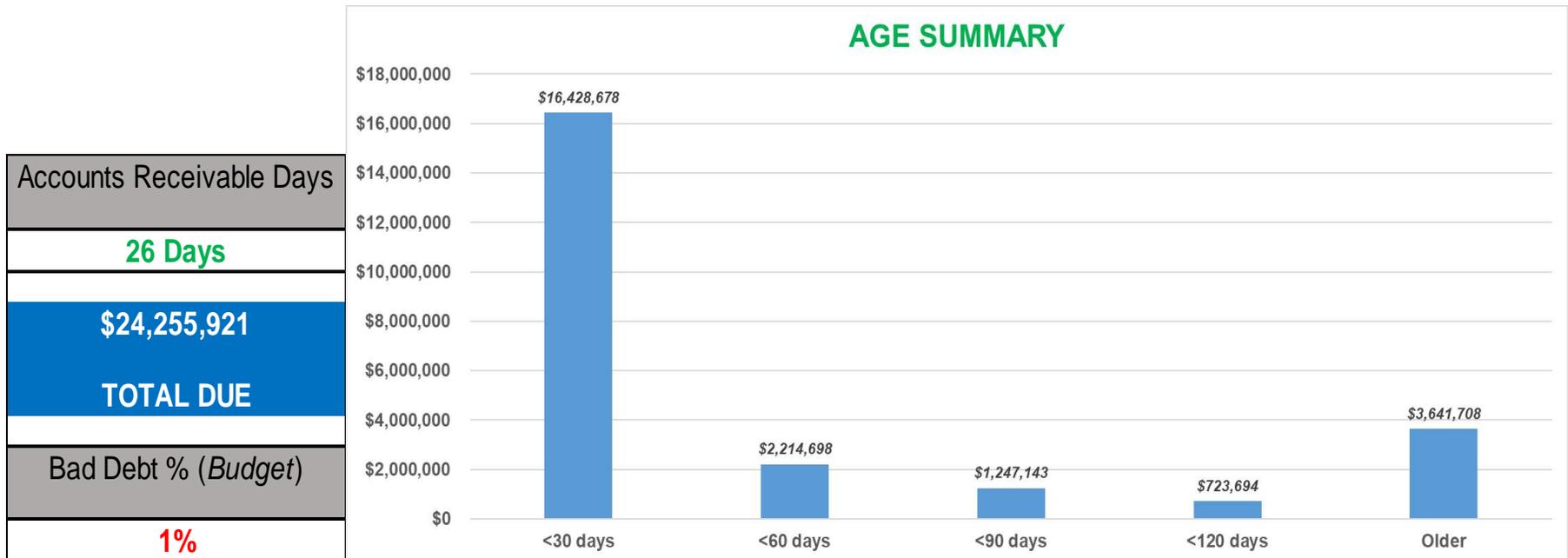
* Note: Balance available to invest does not include lockbox or debt service reserve funds.

CUSTOMER ACCOUNTS



SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	October	November	December	January	February	March	April	May	June	July	August	September
0 to 30 days	74.6%	66.6%	67.7%									
31 to 60 days	8.3%	11.6%	9.1%									
61 to 90 days	3.1%	3.7%	5.1%									
91 to 120 days	2.0%	2.9%	3.0%									
Over 120 days	12.0%	15.1%	15.0%									





Staff Report – Item 1c

Item 1c: Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings

From: Trisha Ortiz, Assistant General Counsel

Prepared by: Trisha Ortiz, Assistant General Counsel

Date: 2/9/2022

RECOMMENDATION

To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-03 making the findings required by Section 54953(e)(3).

BACKGROUND

Pursuant to Government Code Section 54953(b)(3) legislative bodies may meet by “teleconference” only if the agenda lists each location a member remotely accesses a meeting from, the agenda is posted at all remote locations, and the public may access any of the remote locations. Additionally, a quorum of the legislative body must be within the legislative body’s jurisdiction.

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote location, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body’s jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021 Governor Newsom signed [AB 361](#), new legislation that amends the Brown Act to allow local agencies to meet remotely during Governor declared emergencies under certain conditions. AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act’s standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Due to the rise in COVID-19 cases caused by the Delta Variant, on September 21, 2021, the Santa Clara County Health Officer issued a [recommendation](#) that public bodies meet remotely due to the increased protection provided by social distancing. The Health Officer cited “unique characteristics” of government meetings that lead to increased risk of transmission, including the gathering of people from across communities, the need for everybody to participate (including those who are immunocompromised or unvaccinated), and difficulty ensuring compliance with vaccination and safety recommendations. In addition, the Health Officer has described the new Omicron variant as significantly more transmissible than prior variants of the virus.

On October 13, 2021, the Board adopted its Resolution 2021-23 to authorize public meetings to be held via teleconferencing pursuant to Government Code section 54953(e).

Within thirty days after the first teleconferenced meeting held under AB 361, and every thirty days thereafter, in order to continue meeting by teleconference, the local agency’s legislative body must find that it has

Agenda Item: 1c**Agenda Date: 2/9/2022**

reconsidered the circumstances of the state of emergency and that either: (1) The state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) State or local officials continue to impose or recommend measures to promote social distancing.

On November 10, 2021, December 8, 2021, and January 12, 2022, the Board adopted Resolutions 2021-26, 2021-27, and 2022-02 authorizing public meetings to continue to be held via teleconferencing pursuant to Government Code Section 54953(e) and directing staff to return with a resolution to make the findings necessary to continue meeting pursuant to Government Code section 54953(e).

STRATEGIC PLAN

SVCE's Board-adopted Strategic Plan identifies engaging the public as a goal of SVCE and remote meetings will better engage the public as long as COVID-19 is a threat to public health.

FISCAL IMPACT

Continuing to conduct remote public Board of Directors and Standing Committee meetings will not increase the cost of meetings.

ANALYSIS & DISCUSSION

The attached Resolution makes the periodic findings necessary to continue holding meetings under Government Code Section 54953(3). Specifically, the attached Resolution makes findings that the Board has reconsidered the circumstances of the COVID-19 state of emergency and that local officials continue to recommend measures to promote social distancing. As required by Government Code Section 54953(e)(3), the resolution makes the findings and provides that the findings will cover the period of time until the next regular meeting of the Board. The resolution applies to both the Board of Directors and its Committees.

Staff will continue to monitor the situation and will return to the Board every 30 days or as needed with additional recommendations related to the conduct of public meetings.

ATTACHMENTS

1. Resolution 2022-03 Reconsidering Circumstances Of The COVID-19 State Of Emergency And Making Findings In Connection Therewith To Authorize Public Meetings To Be Held Via Teleconferencing Pursuant To Government Code Section 54953(e)

**SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2022-03**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON
VALLEY CLEAN ENERGY AUTHORITY RECONSIDERING
CIRCUMSTANCES OF THE COVID-19 STATE OF EMERGENCY
AND MAKING FINDINGS IN CONNECTION THEREWITH TO
AUTHORIZE PUBLIC MEETINGS TO BE HELD VIA
TELECONFERENCING PURSUANT TO GOVERNMENT CODE
SECTION 54953(e)**

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

WHEREAS, the Board of Directors (“the Board”) of Silicon Valley Clean Energy (“SVCE”) is committed to public access and participation in its meetings while balancing the need to conduct public meetings in a manner that reduces the likelihood of exposure to COVID-19; and

WHEREAS, all meetings of the Board of Directors and the other legislative bodies of SVCE are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the Board and other legislative bodies conduct their business; and

WHEREAS, pursuant to Assembly Bill 361 legislative bodies of local agencies may hold public meetings via teleconferencing pursuant to Government Code Section 54953(e), without complying with the requirements of Government Code Section 54953(b)(3), if the legislative body complies with certain enumerated requirements in any of the following circumstances:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, on March 4, 2020, Governor Newsom declared a [State of](#)

Emergency in response to the COVID-19 pandemic (the “Emergency”) which remains in effect; and

WHEREAS, the Santa Clara Public Health Officer recommends that public bodies meet remotely to the extent possible, specifically including use of newly enacted AB 361.

WHEREAS, due to the ongoing COVID-19 pandemic and the need to promote social distancing to reduce the likelihood of exposure to COVID-19, the Board determined that meetings of the SVCE legislative bodies may be held via teleconferencing pursuant to Government Code Section 54953(e).

WHEREAS, to continue meeting pursuant to Government Code Section 54953(e), an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) that any of the following circumstances exist: (a) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

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

Section 1. The Recitals provided above are true and correct and are hereby incorporated by reference.

Section 2. The Board has reconsidered the circumstances of the COVID-19 state of emergency and local officials continue to recommend measures to promote social distancing.

Section 3. The Board and other legislative bodies of SVCE may continue to conduct their meetings pursuant to Government Code section 54953(e).

Section 4. Staff is hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution. Such action includes returning to the Board within 30 days and every 30 days thereafter to make the findings required by Section 54953(e)(3).

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 9th day of February 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				2

Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Clerk



Staff Report – Item 1d

Item 1d: Adopt Resolution Modifying Delegation of Authority to the Chief Executive Officer to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers, to Include Customer-Provided Supply Agreements

From: Girish Balachandran, CEO

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

Date: 2/9/2022

RECOMMENDATION

Staff recommends that the Board adopt Resolution No. 2022-04 modifying delegation of authority to the Chief Executive Officer (“CEO”) to negotiate and execute non-standard pricing agreements originally established in Resolution No. 2019-12, to include approval of supply agreements originated and furnished by the customer for the purpose of directly serving that customer’s load under a non-standard pricing agreement.

BACKGROUND

Large commercial and industrial (“C&I”) customers represent approximately one-third of SVCE’s overall load. Accordingly, losing large C&I customers to Direct Access (“DA”) means measurable load loss for SVCE. Large C&I customers are critical partners in helping SVCE achieve its primary goals:

- Reducing local GHG emissions through use of clean, carbon-free electricity, in line with member agency climate goals
- Maintaining a strong financial foundation and competitive electricity prices
- Enabling ongoing GHG reduction via electrification of transportation and the built environment, per SVCE’s Decarbonization Strategy and Programs Roadmap
- Enabling re-investment in the local community

In 2018, Senate Bill 237 re-opened DA for C&I customers, expanding the statewide ‘cap’ on DA by 4,000 GWh annually. Historically, many large PG&E or CCA customers have been on a waitlist to become DA customers, as associated energy pricing structures are typically lower-cost and more flexible. The waitlist included many of SVCE’s C&I customers, with annualized loads totaling more than 600 GWh, or ~15% of SVCE’s overall load. Until this expansion of the DA cap, the DA program was fully subscribed and not open to new customers.

In 2019, as a direct result of the DA expansion, SVCE passed Resolution No. 2019-12, allowing SVCE to negotiate non-standard pricing agreements with qualifying large commercial and industrial customers, subject to a defined ‘Non-Standard Pricing Agreement Policy’. Under this Policy, non-standard pricing agreements must:

- Meet defined eligibility criteria, and be available to all customers meeting criteria
- Be cost-based and account for any volume and/or price risk
- Be priced to allow SVCE to cover variable costs and achieve some level of contribution to fixed cost and reserve margin, in conformance with SVCE’s financial objectives, Risk Management Policy and controls.
- Require a commitment level from the customer commensurate with non-standard pricing agreement
- Meet SVCE’s carbon-free requirements

The Board delegated authority to the CEO to negotiate non-standard pricing agreements with the oversight of the Risk Oversight Committee. Delegation of authority in establishing Non-Standard Pricing Agreements is

important because of the competitive need for responsiveness, and protection of customer-sensitive information.

ANALYSIS & DISCUSSION

Since 2018, the re-opening and expansion of DA under Senate Bill 237 resulted in SVCE load loss of approximately 60-80 GWh, or 1.5 – 2% of SVCE's overall load. Most of this load loss has been from 'national accounts' with remote headquarters, and multiple retail locations or operating sites in SVCE territory. Senate Bill 237 also required that the CPUC study further expansion of the DA market through ongoing increases in the cap, and make recommendations back to the state legislature. The study, finalized in 2021, recommended against immediate expansion of the cap.

Nonetheless, it is anticipated that DA proponents will work to advance new legislation to increase the DA cap in future years.

SVCE understands that electricity costs are significant for our largest C&I customers, and historically, customers have saved money via the DA market. The DA marketplace is highly competitive, offering more flexible or lower-cost pricing structures than offered by traditional load-serving entities. Several of SVCE's largest C&I customers currently also have some percentage of their load with DA providers in our service territory.

With qualifying customers, SVCE has continued to explore potential non-standard pricing agreements taking several possible forms, including but not limited to:

- 1) expanded discount relative to the standard SVCE tariff in exchange for a multi-year customer volume commitment
- 2) providing a discount in the form of co-investment in designated products or services consistent with SVCE's decarbonization strategy (e.g. EV charging infrastructure, load capacity, resiliency)
- 3) providing a customer with generation services from specific renewable energy PPA's, originated by SVCE and/or the customer
- 4) fixed or index-based pricing structures for a defined term and volume

Current SVCE policy requires BOD approval of supply agreements for power (energy and environmental products) exceeding 5 years. In the case 3) above, SVCE may procure power originated and furnished by the customer, for the direct purpose of providing that power to the same customer under a non-standard pricing agreement. In this specific case, staff recommends modifying the CEO's authority for non-standard pricing agreements to include approval of embedded customer-provided supply agreements. Supply or pricing risk is minimized, as the supply agreement for customer-provided power is tied to an SVCE retail service agreement to provide that power back to the same customer. Also, this modification supports the competitive need for responsiveness, and protection of customer-sensitive information.

This modification of policy would apply only to agreements for customer-provided power under a non-standard pricing agreement. BOD approval of any SVCE-originated PPAs is still required. Further, all non-standard pricing agreements must continue to meet SVCE's Non-Standard Pricing Policy and be executed with oversight from SVCE's Risk Oversight Committee. The Non-Standard Pricing Agreements, including any associated SVCE procurement of supply resources originated and furnished by the Customer to serve that Customer's load, will be reviewed and approved as to form by SVCE counsel.

STRATEGIC PLAN

Approval of the attached Resolution and Non-Standard Pricing Agreement Policy is in direct support of the Board approved Strategic Plan as follows:

- Goal 12: Enact competitive service offerings and programs that deliver measurable environmental and economic benefits

Agenda Item: 1d**Agenda Date: 2/9/2022**

- Measure 2: Develop customized power offerings for strategic C&I customers
- Goal 6: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives
 - Measure 1: Manage power supply portfolio and energy risk

ALTERNATIVE

The alternative would be no change in delegation of authority to the CEO for non-standard pricing agreements and continuing to require BOD approval of customer-provided supply agreements longer than five years embedded in a non-standard pricing agreement. This limits SVCE's ability to respond in a competitive and confidential fashion to certain major customers considering Direct Access or other alternatives to SVCE-supplied power.

FISCAL IMPACT

There is no direct cost associated with this modification of delegation of authority.

ATTACHMENTS

1. Resolution 2022-04, Modifying Authority of the Chief Executive Officer to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers
2. Resolution 2019-12, Resolution of the Board of Directors of the Silicon Valley Clean Energy Authority Delegating Authority to the Chief Executive Officer to Negotiate Non-Standard Pricing Agreements for Eligible Large Commercial and Industrial Customers
3. Non-standard Pricing Agreement Policy, approved June 2019

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2022-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY MODIFYING THE DELEGATION OF AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE NON-STANDARD PRICING AGREEMENTS WITH ELIGIBLE LARGE COMMERCIAL AND INDUSTRIAL CUSTOMERS, TO INCLUDE APPROVAL OF SUPPLY AGREEMENTS FOR SUPPLY ORIGINATED AND FURNISHED BY THE CUSTOMER FOR THE PURPOSE OF DIRECTLY SERVING THAT CUSTOMER'S LOAD UNDER A NON-STANDARD PRICING AGREEMENT

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

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

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

WHEREAS, commercial and industrial customers make up a substantial majority of SVCE's electric load;

WHEREAS, commercial and industrial customers are critical partners in helping SVCE and its member agencies reduce carbon emissions and meet climate action planning goals;

WHEREAS, the state of California adopted new legislation to re-open the cap for Direct Access to the wholesale markets for commercial and industrial customers under SB 237 in September 2018;

WHEREAS, in the expanded Direct Access marketplace, current SVCE commercial and industrial customers may opt out to receive DA service under more flexible or lower-cost tariff structures;

WHEREAS, SVCE seeks to provide clean, carbon-free electricity services that meet customer needs, at rates that are competitive and contribute positively to SVCE's financial position;

WHEREAS, the Direct Access marketplace is highly competitive, requiring that SVCE structure non-standard pricing agreement terms in a highly responsive, time-sensitive fashion;

WHEREAS, in order to expedite the approval of non-standard pricing agreements consistent with Direct Access marketplace requirements, the Board adopted Resolution No. 2019-12 in June 2019 to delegate to the Chief Executive Officer the authority to negotiate directly with eligible commercial and industrial accounts in accordance with the Board approved Non-Standard Pricing Agreement Policy (the "Current Policy");

WHEREAS, Board of Director approval is required for procurement agreements for power supply (e.g. energy, environmental products) serving SVCE's customer load, where the agreement is longer than 5 years;

WHEREAS, SVCE wishes to offer Non-Standard Pricing Agreements that include SVCE procurement of supply resources originated and furnished by the Customer, for the purpose of directly serving that Customer’s load under a Non-Standard Pricing Agreement by revising the Current Policy to delegate to the Chief Executive Officer the authority to negotiate and enter into such agreements;

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

Section 1. The Board hereby modifies the Current Policy as follows: (i) delegation of authority to the Chief Executive Officer to negotiate and execute non-standard pricing agreements with an eligible large commercial or industrial customer (“Customer”), shall include authority to approve such agreements that include supply originated and furnished by the Customer for the purpose of directly serving that Customer’s load under a Non-Standard Pricing Agreement; and (ii) such agreements shall be reviewed and approved as to form by SVCE counsel.

PASSED AND ADOPTED this 9th day of February 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Clerk

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2019-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE NON-STANDARD PRICING AGREEMENTS FOR ELIGIBLE LARGE COMMERCIAL AND INDUSTRIAL CUSTOMERS

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

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

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

WHEREAS, commercial and industrial customers make up a substantial majority of SVCE's electric load;

WHEREAS, commercial and industrial customers are critical partners in helping SVCE and its member agencies reduce carbon emissions and meet climate action planning goals;

WHEREAS, the state of California adopted new legislation to re-open the cap for Direct Access to the wholesale markets for commercial and industrial customers under SB 237 in September 2018;

WHEREAS, in the expanded Direct Access marketplace, current SVCE commercial and industrial customers may opt out to receive DA service under more flexible or lower-cost tariff structures;

WHEREAS, SVCE seeks to provide clean, carbon-free electricity services that meet customer needs, at rates that are competitive and contribute positively to SVCE's financial position;

WHEREAS, the Direct Access marketplace is highly competitive, requiring that SVCE structure non-standard pricing agreement terms in a highly responsive, time-sensitive fashion;

WHEREAS, SVCE wishes to offer non-standard pricing agreements to retain eligible commercial and industrial accounts, under the terms of the attached 'Non-Standard Pricing Agreement Policy'

WHEREAS, in order to expedite the approval of non-standard pricing agreements consistent with Direct Access marketplace requirements, the Board wishes to delegate to the Chief Executive Officer the authority to negotiate directly with eligible commercial and industrial accounts in accordance with the Board approved Non-Standard Pricing Agreement Policy.

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

Section 1. The Board hereby delegates authority to the Chief Executive Officer to negotiate and execute non-standard pricing agreements with eligible large commercial and industrial customers, provided that the pricing agreements meet the minimum requirements set forth in the Non-Standard Pricing Agreement Policy.

PASSED AND ADOPTED this 12th day of June 2019, by the following vote:

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


Chair

ATTEST:


Andrea Pizano, Board Secretary

SILICON VALLEY CLEAN ENERGY AUTHORITY
NON-STANDARD PRICING AGREEMENT POLICY

When offering non-standard pricing agreements to eligible customers, SVCE adheres to a defined non-standard pricing agreement policy. A non-standard pricing agreement will apply to electric generation services, and if applicable, may include consideration and valuation of supporting products or services. Under this policy, the non-standard pricing agreement must:

- 1) apply exclusively to customers with annual load in SVCE's service territory greater than 10GWh
- 2) be marginal cost-based and account for any volume and/or price risk
- 3) be priced to allow SVCE to cover variable costs and achieve some level of contribution to fixed cost and reserve margin, in conformance with SVCE's financial objectives, Risk Management Policy and controls.
- 4) require a commitment level from the customer (e.g. volume, length of term) commensurate with the non-standard pricing agreement offered to the customer
- 5) meet SVCE's carbon-free requirements, and be consistent with SVCE's decarbonization strategy for power supply, transportation and the built environment



Staff Report – Item 1e

Item 1e: Approve 2022 Updates to Exhibit C, Annual Energy Use, and Exhibit D, Voting Shares, of the SVCE Joint Powers Agreement

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations
 Peyton Parks, Energy Services Lead
 Hannah Gustafson, Sr. Energy Services Specialist

Date: 2/9/2022

RECOMMENDATION

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

BACKGROUND

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

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

ANALYSIS & DISCUSSION

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

All Jurisdictions in SVCE territory received service for an entire calendar year in 2021. Each Party’s 2022 voting share was calculated as a percentage of total 2021 load served by SVCE only.

ATTACHMENTS

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

EXHIBIT C
ANNUAL ENERGY USE

This Exhibit C is effective as of February 9, 2022.

Party	kWh (2021*)
Campbell	183,921,521
Cupertino	200,723,619
Gilroy	222,069,595
Los Altos	115,868,549
Los Altos Hills	40,344,474
Los Gatos	169,578,308
Milpitas	577,186,354
Monte Sereno	15,230,783
Morgan Hill	202,621,844
Mountain View	457,964,351
Santa Clara County (Unincorporated)	345,776,076
Saratoga	112,218,897
Sunnyvale	1,043,674,527
Total	3,687,178,898

*Data provided by Pacific Gas and Electric Company

EXHIBIT D

VOTING SHARES

This Exhibit D is effective as of February 9, 2022.

Party	kWh (2021*)	Voting Share Section 4.9.2
Campbell	183,921,521	5.0%
Cupertino	200,723,619	5.4%
Gilroy	222,069,595	6.0%
Los Altos	115,868,549	3.2%
Los Altos Hills	40,344,474	1.1%
Los Gatos	169,578,308	4.6%
Milpitas	577,186,354	15.7%
Monte Sereno	15,230,783	0.4%
Morgan Hill	202,621,844	5.5%
Mountain View	457,964,351	12.4%
Santa Clara County (Unincorporated)	345,776,076	9.4%
Saratoga	112,218,897	3.0%
Sunnyvale	1,043,674,527	28.3%
Total	3,687,178,898	100.0%

*Data provided by Pacific Gas and Electric Company



Staff Report – Item 1f

Item 1f: Approve Cancellation of July 13, 2022 Board of Directors Meeting and Receive 2022 Board of Directors Regular Meeting Schedule

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/9/2022

RECOMMENDATION

Staff recommends that the Board approve the cancellation of the regularly scheduled July 13, 2022 Board of Directors Meeting and receive the 2022 Board of Directors regular meeting schedule.

EXECUTIVE COMMITTEE RECOMMENDATION

The Executive Committee met January 28, 2022 and were unanimous in recommending the cancellation of the July Board of Directors meeting.

BACKGROUND

Since 2018, the Board of Directors approved a one-month summer hiatus from meetings; in 2018 it was August, and, based on feedback from the Board that a July recess would be preferable, it was July in 2019, 2020, and 2021.

ANALYSIS & DISCUSSION

Given the positive feedback received for a summer recess, staff would like to propose this be continued. Staff suggests July be selected for the summer hiatus, as this has worked well in the past.

Being that the July Executive Committee meeting received approval to be cancelled, the month of July will not have any regularly scheduled SVCE committee meetings.

If the need for Board or any committee action arises in July, a special meeting of the Board and/or committee will be called.

STRATEGIC PLAN

Not applicable.

ALTERNATIVES

The Board may select an alternative month for a summer hiatus; the Board could also choose not to cancel the regularly scheduled July meeting.

FISCAL IMPACT

None.

ATTACHMENT

1. Proposed 2022 SVCE Board of Directors Regular Meeting Schedule



2022 Board Meeting Schedule

All Board of Directors meetings occur at 7:00 p.m. and will be held virtually unless noted otherwise on the SVCE website

January 12, 2022

February 9, 2022

March 9, 2022

April 13, 2022

May 11, 2022

June 8, 2022

August 10, 2022

September 14, 2022

October 12, 2022

November 9, 2022

December 14, 2022



Staff Report – Item 1g

Item 1g: Authorize the Chief Executive Officer to Extend the Contract Terms and Spending Under Innovation Onramp Participant Agreement with UtilityAPI, Inc. for Data Hive

From: Girish Balachandran, CEO

Prepared by: Rebecca Fang, Data Analyst

Date: 2/9/2022

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy Authority Board (“SVCE Board”) authorize the Chief Executive Officer (“CEO”) to extend the contract terms with UtilityAPI, Inc. (“UAPI”) for hosting, maintaining and supporting the Innovation Onramp Data Hive pilot by adding \$18,000 to the total cost of the pilot (from the currently authorized \$379,500 to a not-to-exceed amount of \$397,500) and extending the termination date from February 15, 2022 to April 15, 2022.

BACKGROUND

In December 2018, the SVCE Board adopted the Decarbonization Strategy and Programs Roadmap (abbrev. “Roadmap”) to achieve its mission to reduce dependence on fossil fuels by providing carbon-free, affordable, and reliable electricity and innovative programs for the community. The Roadmap budget includes funding for the Innovation Onramp program, which is designed to leverage our unique position to engage and support the innovation ecosystem in addressing key market barriers to achieving deep decarbonization in SVCE service territory and beyond. In June 2019, the SVCE Board approved grant funding for a flagship pilot which had been proposed by UAPI. This pilot, later named “Data Hive”, has deployed a data exchange platform for SVCE service territory that allows third parties to request and download customer utility bill and usage data.

ANALYSIS & DISCUSSION

The Data Hive opened for public use in March 2020 with the goal of demonstrating the potential of free, authorized access to standardized and automated energy usage data in accelerating the deployment of clean energy projects, empowering customer choice and supporting local businesses. Interest in the Data Hive was high at launch and throughout the summer, with 60 3rd-party registrations in the first several months. Today, there are over 180 companies registered to use the Data Hive.

Transactional activity on the Data Hive for the spring and summer of 2020 remained fairly low – extending lockdowns and worsening economic conditions seemed to affect consumer interest in clean energy projects (see reference for solar installers¹). As the pilot approached its original termination date of mid-September 2020, staff and UAPI implemented a no-cost term extension with a usage-based monthly fee to give the clean energy market more time to recover and use Data Hive.

¹ See recent Solar Energy Industries Association (SEIA) report on solar installations: <https://www.seia.org/researchresources/solar-market-insight-report-2020-q4>

Agenda Item: 1g**Agenda Date: 2/9/2022**

In Q3 of 2020, the market for clean energy projects began to show some recovery² and usage of the Data Hive increased. Additionally, SVCE's other programs (e.g. GridShift: EV Charging pilot and FutureFit Assist: EV Charging) began to use the Data Hive to help our 3rd party administrators easily access customer data.

In February 2021, the pilot term was extended to November 15, 2021 to allow time to fully vet the efficacy of Data Hive. Since then, Data Hive has received positive feedback from SVCE's 3rd party program partners. For the GridShift: EV Charging program, Data Hive was successfully integrated into the GridShift app such that the entire customer enrollment process is on-app, significantly reducing program administration costs. Interviews with 3rd parties indicated strong support for key features of the platform such as: streamlined 3rd party registration process, streamlined customer consent using one-time passcodes, and scope of data.

The above reasons have led to the decision to pursue a full-scale, multi-year Data Hive program. In November 2021, the pilot term was extended to February 15, 2022 to allow time to negotiate a long-term contract with UAPI. Due to delays associated with the holidays, staff recommends extending the pilot term through April 15, 2022 to allow time to complete negotiations for a long-term contract with UAPI, which would be brought to the Board for approval in a future meeting.

Staff Request to Extend the Contract Terms & Budget

The June 2019 request to the Board for spending authority of \$279,000 was based on UAPI's pilot proposal. The subsequent extension that was approved in February 2021 utilized UAPI's standard pricing model for utility partners (\$0.40 per meter per year), adding \$73,500 to the total cost of the Data Hive pilot and approximately 8 months to the pilot term. The extension that was approved in November 2021 used the same standard pricing model and added \$27,000 to the total cost of the Data Hive pilot and added 3 months to the pilot term. The requested extension will use the same standard pricing model and add \$18,000 to the total cost of the Data Hive pilot (now \$397,500) and add 2 months to the pilot term.

STRATEGIC PLAN

The proposal supports SVCE's updated 2021-2022 Strategic Plan Goal 8, which is to "coordinate development of decarbonization strategy, lead design of local policy and programs, and support program deployment."

ALTERNATIVE

The primary alternative to the Staff recommendation is to not extend the Data Hive pilot term and allow the pilot to end once the current funding runs out in February 2022. The Data Hive would be out of service during the time that SVCE is negotiating the long-term contract with UAPI for the full-time Data Hive program. Staff does not recommend this alternative because it would result in an interruption of service for the Data Hive and its users (3rd parties, SVCE customers, and SVCE programs).

FISCAL IMPACT

The staff proposal has no incremental fiscal impact. Through the annual budget process, the Board approved 2% of annual operating revenues for programs. The Board further approved allocating \$600,000 of the programs budget per fiscal year from FY19 through FY22 to implement SVCE's two innovation programs, Innovation Onramp and Innovation Partners. This extension to the Data Hive pilot with UAPI falls within the Board-approved budget for programs and the funding allocation for innovation.

ATTACHMENTS

1. Fifth Amendment to Agreement with UtilityAPI, Inc.
2. Previous Amendments and Agreement with UtilityAPI, Inc.

² See SEIA report or a National Renewable Energy Laboratory update: <https://www.nrel.gov/docs/fy21osti/78625.pdf>

FIFTH AMENDMENT TO AGREEMENT WITH UTILITY API, INC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITY API, INC entered into that certain agreement entitled ENERGY DATA EXCHANGE PLATFORM PILOT, effective on June 12, 2019, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and UTILITY API, INC have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM section of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on June 12, 2019 and shall terminate on April 15, 2022 (“Term”), unless terminated earlier as set forth herein.

2. COMPENSATION TO PARTICIPANT section of Original Agreement shall be amended to read as follows:

Participant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed three hundred and ninety-seven thousand, five hundred dollars (\$397,500.00).

3. EXHIBIT B SCHEDULE OF PERFORMANCE section of Original Agreement shall be amended to read as follows:

Milestone 11: Launch and maintain platform / Promotion activities & Ongoing support	April 2022
---	------------

Note – As of February 2022, all other deliverables have been completed.

4. EXHIBIT C COMPENSATION section of Original Agreement shall be amended to read as follows:

The compensation to be paid to Participant under this Agreement for all services described in Exhibit “A” shall not exceed a total of three hundred and ninety-seven thousand, five hundred dollars (\$397,500.00), as set forth below. Any work performed 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. No reimbursable expenses are contemplated as a part of this Agreement.

Deliverable 11: Launch and maintain platform / Promotion activities & Ongoing support

Note – As of February 2022, all other deliverables have been completed.

\$9,000 each month, not to exceed \$18,000 in aggregate

Original + Amendment 1 + Amendment 2 + Amendment 3 + Amendment 4	
\$279,000+\$0+\$0+\$73,500 + \$27,000	
Total - not to exceed	\$379,500
Amendment 5	
Deliverables 11	\$18,000
Total - not to exceed	\$397,500

5. This Amendment shall be effective on February 9, 2022.
6. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.
7. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

Don Bray, Director of Account Services & Community Relations

RECOMMENDED FOR APPROVAL

Amrit Singh, Director of Finance and Administration

CONSULTANT NAME
UTILITY API

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

DRAFT

FOURTH AMENDMENT TO AGREEMENT WITH UTILITY API, INC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITY API, INC entered into that certain agreement entitled ENERGY DATA EXCHANGE PLATFORM PILOT, effective on June 12, 2019, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and UTILITY API, INC have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM section of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on June 12, 2019, and shall terminate on February 15, 2022 (“Term”), unless terminated earlier as set forth herein.

2. COMPENSATION TO PARTICIPANT section of Original Agreement shall be amended to read as follows:

Participant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed three hundred and seventy-nine thousand, five hundred dollars (\$379,500.00).

3. EXHIBIT B SCHEDULE OF PERFORMANCE section of Original Agreement shall be amended to read as follows:

Milestone 10: Launch and maintain platform / Promotion activities & Ongoing support	February 2022
---	---------------

Note – As of November 2021, all other deliverables have been completed.

4. EXHIBIT C COMPENSATION section of Original Agreement shall be amended to read as follows:

The compensation to be paid to Participant under this Agreement for all services described in Exhibit “A” shall not exceed a total of three hundred and seventy-nine thousand, five hundred dollars (\$379,500.00), as set forth below. Any work performed 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. No reimbursable expenses are contemplated as a part of this Agreement.

Deliverable 10: Launch and maintain platform / Promotion activities & Ongoing support

Note – As of November 2021, all other deliverables have been completed.

\$9,000 each month, not to exceed \$27,000 in aggregate

Original + Amendment 1 + Amendment 2 + Amendment 3	
\$279,000+\$0+\$0+\$73,000	
Total - not to exceed	\$352,500
Amendment 4	
Deliverables 10	\$27,000
Total - not to exceed	\$379,500

5. This Amendment shall be effective on November 11, 2021.
6. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.
7. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

DocuSigned by:

 25AB666D5413484...
 Don Bray, Director of Account Services & Community Relations

RECOMMENDED FOR APPROVAL

DocuSigned by:

 A83F10F92E8F467...
 Amrit Singh, Director of Finance and Administration

CONSULTANT NAME

UTILITY API

DocuSigned by:

 By: _____
 Name: Lynne Wander
 Title: Chief operating officer
 Date: 11/16/2021

SILICON VALLEY CLEAN ENERGY

AUTHORITY

A Joint Powers Authority
 DocuSigned by:

 By: _____
 Name: Girish Balachandran
 Title: Chief Executive Officer
 Date: 11/16/2021

APPROVED AS TO FORM:

DocuSigned by:

Trisha Ortiz

60CEBB7661684C2...

Counsel for Authority

ATTEST:

DocuSigned by:

Dorothy Roberts

FA4736575CF7449...

Authority Clerk

THIRD AMENDMENT TO AGREEMENT WITH UTILITYAPI, INC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITYAPI, INC entered into that certain agreement entitled ENERGY DATA EXCHANGE PLATFORM PILOT, effective on June 12, 2019, hereinafter referred to as “Original Agreement”; and

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on June 12, 2019 and shall terminate on November 15, 2021 (“Term”), unless terminated earlier as set forth herein.

2. COMPENSATION TO PARTICIPANT of Original Agreement shall be amended to read as follows:

Participant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed three hundred and fifty-two thousand, five hundred dollars (\$352,500.00) based on the rates and terms set forth in Exhibit “C”, which is attached hereto and incorporated herein by this reference.

3. EXHIBIT A SCOPE OF SERVICES of Original Agreement shall be amended to read as follows:

Launch, Operations & Support:

End of setup through a 20 month term:

Task 1: Launch & maintain platform

Task 2: Promotion activities

Marketing by SVCE

Marketing by UtilityAPI

Task 3: Ongoing support, including biweekly reporting and check in

4. EXHIBIT B SCHEDULE OF PERFORMANCE of Original Agreement shall be amended to read as follows:

Launch, Operations & Support, Task 1 / Launch and maintain platform	Monthly for a 20 month term starting at platform launch and beginning of software license
Launch, Operations & Support, Tasks 2 & 3 / Promotion activities & Ongoing support	Monthly for a 20 month term starting at platform launch and beginning of software license

5. EXHIBIT C COMPENSATION of Original Agreement shall be amended to read as follows:

The compensation to be paid to Participant under this Agreement for all services described in Exhibit “A” shall not exceed a total of three hundred and fifty-two thousand, five hundred dollars (\$352,500), as set forth below. Any work performed 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. No reimbursable expenses are contemplated as a part of this Agreement.

Deliverable 8: Launch, Operations & Support, Task 1 /Launch and maintain platform
Months 1-4
\$22,500 per month

Months 5-11
\$0 per month if there are fewer than 90 Unique Account Holders Served* for that month
\$7,500 per month if there are at least 90 Unique Account Holders Served* for that month

Months 12-20
\$4,500 per month

Total Deliverable 8 payments are not to exceed \$145,500 in aggregate (total spend months 1-20)

**For the purposes of the Agreement, ‘Unique Account Holders Served’ shall be defined as the number of distinct email addresses associated with an authorization or collection of data in the billing month. Multiple data pulls in a month, data pulls encompassing multiple meters, and data pulls across multiple accounts supporting the same email address will count as only one Unique Account Holder Served for that month; each billing month will reset and the email address can be counted again as a Unique Account Holder Served in a preceding month if any of these actions recur in that month.*

Deliverable 9: Launch, Operations & Support, Tasks 2 & 3 /Promotion activities & Ongoing support
\$4,500 each month, not to exceed \$90,000 in aggregate

Original+ Amendment 1+ Amendment 2	
\$279,000+\$0+\$0	\$279,000
Total - not to exceed	
Amendment 3	
Total - not to exceed	\$73,500
New Total	
Deliverables 1-7	\$117,000
Deliverables 8	\$145,500
Deliverables 9	\$90,000
Total - not to exceed	\$352,500

6. This Amendment shall be effective on February 11, 2021.

7. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.

8. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

DocuSigned by:

Don Bray

25A8666D5413484...

Don Bray, Director of Account Services & Community Relations

RECOMMENDED FOR APPROVAL

DocuSigned by:

Amrit Singh

A88F1DF92E8F467...

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
UTILITYAPI INC

DocuSigned by:

Lynne Wander

D59833D64586468...

By: _____
Name: Lynne Wander
Title: Chief Operating Officer
Date: 2/16/2021

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

DocuSigned by:

Girish Balachandran

5CA64B9AC4C24C3...

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 2/17/2021

APPROVED AS TO FORM:

DocuSigned by:

Gregory W. Stepanicich

9E728D9E914F493...

Counsel for Authority

ATTEST:

DocuSigned by:

Andrea Pizano

8BC3564ACEA848D...

Authority Clerk

SECOND AMENDMENT TO AGREEMENT WITH UTILITYAPI, INC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITYAPI, INC entered into that certain agreement entitled ENERGY DATA EXCHANGE PLATFORM PILOT, effective on June 12, 2019, hereinafter referred to as “Original Agreement”; and

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on June 12, 2019 and shall terminate on July 15, 2021 or once payment for services performed pursuant to this Agreement reach the not-to-exceed total amount of compensation based on the rates and terms set forth in Exhibit “C” (“Term”), unless terminated earlier as set forth herein.

2. EXHIBIT A SCOPE OF SERVICES of Original Agreement shall be amended to read as follows:

Launch, Operations & Support:

End of setup through an up to 16 month term:

Task 1: Launch & maintain platform

Task 2: Promotion activities

Marketing by SVCE

Marketing by UtilityAPI

Task 3: Ongoing support, including biweekly reporting and check in

3. EXHIBIT B SCHEDULE OF PERFORMANCE of Original Agreement shall be amended to read as follows:

Launch, Operations & Support, Task 1 / Launch and maintain platform	Monthly for an up to 16-month term starting at platform launch and beginning of software license
Launch, Operations & Support, Tasks 2 & 3 / Promotion activities & Ongoing support	Monthly for an up to 16-month term starting at platform launch and beginning of software license

4. EXHIBIT C COMPENSATION of Original Agreement shall be amended to read as follows:

Deliverable 8: Launch, Operations & Support, Task 1 /Launch and maintain platform

For the first four months of a public-facing platform: \$22,500 each month, not to exceed \$90,000 in aggregate

For all subsequent months of a public-facing platform: \$0 each month for any months in which the total number of Unique Account Holders Served is below 90; \$7,500 each month for any months in which the total number of Unique Account Holders Served is 90 or more, not to exceed \$31,500 in aggregate

Months 1-4
\$22,500 per month

Months 5-16
\$0 per month if there are fewer than 90 Unique Account Holders Served* for that month
\$7,500 per month if there are at least 90 Unique Account Holders Served* for that month

Total Deliverable 8 payments are not to exceed \$121,500 in aggregate

**For the purposes of the Agreement, 'Unique Account Holders Served' shall be defined as the number of distinct email addresses associated with an authorization or collection of data in the billing month. Multiple data pulls in a month, data pulls encompassing multiple meters, and data pulls across multiple accounts supporting the same email address will count as only one Unique Account Holder Served for that month; each billing month will reset and the email address can be counted again as a Unique Account Holder Served in a preceding month if any of these actions recur in that month.*

Deliverable 9: Launch, Operations & Support, Tasks 2 & 3 /Promotion activities & Ongoing support
\$4,500 each month, not to exceed \$72,000 in aggregate

- 5. This Amendment shall be effective on September 21, 2020.
- 6. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.
- 7. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

DocuSigned by:

25AB666D5413484...
 Don Bray, Director of Account Services & Community Relations

CONSULTANT NAME
UTILITY API, INC

DocuSigned by:
Lynne Wander
By: _____
D59833D64586468...
Name: Lynne Wander
Title: Chief Operating Officer
Date: 9/22/2020

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority
DocuSigned by:
Girish Balachandran
By: _____
5CA64B9AC4C24C3...
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 9/22/2020

FIRST AMENDMENT TO AGREEMENT WITH UTILITYAPI, INC

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITYAPI, INC entered into that certain agreement entitled ENERGY DATA EXCHANGE PLATFORM PILOT, effective on June 12, 2019, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and UTILITYAPI, INC have determined it is in their mutual interest to amend certain terms of the Original Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. TERM section of Original Agreement shall be amended to read as follows:

The term of this Agreement shall commence on June 12, 2019 and shall terminate on September 30, 2020 or a cap of 20,000 data transactions (“Term”), unless terminated earlier as set forth herein.

2. This Amendment shall be effective on May 5, 2020.

3. Except as expressly modified herein, all of the provisions of the Original Agreement shall remain in full force and effect. In the case of any inconsistencies between the Original Agreement and this Amendment, the terms of this Amendment shall control.

4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates set forth besides their signatures below.

RECOMMENDED FOR APPROVAL

DocuSigned by:

Aimee Bailey

78C1D0448EEF49B...

Aimee Bailey, Director of Decarbonization and Grid Innovation Programs

RECOMMENDED FOR APPROVAL

DocuSigned by:

Don Eckert

10C84C9C59134BD...

Don Eckert, Director of Finance and Administration

CONSULTANT NAME

UTILITYAPI, INC

DocuSigned by:

By: _____

Lynne Wander

Lynne Wander

Name: _____

Chief Operating Officer

Title: _____

5/6/2020

Date: _____

SILICON VALLEY CLEAN ENERGY

AUTHORITY

A Joint Powers Authority

DocuSigned by:

By: _____

Girish Balachandran

Girish Balachandran

Name: _____

Girish Balachandran

Title: _____

Chief Executive Officer

Date: _____

5/6/2020

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY
AUTHORITY AND
UTILITYAPI, INC. FOR
ENERGY DATA EXCHANGE PLATFORM PILOT**

THIS AGREEMENT, is entered into this 12th day of June, 2019, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and UtilityAPI, Inc, a Delaware Corporation whose address is 1212 Broadway, 16th floor, Oakland, CA 94618 (hereinafter referred to as "Participant") (collectively referred to as the "Parties").

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. Authority has launched an innovation pilot partnership program called Innovation Onramp in order to facilitate and support innovative research and the evaluation, testing, and implementation of innovative, emerging technologies and ideas, with the goal of accelerating decarbonization.

C. Participant has submitted a pilot project proposal to the Innovation Onramp program, pursuant to which Participant proposes to provide a drop-in data exchange platform that third parties can use to request and download customer utility bill and usage data. (the "Project").

D. Participant possesses the skill, experience, ability, background, training and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

E. Authority and Participant desire to enter into an agreement to carry out the Project upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on June 12, 2019, and shall terminate on July 1, 2020 or a cap of 20,000 data transactions ("Term"), unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO PARTICIPANT**

Participant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed two hundred and seventy-nine thousand dollars (\$279,000.00) 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**

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

5. **STANDARD OF CARE**

Participant 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 and agrees that all services shall be performed by qualified and experienced personnel.

6. **INDEPENDENT PARTIES**

Authority and Participant 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 Participant, 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 Participant'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 Participant, 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 Participant. Payments of the above items, if required, are the responsibility of Participant.

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

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

Participant agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Participant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Participant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. Participant shall, to the fullest extent allowed by law and without limitation of the provisions of this Agreement related to insurance, with respect

to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action, demands, damages, losses, costs, and expenses of any nature whatsoever ("Claims"), including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of, pertaining to, or related to the performance of this Agreement by Participant or Participant's employees, officers, officials, agents or independent contractors. 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.

B. Intellectual Property Indemnification. Participant 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 Project 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. Participant warrants that the Equipment, the Project, and any related 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. Participant shall indemnify, defend, and hold Authority, its members, officers, employees, and volunteers, harmless from and against any Claims by a third party that the Equipment, the Project, or any related services to be provided pursuant to this Agreement infringe or violate any third-part'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 Claim.

D. The provisions of this Section shall survive the completion of the Project or termination of this Agreement.

10. INSURANCE:

A. General Requirements. On or before the commencement of the Term of this Agreement, Participant 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 Participant'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." Participant 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. Participant 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, Participant shall look solely to his/her/its insurance for recovery. Participant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Participant or Authority with respect to the services of Participant herein, a waiver of any right to subrogation which any such insurer of Participant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Participant at any time during the Term should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Participant's name or as an agent of the Participant and shall be compensated by the Participant 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 Participant. Participant is advised to confer with Participant's insurance broker to determine adequate coverage for Participant.

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.

G. Subcontractors. Participant shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit "D." Failure of Participant to verify existence of subcontractor's insurance shall not relieve Participant from any claim arising from subcontractor's work on behalf of Participant.

11. CONFLICT OF INTEREST

Participant warrants that it presently has 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 will not employ any person having such an interest. Participant agrees to advise Authority immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Participant 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

The Parties agree that the expertise and experience of Participant are material considerations for this Agreement. Participant 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. Consent to one assignment will not be deemed to be consent to any subsequent assignment. However, claims for money by Participant 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 Participant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Participant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Participant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Participant, 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 Participant 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 Participant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Participant 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 Participant shall agree to be bound to Participant and Authority in the same manner and to the same extent as Participant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Participant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Participant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**

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

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

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

D. All Reports required to be provided by this Agreement shall be printed on recycled paper. All Reports shall be copied on both sides of the paper except for one original, which shall be single sided. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Participant pursuant to this Agreement shall be made available to any individual or organization by Participant without prior approval by Authority.

15. **RECORDS**

Participant 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 maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Participant 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 Participant receives final payment from Authority for all services required under this agreement.

If supplemental examination or audit of the records is necessary due to concerns raised by Authority's preliminary examination or audit of records, and the Authority's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Participant shall reimburse Authority for all reasonable costs and expenses associated with the supplemental examination or audit.

16. **PARTY REPRESENTATIVES**

Aimee Bailey, Director of Decarbonization and Grid Innovation shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Lynne Wander, Chief Operating Officer shall represent Participant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

A. Participant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all Confidential Information held by Authority or provided to Participant by Authority.

B. The term "Confidential Information" includes all information, documents, and materials owned by Authority or Participant, including technical, financial, business, or utility customers' personal information which is not available to the general public, as well as information derived from such information, which is furnished or made available

to Participant. Information received by Participant shall not be considered Confidential Information if: (i) it is or becomes available to the public through no wrongful act of Participant; (ii) it is already in the possession of Participant and not subject to any confidentiality agreement between the Parties; (iii) it is received from a third party without restriction for the benefit of Authority and without breach of this Agreement; (iv) it is independently developed by Participant; or (v) it is disclosed pursuant to a requirement of law, a duly empowered government agency, or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to Authority, unless such notice is prohibited.

C. As practicable, Authority shall mark Confidential Information with the words “Confidential” or “Confidential Material” or with words of similar import, or, if that is not possible, Authority shall notify the Participant (for example, by cover e-mail transmitting an electronic document) that the material is Confidential Information. Authority’s failure, for whatever reason, to mark or notify Participant at the time the material is produced shall not take the material out of the coverage of this Agreement.

D. Participant will direct its employees, contractors, consultants, and representatives who have access to any Confidential Information to comply with the terms of this Section.

E. Upon termination or expiration of this Agreement, Participant shall, at Authority’s direction, either return or destroy all such Confidential Information and shall so certify in writing, provided, however, any Confidential Information (i) found in drafts, notes, studies, and other documents prepared by or for Authority or its representatives, or (ii) found in electronic format as part of Participant’s off-site or on-site data storage/archival process system, will be held by Participant and kept subject to the terms of this provision or destroyed at Participant’s option. The obligations of this provision will survive termination or expiration of this Agreement.

18. **DATA SECURITY**

If, pursuant to this Agreement, Authority shares with Participant personal information as defined in California Civil Code Section 1798.81.5(d) about a California resident (“Personal Information”), Participant shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform Authority immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. Participant shall not use Personal Information for direct marketing purposes without Authority’s express written consent. For purposes of this provision, security procedures are “reasonable and appropriate” when they (i) adequately address all reasonable foreseeable threats to Personal Information, (ii) are appropriate to the quantity, sensitivity, and type of Personal Information accessed and the way that information will be accessed, and (iii) comply with all laws, regulations, and government rules or directives applicable to the Participant in connection with its access of Personal Information.

19. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
333 W. El Camino Real
Suite 290
Sunnyvale, CA 94087
Attention: Aimee Bailey

TO PARTICIPANT:
Lynne Wander, Chief Operating Officer
UtilityAPI, Inc
1212 Broadway, Floor 16
Oakland, CA 94607

20. **TERMINATION**

In the event either Party fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, that Party shall be deemed in default in the performance of this Agreement (“Defaulting Party”). If the Defaulting Party fails to cure the default within 30 days of receipt of notice from the non-Defaulting Party, and in addition to any other remedy available to the non-Defaulting Party by law, the non-Defaulting Party may terminate the Agreement by giving the Defaulting Party written notice thereof, which shall be effective immediately. Each Party shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving thirty (30) calendar days' prior written notice to the other Party as provided herein. Upon receipt of any notice of termination by the Authority, Participant shall immediately discontinue performance.

Authority shall pay Participant for services satisfactorily performed up to the effective date of termination. If the termination is for cause, Authority may deduct from such payment the amount of actual damage, if any, sustained by Authority due to Participant's failure to perform its material obligations under this Agreement. Upon termination, Participant 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 Participant or given to Participant, in connection with this Agreement. Such materials shall become the property of Authority.

21. **COMPLIANCE**

Participant shall keep informed of and comply with all applicable local, state and federal laws. Participant shall procure all applicable permits and licenses, pay all applicable charges and fees, and give all notices as may be required by law in the performance of services under this Agreement.

22. **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.

23. **ADVERTISEMENT**

Participant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters, cards, news releases, annual reports, product packaging, print literature, websites, or other media of any kind pertaining to the services performed under this Agreement or using the name, trade name, trademarks, or service marks of or owned by Authority, unless prior written approval has been secured from Authority to do otherwise. Participant shall not represent, directly or indirectly, that any product or service has been approved or endorsed by Authority without prior written consent.

24. **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.

25. **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 Participant. In the event of a conflict between the terms of this Agreement and the exhibits hereto or Participant's proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and Participant's proposal, the exhibits shall control.

26. **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.

27. **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.

28. **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.

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

RECOMMENDED FOR APPROVAL

DocuSigned by:

Aimee Bailey

78C1D044BEEF49B...

Aimee Bailey

Director of Decarbonization and Grid Innovation Programs

PARTICIPANT

Utility API

DocuSigned by:

Lynne Wander

By:

Name: *Lynne Wander*

Title: Chief Operating Officer

Date: *7/22/2019*

SILICON VALLEY CLEAN ENERGY AUTHORITY

A Joint Powers Authority

DocuSigned by:

Girish Balachandran

By:

Name: *Girish Balachandran*

Title: Chief Executive Officer

Date: *7/22/2019*

APPROVED AS TO FORM:

DocuSigned by:

Gregory W. Stepanicich

9E728D9E914F493...

Counsel for Authority

ATTEST:

DocuSigned by:

Andrea Pizano

D0029733BB994BA...

Authority Clerk

Exhibit A
Scope of Services

The project is to deploy a data exchange platform for SVCE service territory, which would allow third parties to use to request and download customer utility bill and usage data. The overarching goal of the pilot is to demonstrate the potential of free, authorized access to standardized and automated energy usage data in accelerating the deployment of clean energy projects, while empowering customer choice and supporting local businesses. For the pilot, UtilityAPI will manage third party registration, data access authorizations, historical and ongoing data collection, and data cleaning and standardization to realize the data exchange platform. The platform includes an easy-to-use dashboard for small and local businesses, and a fully documented API for enterprise and app integration. On the back end, structured data stores and S3 buckets will be isolated for each utility and will not share resources, so only SVCE customer data is stored in a particular S3 bucket and structured data store.

Set-up:

Milestone 1: Pull in data from Calpine and successfully parse it into the structured storage format.

Milestone 2: Customers can authenticate themselves to load the dashboard and authorize

Milestone 3: Customers can see scope of authorizations, and revoke

Milestone 4: Changes are made to UtilityAPI settings page that allows third-parties to pull data

Milestone 5: SVCE-branded third party registration page

Milestone 6: Ready for Beta program

Milestone 7: Ready for launch

Launch, Operations & Support:

End of setup through a 6-month term:

Task 1: Launch & maintain platform

Task 2: Promotion activities

Marketing by SVCE

Marketing by UtilityAPI

Task 3: Ongoing support, including biweekly reporting and check in

Exhibit B
Schedule of Performance

Participant shall perform the services so as to complete each Project Deliverable according to the schedule set forth below. The time to complete each Deliverable may be increased or decreased by mutual written agreement of the Project Representatives for both Participant and Authority, so long as all work is completed within the Term of the Agreement.

Project Deliverables	Completion Date
Milestone 1: Pull in data from Calpine and successfully parse it into the structured storage format. This includes setting up a firewall rule to whitelist access to only Calpine/SVCE/UtilityAPI IPs, and deleting stale data in the SFTP server as part of the sync script.	August 15, 2019
Milestone 2: Customers can authenticate themselves to load the dashboard and authorize	September 30, 2019
Milestone 3: Customers can see scope of authorizations, and revoke	September 30, 2019
Milestone 4: Changes are made to UtilityAPI settings page that allows third-parties to pull data	October 15, 2019
Milestone 5: SVCE-branded third party registration	October 31, 2019
Milestone 6: Ready for Beta program	October 31, 2019
Milestone 7: Ready for launch	January 1, 2020
Launch, Operations & Support, Task 1 / Launch and maintain platform	Monthly for 6-month term starting at platform launch and beginning of software license
Launch, Operations & Support, Tasks 2 & 3 / Promotion activities & Ongoing support	Monthly for 6-month term starting at platform launch and beginning of software license

Exhibit C Compensation

The compensation to be paid to Participant under this Agreement for all services described in Exhibit “A” shall not exceed a total of two hundred and seventy-nine thousand dollars (\$279,000), as set forth below. Any work performed 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. No reimbursable expenses are contemplated as a part of this Agreement.

Participant shall perform the categories of work and complete the Deliverables as outlined and budgeted below. Authority’s Party Representative may approve in writing the transfer of budget amounts between any of the Deliverables below, provided that the total does not exceed the not-to-exceed amount above.

<u>Project Deliverables</u>	<u>Completion Amount</u>
Deliverable 1: Pull in data from Calpine and successfully parse it into the structured storage format. This includes setting up a firewall rule to whitelist access to only Calpine/SVCE/UtilityAPI IPs and deleting stale data in the SFTP server as part of the sync script.	\$26,000
Deliverable 2: Customers can authenticate themselves to load the dashboard and authorize	\$13,000
Deliverable 3: Customers can see scope of authorizations, and revoke	\$13,000
Deliverable 4: Changes are made to UtilityAPI settings page that allows third-parties to pull data	\$26,000
Deliverable 5: SVCE-branded third party registration	\$13,000
Deliverable 6: Ready for Beta program	\$13,000
Deliverable 7: Ready for launch	\$13,000
Deliverable 8: Launch, Operations & Support, Task 1 / Launch and maintain platform	\$22,500 each month, not to exceed \$135,000 in aggregate over 6-month term
Deliverable 9: Launch, Operations & Support, Tasks 2 & 3 / Promotion activities & Ongoing support	\$4,500 each month, not to exceed \$27,000 in aggregate over 6-month term
Total	\$279,000

Invoicing

In order to request payment, Participant shall submit invoices to the Authority upon completion of each Deliverable, 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).

Advances

Upon written request by Participant, the Authority may, in its sole discretion, distribute to Participant an advance or advances meeting the following requirements:

1. Participant demonstrates that such advance(s) is required up front in order to undertake the Deliverable.
2. Participant submits invoices and receipts supporting the expenditures of an advance within 60 days of the payment by Authority. If complete invoices and receipts are not provided within 60 days, no further advances will be given.
3. At no time shall the total of all advances exceed 25% of the total amount of compensation.
4. No advance shall be provided for the final 10% of the total amount of compensation.

Additional Services

Participant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority's Chief Executive Officer prior to commencement of any additional services. Participant shall submit, at the Chief Executive Officer's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit D
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

Participant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:** Statutory coverage as required by the State of California.
- (2) **Commercial General 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 Participant in the amount of at least \$1,000,000.
- (5) **Cyber Coverage:** Cyber Coverage with an aggregate limit of liability of one million dollars (\$1,000,000.00).

B. **ACCEPTABILITY OF INSURER:** All insurance coverage shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all subcontractors of the Participant retained to perform the services under this Agreement will obtain and maintain, in full force and effect during the Term of this Agreement, identical insurance coverage.



Staff Report – Item 1h

Item 1h: Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions

From: Girish Balachandran, CEO

Prepared by: Kevin Armstrong, Administrative Services Manager

Date: 2/9/2022

RECOMMENDATION

Adopt Resolution 2022-05 amending the SVCE conflict of interest code to add multiple positions in the list of designated positions for filing.

BACKGROUND

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

At the September 8, 2021 Board meeting, the Board of Directors adopted Resolution 2021-22 approving the creation of a personnel system to insure equitable and uniform policies and procedures for administering personnel matters in compliance with applicable laws; designating the Chief Executive Officer (CEO) as Personnel Officer; and delegating authority to the CEO to carry out all duties necessary to implement the personnel system.

ANALYSIS & DISCUSSION

Since the approval of the delegation of authority to CEO as Personnel Officer, the CEO has identified a need for various positions which fall under the approved personnel budget. Of these positions, SVCE staff and general counsel feel the following positions should report financial interests based on the decisions he/she will be making:

Designated Position	Assigned Disclosure Category
Senior Manager of Public Sector Services	2
Senior Risk Manager	2

In accordance with the requirements of the Political Reform Act and the County of Santa Clara, a new conflict of interest code must be adopted by resolution which includes the newly created or identified positions as well as any changes to the existing Conflict of Interest Code. The attached resolution amends Appendix A to SVCE's code to reflect the addition of the two new positions identified above. The remainder of the Conflict of Interest Code has not been changed.

STRATEGIC PLAN

Not applicable.

Agenda Item: 1h

Agenda Date: 2/9/2022

ALTERNATIVES

None.

FISCAL IMPACT

There is no fiscal impact as a result of adding positions to SVCE's Conflict of Interest Code.

ATTACHMENT

1. Resolution 2022-05 Amending the Authority's Conflict of Interest Code to Add Multiple Positions

RESOLUTION NO. 2022-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY'S CONFLICT OF INTEREST CODE TO ADD MULTIPLE POSITIONS

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

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

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

WHEREAS, the Board of Directors of the Authority has adopted a conflict of interest code, and has amended this code as appropriate due to changed circumstances, with the most recent code adopted by Resolution 2021-15; and

WHEREAS, the Board of Directors, after consultation with the County of Santa Clara as its code reviewing body, desires to amend the list of designated positions in Appendix A by amending multiple titles and adding multiple positions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Authority rescinds Resolution No. 2021-15 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

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

ADOPTED AND APPROVED this 9th day of February 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Clerk

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

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

The most current version of 2 Cal. Code of Regs. Section 18730 is available on the website of the Fair Political Practices Commission (<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730.pdf>).

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

**SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Member of Board of Directors	1
Alternate Member of Board of Directors	1
Chief Executive Officer	1
Chief Financial Officer & Director of Administrative Services	1
Finance and Administration Committee Member	2
General Counsel	1
Energy Services Manager	2
Administrative Services Manager	2
Associate Legislative Analyst	2
Associate Manager of Decarbonization & Grid Innovation Programs	2
Associate Power Analyst	1
Associate Power Resources Planner	1
Communications Manager	2
Director of Account Services & Community Relations	2
Director of Decarbonization & Grid Innovation Programs	2
Director of Power Resources	1
Director of Regulatory & Legislative Policy	2
Financial Analyst	2
Management Analyst	2
Manager of Decarbonization & Grid Innovation Programs	2

Policy Analyst	2
Power Analyst	1
Power Resources Manager	1
Power Resources Planner	1
Power Contracts & Settlements Manager	1
Power Settlements & Compliance Analyst	1
Principal Policy Analyst	2
Principal Power Analyst	1
Rates Manager	2
Senior Financial Analyst	2
Senior Government Affairs Manager	2
Senior Manager of Decarbonization & Grid Innovation Programs	2
Senior Manager of Public Sector Services	2
Senior Policy Analyst	2
Senior Power Analyst	1
Senior Power Resources Planner	1
Senior Rates Analyst	2
Senior Regulatory Analyst	2
Senior Risk Manager	2
Consultant	3
Newly Created Position	*

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly

created position, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

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

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

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

APPENDIX "B"

DISCLOSURE CATEGORIES

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

Category 1: Persons in this category shall disclose:

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

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

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

Category 3: Each Consultant, as defined for purposes of the Political Reform Act and applicable regulations¹, shall disclose pursuant to the broadest disclosure category in the Authority's conflict of interest code subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of

¹ As defined in FPPC Regulation 18700.3, "consultant" means an individual who (1) makes governmental decisions, such as whether to approve a rate, rule, or regulation; to issue, deny, suspend, or revoke any permit, license, application, certificate or similar authorization; to adopt or approve a plan, design, report, study; or to adopt or approve policies, standards, or guidelines for the Authority; (2) serves in a staff capacity with the Authority, and in that capacity participates in making governmental decisions by providing information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review; or (3) performs the same or substantially all the same duties for the Authority that would otherwise be performed by an individual holding a designated position in this Code.

disclosure requirements. The Chief Executive Officer's written determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.



Staff Report – Item 1i

Item 1i: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: George Tyson, Chair of the Executive Committee

Date: 2/9/2022

At the first meeting of the 2022 Executive Committee on January 28, Executive Committee members held annual appointments for Chair and Vice Chair; selected a regular meeting schedule; and voted to recommend a summer hiatus from July meetings.

CEO Girish Balachandran provided an update to the committee on upcoming items for the Board of Directors in February and March which included: SVCE rates, the first CC Power long-duration storage contract, the mid-year budget which will include the doubling down on decarb programs budget, and delegation of authority regarding commercial and industrial special contracts. CEO Balachandran addressed NEM 3.0 and provided an update on new personnel. Director of Power Resources, Monica Padilla, provided an update on the status of SVCE's first newly constructed solar plus storage project. The Committee also discussed NEM 3.0 in more detail.

The Committee appointed me as Chair, and Director Neysa Fligor as Vice Chair for 2022. A regular meeting schedule was established of the fourth Fridays of the month at 10:00 a.m., with the exception of the months of April and October, where the meetings will begin at 11:30 a.m. This schedule will allow all members to be in attendance.

Lastly, the Committee voted to cancel the regularly scheduled Executive Committee meeting on July 22, 2022. They also voted to recommend the Board of Directors approve cancelling the regularly scheduled Board of Directors meeting on July 13, 2022, which is on the consent calendar for the Board's consideration.

Materials from the January 28, 2022 meeting can be found here: [SVCE Executive Committee Meeting Materials, 1/28/22](#)

The next meeting of the Executive Committee will be February 25, 2022 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1j

Item 1j: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/9/2022

No report as the Finance and Administration Committee has not met since December 16, 2021.

The next meeting of the Finance and Administration Committee is to be determined; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 1k

Item 1k: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/9/2022

No report as the Audit Committee has not met since August 18, 2021.

The next meeting of the Audit Committee is anticipated for February; materials will be posted no later than 72 hours in advance of the meeting.



Staff Report – Item 11

Item 11: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 2/9/2022

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 regular board meeting on Wednesday, January 19, 2022.

Attached is a summary report from Interim General Manager Timothy Haines; materials from the regular board meeting can be found here on the CC Power website: [CC Power Meeting, 1/19/22](#)

The next meeting of the board will be March 16, 2022 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

ATTACHMENTS:

CA Community Power Board Meeting Summary from Interim General Manager Timothy Haines, January 19, 2022

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors **DATE:** 1/19/2022
FROM: Tim Haines – Interim General Manager
SUBJECT: Report on CC Power Board of Directors Meeting – January 19, 2022

The CC Power Board of Directors held its normally scheduled meeting on Wednesday, January 19, 2022, 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:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** There was no public comment on items not on the agenda.
- **Consent Calendar** - The Board unanimously approved the following items:
 - Minutes of the December 15, 2021 Regular Board Meeting
 - Resolution 22-01-01 Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency
- **General Manager's Report.**
 - **Update on LDS Projects:** Interim GM Haines informed the Board that negotiations continue with developers of additional Long Duration Storage projects and the intent is to bring them to the Board as soon as negotiations are complete. The Board was also informed there is no scheduled meeting in February.
 - **Approval of Tumbleweed Project Agreements:** Monica Padilla, SVCE Director of Power Resources, presented the Tumbleweed project and the associated agreements for the Board consideration. Members of the public spoke in support of the project. After clarifying questions Resolution 22-01-02 was moved and seconded. The Board unanimously approved the agreements and delegated the Interim GM to execute the agreements.
- **Update on Firm Clean Resources Request for Offers:** Jeanne Sole, SJCE Deputy Director, Power Resources, provided the Board with an update of the status of the FCR RFO. Following the presentation, the Board considered and approved:
 - Resolution 22-01-03 Approval of CC Power Non-disclosure and Exclusivity Agreement and
 - Resolution 22-01-04 Approval of the Phase 2 Cost Sharing Agreement and authorization for General Manager to Execute with Participants.
- **Selection of Board Officers.** The Board elected Geof Syphers, SCP, as Board Chair, Lori Mitchell, SJCE, as Vice Chair, Tom Habashi, 3CE, Treasurer and Brittany Iles, BBSW, as Secretary.

A Joint Powers Agency whose members are:

Central Coast Community Energy | CleanPowerSF | East Bay Community Energy | MCE | Peninsula Clean Energy | Redwood Coast Energy Authority | San José Clean Energy | Silicon Valley Clean Energy | Sonoma Clean Power | Valley Clean Energy



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 2/9/2022

REPORT

SVCE Staff Update

Aidas Baublys joined SVCE January 31, 2022 as a Senior Financial Analyst in the Finance and Administration group. Aidas comes to us from the New York Power Authority (NYPA) where he worked as a Senior Analyst in the Financial Planning and Analysis group. At NYPA, Aidas built and maintained financial forecasting and budgeting models. His experience also includes working at Akayi Capital Partners where he analyzed the viability of 17 renewable energy projects, and Starwood Hotels where he worked in the revenue strategies and analytics function. Aidas also worked at Creditsights assessing the credit risk of companies in the airlines and maritime shipping industry. Aidas has an MBA from University of Bridgeport, Bridgeport CT and a BS in Electrical Engineering and Engineering Economy from Kaunas University of Technology, Kaunas, Lithuania.

Personnel Officer Update

Personnel additions have continued through the winter, bringing SVCE's current FTE headcount to 29, seven greater than the low of 22 we were at in September. Included in those seven new hires are a new Energy Services Lead, Peter Mustacich, who started on Jan 10th. On Jan 31st, the Finance and Admin team added Aidas Baublys as Senior Financial Analyst. And in mid-February, we look forward to hitting 30 FTEs, when Tony Eulo joins the Account Services and Community Relations Team as a Senior Public Sector Services Manager. In staff transitions, Karthik Rajan, our Principal Power Analyst, has accepted a transfer to a new role, that of Senior Risk Manager, splitting duties between the Power Resources and Finance & Admin Teams. Staff continues to finalize job descriptions for additional positions, including an HR Generalist, a Compliance Manager, and Quantitative roles to help with risk management. On the benefits front, SVCE has reduced the window for benefits enrollment, in order to better compete in a tight job market and aid new employees with their transitions. New employees will now be eligible on the first of the month following their hire, removing an additional 30-day waiting period.

CEO Agreements Executed

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

- 1) Granicus, Amendment: Software as a service, additional \$44,595.48 added, extends to 12/31/22



CEO Power Supply Agreements Executed

Transaction	Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value	Link
Transaction 1	Peninsula Clean Energy	12/17/2021	Sale	Resource Adequacy	3/1/2022	3/31/2022	\$92,625.00	Transaction 2
Transaction 2	Peninsula Clean Energy	12/17/2021	Purchase	Resource Adequacy	3/1/2022	3/31/2022	\$50,375.00	Transaction 1
	Direct Energy	1/13/2022	Sale	Resource Adequacy	3/1/2022	3/31/2022	\$135,000.00	
	PG&E	12/12/2021	Allocation	Carbon-Free	1/1/2022	12/31/2022	\$0.00	

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, January 19th, report included on the Consent Calendar
- Energy Storage News Interview, Feb. 3, 2022 (CEO Balachandran and Director of Power Resources Monica Padilla)

ATTACHMENTS

1. Decarb & Grid Innovation Programs Update, February 2022
2. Account Services & Community Relations Update, February 2022
3. Legislative and Regulatory Update, February 2022
4. Agenda Look Ahead, February – June 2022
5. Board Action Requested, February 2022 Update

DECARBONIZATION & GRID INNOVATION PROGRAMS UPDATE

FEBRUARY HIGHLIGHTS



Milpitas Solar+Battery Storage Resilience Project

The SVCE Community Resilience Program provides a total of \$5 million in grant funding and technical resources distributed to member agencies to support increased energy resilience at critical community facilities during grid outages.

The City of Milpitas used grant funding to support a solar array and battery storage system at the Community Center and Barbara Lee Senior Center to increase energy resilience at these key city facilities.

Projects increase economic recovery, community resilience and decarbonization. If you would like to learn more, visit:

svcleanenergy.org/resilience



Milpitas resilience project



New Electric Vehicle Infrastructure Baseline Study

SVCE published the EV and EV Infrastructure (EVI) Baseline Study which highlights key findings of where EV adoption is strongest and where it still needs to grow in the SVCE service area. The report also identifies where and how charging infrastructure is being used. Find the study here: svcleanenergy.org/research-analysis



Reach Codes 2.0 - The Sequel

SVCE jurisdictions led the way in passing electrification and EV reach codes in the 2019 code cycle. These codes need to be re-upped by October 2022 to remain in effect. In addition to nuts and bolts code adoption support, Reach Codes 2.0 includes resources for permitting simplification and electric retrofits of existing buildings to continue to advance our community's climate goals.

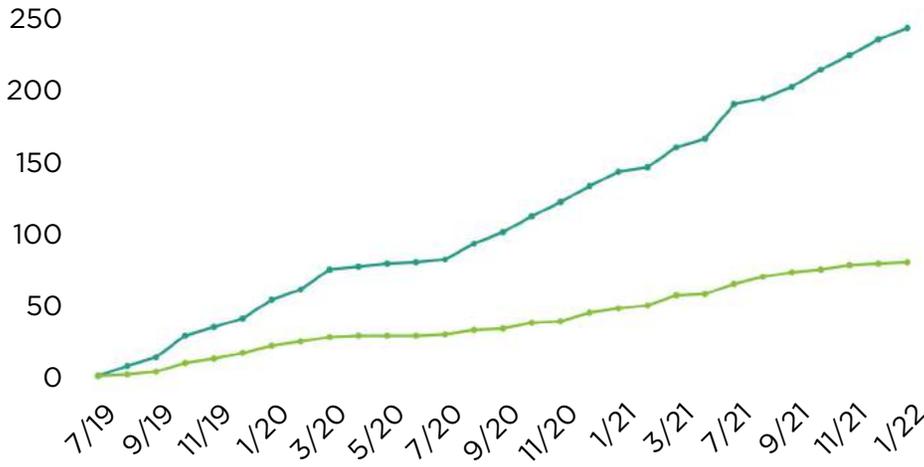
ONGOING METRICS

FEBRUARY 2022

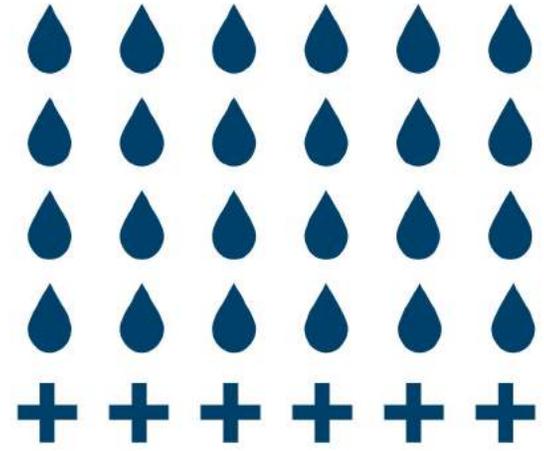
Heat Pump Water Heater

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



■ Cumulative HPWH Installations
■ Cumulative Service Panel Upgrades

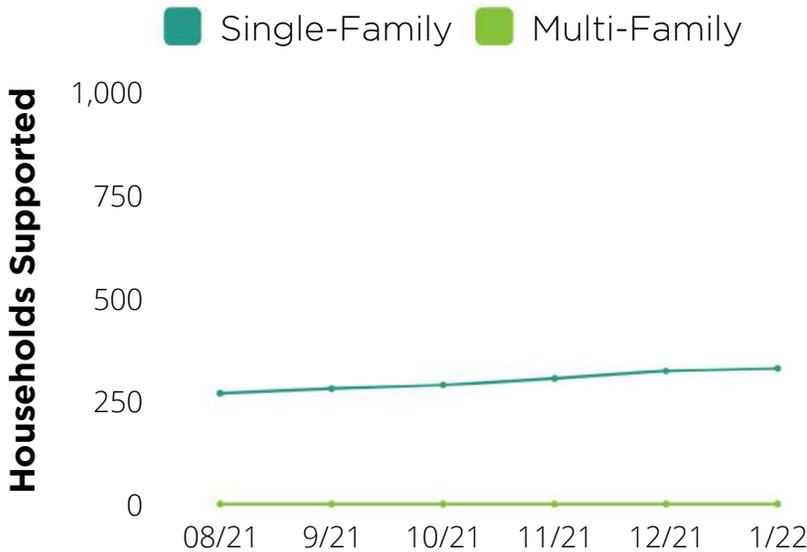


💧 = 10 Completed Installations
+ = 1 CARE/FERA Installation

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



■ Single-Family ■ Multi-Family



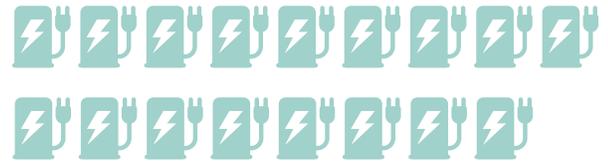
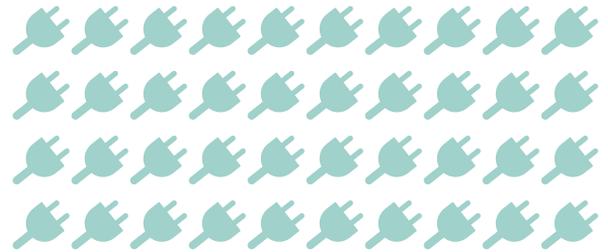
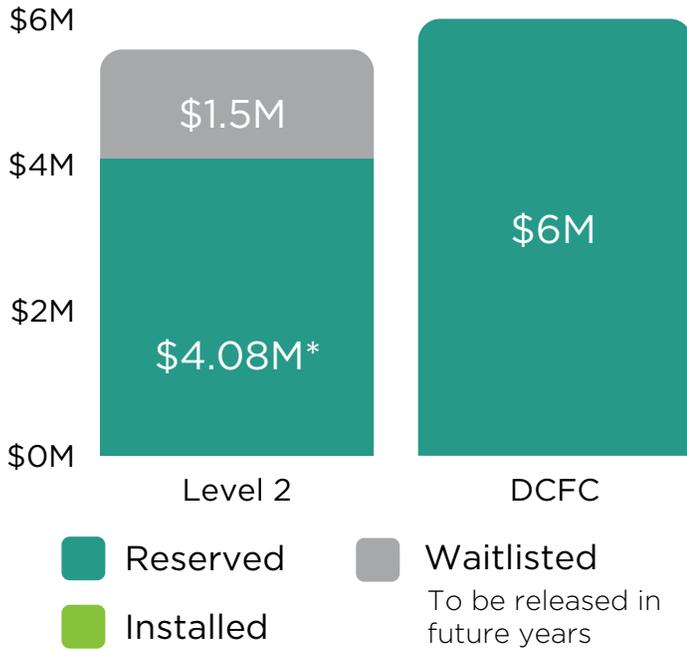
🏠 = 25 Single-Family Projects
🏢 = 1 Multi-Family Property Project (Number of households varies)

ONGOING METRICS FEBRUARY 2022

CALeVIP

Provide incentives for electric vehicle (EV) chargers as part of a regional program

Funding: \$11.58M
Goal: 1K Level 2 + 85 DC Fast Chargers by 2023

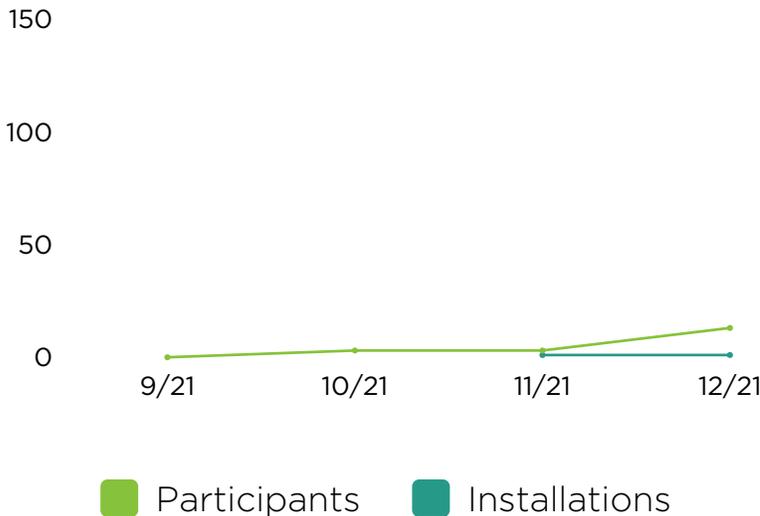


 = 25 Level 2 Installations
 = 5 DCFC Installations

FutureFit Fundamentals

Provide financial relief to contractors by expanding their knowledge of electrification technologies

Funding: \$1.5M
Goal: 150 Participants (Phase 1)



 = 5 Participants Complete Course

PROGRAMS AT A GLANCE

FEBRUARY 2022

[Click for More Information](#)



Active



In Development



Complete

POWER SUPPLY

C&I Clean Power Offerings

BUILT ENVIRONMENT

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

MOBILITY

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

GRID INTEGRATION

Virtual Power Plant

EDUCATION OUTREACH

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

NeoCharge

XeroHome



1. Outreach Events & Sponsorships

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

Date	Time	Description	Location
January 18	7 - 9 PM	SVCE Power Supply & Programs Update to Sunnyvale Sustainability Commission	Virtual
February 9	12 – 1 PM	Drive Clean Bay Area EV 102 for new EV Drivers – <i>sponsorship and presenting</i>	Virtual
February 12	1 – 3 PM	EV Showcase Event – <i>tabling</i>	Los Altos High School
February 18	9 AM – 12 PM	Joint Venture Silicon Valley – State of the Valley - <i>sponsorship</i>	Stanford University and Virtual (hybrid)



Mountain View Tree Lighting 2021

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.37%	96.37%
Commercial	96.37%	

3. Member Agency Working Group January Update

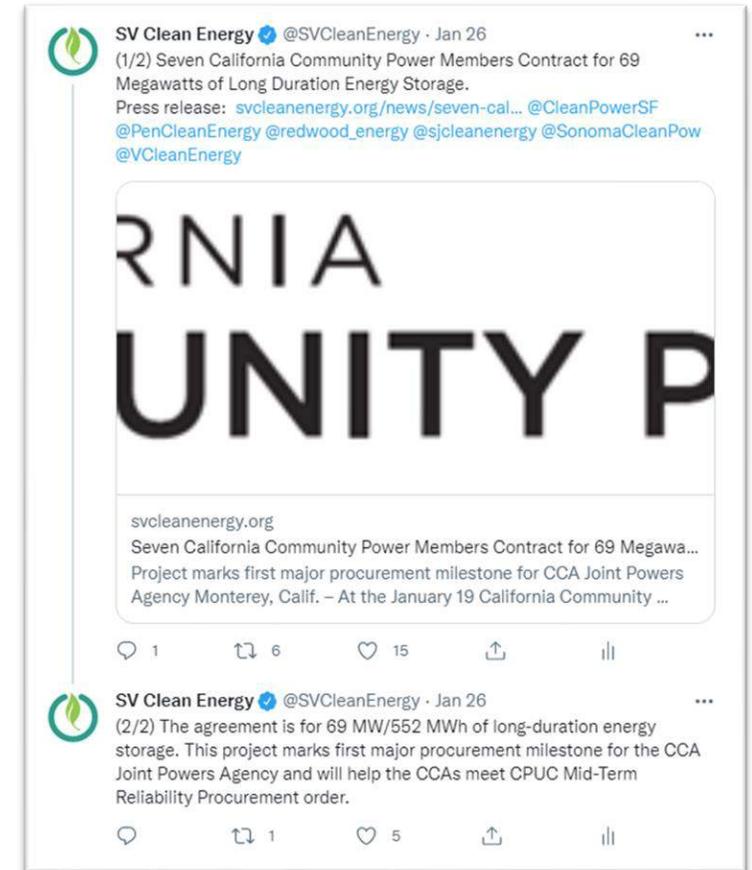
The recent MAWG meeting was held virtually on January 27, 2022, and was attended by 10 different agencies and organizations with a total of 22 participants.

The following agenda items were presented and discussed:

- Member Agency Roundtable Updates
- CALeVIP Update
- TECH On-Bill Financing Pilot & Reach Code EM&V Data Request
- Reach Codes 2.0
- NEM Successor Tariff Update

4. Latest SVCE News & Media

- [Northern and Central California Community Choice Aggregators Issue Joint Request for Proposals for New Clean Energy Sources, Press Release, 01-07-22](#)
- [SV Clean Energy Brings EV Drivers a New Way to Charge with Cheaper, Cleaner Electricity, Press Release, 01-10-22](#)
- [EVmatch and Silicon Valley Clean Energy Partnering to Address Electric Vehicle Charger Accessibility in Santa Clara County, Press Release, 01-18-22](#)
- [Seven California Community Power Members Contract for 69 Megawatts of Long Duration Energy Storage, Press Release, 01-26-22](#)
- [Campbell and Los Altos Hills Representatives Elected to Lead Local Energy Agency, Press Release, 01-31-22](#)



5. Media

- ['Community Choice' raises \\$2.2 billion with clean energy bonds in California, Impact Alpha, 12-09-21](#)
- [Financial JPA Issues \\$2B in Power-Purchase Bonds Aiding Three CCAs, Energy News Data, 12-10-21](#)
- [San Rafael Chamber: CCCFA Issues California's First Municipal Clean Energy Project Revenue Bonds Worth Over \\$2 Billion, Patch.com, 12-16-21](#)
- [California Community Choice Financing Authority's \\$1.5 Billion Notes Offering, Global Legal Chronicle, 12-18-21](#)
- [Project update: Construction underway on the 100 MW/50 MWh Rabbitbrush Solar project, PV Magazine, 01-06-22](#)
- [California Community Choice Aggregators Seek Clean Energy Supply Proposals, American Power Public Association, 01-07-22](#)



5. Media

- [How Much Did Residents Reduce Emissions By In 2021?](#), *Patch.com* – *Campbell, Cupertino, Gilroy, Los Gatos, 01-10-22*
- [Charging less for charging EVs](#), *The Mercury News, Community Briefs* – *Campbell, Cupertino, Los Gatos, Milpitas, Saratoga, Sunnyvale, 01-16-22*
- [Quick Bites: Energy News Roundup](#), *California Energy Markets, 01-14-22*
- [EVmatch, Silicon Valley Clean Energy to Address EV Charger Accessibility in Santa Clara County, CA](#), *Autobody News, 01-18-22*
 - +3 more articles
- [7 California CCAs sign on for nearly 70-MW long-duration energy storage project](#), *Solar Power World, 01-26-22*
 - +19 more articles
- [California Community Power members procure 69MW of long-duration storage](#), *PV Magazine, 01-26-22*
- [Town Of Los Gatos: DIY Home Energy Toolkits Available At The Los Gatos Library](#), *Patch.com, 01-26-22*
- [Lithium-ion batteries beat novel long-duration tech in California contest](#), *Canary Media, 01-27-22*

5. Media

- [Eight-hour lithium-ion project wins in California long-duration energy storage procurement](#), *Energy Storage News*, 01-27-22
- [Quick Bites: Energy News Roundup](#), *California Energy Markets*, 01-28-22
- [California Battery Storage Surges With New Projects and Contracts](#), *California Energy Markets*, 01-28-22
- [California Community Choice Aggregators Enter Into Storage Service Agreement](#), *American Public Power Association*, 01-29-22
- [Check out DIY Energy Saving Toolkits at Los Gatos Library](#), *The Mercury News*, 01-30-22
- [Seven California CCAs Sign On for Long-Duration Energy Storage](#), *Smart Energy Decisions*, 01-21-22
- [In the New World of Long-Duration Battery Storage, an Old Technology Holds Its Own](#), *Inside Climate News*, 02-03-22

SVCE Legislative and Regulatory Update

February 9, 2022



Regulatory Update:

1. Power Charge Indifference Adjustment (PCIA)
2. Electricity Planning and Procurement
 1. Integrated Resource Planning (IRP)
 2. Resource Adequacy (RA)
3. Net Energy Metering (NEM)

Legislative Update:

1. Governor's January Budget Proposal
2. CalCCA-sponsored bill on Transportation Electrification Program



Regulatory Update



PCIA: 2022 Rate Implementation Is Expected March 1

The ERRA Forecast Proceeding sets the generation rate for PG&E customers and the Power Charge Indifference Adjustment (PCIA) for all customers.

Implementation of the new rates

The bundled generation rate for PG&E customers is going to increase substantially (~33%).

The PCIA is going to decrease substantially (~58%).

These changes offset some of the negative impacts of the 2021 rates.

Next Steps: CPUC is scheduled to vote on the decision on February 10th. If adopted, the new rates are targeted to be included in SVCE customer March bills.



PCIA: Allocation of RPS Resources to CCA's is Underway

In May 2021, the CPUC granted CCA's access to legacy RPS resources beginning in 2023.

Implementing the new PCIA rules

Q1 2022: PG&E will work with the CCA's to finalize the contract and allocation share

Next Steps: Staff is analyzing whether or not to accept the allocation, and, if yes, whether all or a portion should be accepted.



Electricity Planning and Procurement: New rules imposed and more changes expected

Procurement obligations continue to evolve throughout 2022

Newsom's 2021 Emergency Proclamation

- Orders energy agencies to ensure energy supply meets demand in extreme events

New Procurement Mandates in 2021

- LSEs must procure 11,500 MW of new electricity by 2026
 - SVCE is responsible for and making progress towards procuring 237 MW
- IOUs must have 2000 – 3000 MW to be online by summer 2022 and summer 2023

New Reliability Rules in Development in 2022

- CPUC is restructuring its Resource Adequacy program



IRP: CPUC considering additional measures to enhance summer reliability during 2022-23

Integrate Resource Planning (IRP) is a process to ensure that the electricity sector is on track to meet its portion of the State's GHG reduction and reliability goals.

New procurement mandate for utilities to meet summer needs

December 2021: CPUC adopted new requirements to meet 2022-2023 summer reliability, which

- Orders PG&E to procure demand and supply-side resources of 900 – 1,350 MW to meet summer reliability needs. Procurement costs will be recovered via IOU and CCA customers through rates.
- Expands use of a central procurement entity to procure reliability resources located in local areas.
- Encourages accelerated online dates for procurement ordered by previous mandates.
- Expands the Emergency Load Reduction Program (ELRP), where customers reduce usage during times of high grid stress, to residential customers and increases the incentive from \$1 to \$2/kWh to increase participation.

Next steps: The utilities begin implementation of new requirements. SVCE staff is also planning for its 2022 IRP filing due in September.



RA Program: Reform of the RA Program is underway

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

January 2022: Six months of stakeholder workshops concluded.

- Two main proposals have been proposed during the Workshops that have different impacts on the SVCE portfolio.
- Workshops focused on different aspects of the proposals.

Next steps: Staff analyzing proposals to assess impacts on portfolio. A proposed decision expected in Q2 2022.



NEM: CPUC proposes major revisions to the program

Net Energy Metering (NEM) compensates customers who generate their own electricity, predominately from rooftop solar, to serve their onsite electricity needs.

Proposed NEM successor tariff

December 2021: CPUC issued a proposed decision establishing a new tariff revising the NEM program, which:

- Reduces the NEM compensation from the retail rate (~25 cents/kWh) to a rate based on the “avoided cost” of generation (~5 cents/kWh).
- Establishes a new monthly "Grid Participation Charge" (averaging \$40 – 50/month for typical installation).
- Compensates new NEM customers with a “Market Transition Credit” of \$5.25/month per kW of solar installed, declining 25%/year.
- Exempts low-income customers from grid connection fees.

January 2022: SVCE staff issued a letter to the CPUC

- Staff expressed concern with the Grid Participation Charge which would only be imposed on NEM customers.
- Staff expressed support for the CPUC’s aim to encourage electrification, adoption of solar+storage and more access to solar in low-income communities.

Next Steps: The CPUC withdrew its proposed decision from its meeting agenda. Staff is expecting a revised proposed decision from the assigned Administrative Law Judge or an Alternate Proposed Decision from a commissioner in the future.



Legislative Update



2022 Governor's January Budget

Governor prioritizing climate investments, including these highlights:

Program	Amount of Funding	Notes
Long Duration Storage	\$380 million (over 2 years)	Support “projects throughout the state.”
Offshore Wind	\$45 million (over 2 years)	Establishes new Offshore Wind Deployment Facility Improvement Program to help with investment plans, engineering and environmental review, and cost-share funding for federal grants.
Building Decarb – Consumer Rebates	\$300 million (over 2 years)	Rebates for building upgrades
ZEV Fueling Infrastructure Grants	\$900 million (over 5 years)	Low-income neighborhood infrastructure
Community-based plans and Sustainable Community Strategies	\$419 million	Increasing access in low-income communities, clean mobility options, sustainable/equitable transportation projects, and established community mobility plans.



CalCCA sponsoring Transportation Electrification Bill

Assemblymember Grayson authoring the bill.

New Transportation Electrification Bill

- CalCCA-sponsored bill would explicitly authorize CCAs to administer transportation electrification program funds at the CPUC.
- This authorization is similar to what already exists for energy efficiency programs.



FEBRUARY 2022

MARCH 2022

APRIL 2022

MAY 2022

<p>Board of Directors, February 9:</p>	<p>Board of Directors, March 9: <u>Consent:</u> Minutes January 2022 Treasurer Report Zglobal Agreement <u>Regular Calendar:</u> Financial Audit Results Midyear Budget eHub Year 1 Recap & Survey Results "Double Down" on Decarb Programs CC Power LDS Contract #2</p>	<p>Board of Directors, April 13: <u>Consent:</u> Minutes February 2022 Treasurer Report <u>Regular Calendar:</u> TBD</p>	<p>Board of Directors, May 11: <u>Consent:</u> Minutes March 2022 Treasurer Report <u>Regular Calendar:</u> TBD</p>
<p>Executive Committee, February 25: eHub Year 1 Recap & Survey Results "Double-Down" on Decarb Programs</p>	<p>Executive Committee, March 25: Reach Codes 2.0 Update Update on Programs Equity Framework</p>	<p>Executive Committee, April 22: TBD</p>	<p>Executive Committee, May 27: TBD</p>
<p>Audit Committee, TBD: Receive Audit Results</p>	<p>Finance & Administration Committee (Mar/Apr TBD): TBD</p>		

SVCE Board Action Requested - February Update

Date	Meeting Where Requested	Request/Comment	Comments	Department
1/28/2022	Executive Committee	Request for information re: solar plus storage incentives (Dir. Ellahie)	Staff has reached out to Dir. Ellahie with information on SVCE's program with Sunrun which offers customers a \$500 rebate	Account Services & Comm
8/11/2021	Board Meeting	Power Supply Contract with the California Community Choice Financing Authority. Note: Under discussion, Director Wiley asked if it would be advantageous to have periodic check-ins to assure that the Board was satisfied with results. CEO Balachandran stated he would take that as an action item to the Finance Committee and bring it back to the Board for discussion.	Staff is keeping this in mind as we plan for future agenda items	Finance & Admin
5/12/2021	Board Meeting	Training request on how to manage a potential new working environment and check-in 6 months to 1 yr after implementation of a possible hybrid work structure	Staff will keep this in mind as a policy is developed	Executive
3/3/2021	Audit Committee	SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)	Staff will consider this when looking at overall risk mitigation	Finance & Admin
8/28/2020	Executive Committee	Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)	Purchasing Policy does not currently have a formal duration limit; will update Purchasing policy pending discussion with CFO	Finance & Admin



Staff Report – Item 3

Item 3: Appoint 2022 Board Committee Members

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 2/9/2022

RECOMMENDATION

Staff recommends the Board appoint members to the 2022 Legislative and Regulatory Ad Hoc Committee, Audit Committee, and Finance and Administration Committee through February 2023.

BACKGROUND

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

ANALYSIS AND DISCUSSION

Legislative and Regulatory Ad Hoc Committee

This Ad Hoc Board Committee was formed on January 12, 2022 to address the following priorities:

- Expansion of Direct Access
- Reliability Planning and Procurement
- Transparency and Accountability in Ratemaking
- Public Safety Power Shutoffs & Wildfire Prevention and Cost Recovery
- Affordability and Equity
- Decarbonization

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

Composition	Expressed Interest for 2022
<ul style="list-style-type: none"> • Not more than six Directors/Alternate Directors of the Board (6 total) • No more than one eligible Committee Member shall represent their respective Member Agency • Alternates to appointed committee members is prohibited 	<ol style="list-style-type: none"> 1. Dir. Liz Gibbons, Campbell 2. Dir. Zach Hilton, Gilroy 3. Dir. Rob Rennie, Los Gatos 4. Dir. Yvonne Martinez Beltran, Morgan Hill 5. Dir. Margaret Abe-Koga, Mountain View 6. Dir. Gustav Larsson, Sunnyvale

Agenda Item: 3**Agenda Date: 2/9/2022****Audit Committee**

The purpose of the Audit Committee is to oversee the accounting and financial reporting process and the audit of SVCE's financial statements by the independent auditor. The Audit Committee meets twice a year and as needed, is comprised of a minimum of three and up to six Directors or Alternate Directors of the Board, and no more than one eligible committee member shall represent their respective member agency.

Composition	2021 Roster	Expressed Interest for 2022
<ul style="list-style-type: none"> • Minimum of three and no more than six Directors of the Board or appointees by the Board (3-6 total) • Board Members, Alternate Board Members, and member agency staff nominated by a Board Member can serve • No more than one eligible Committee Member shall represent their respective Member Agency • Alternates to appointed committee members is prohibited 	<ol style="list-style-type: none"> 1. Committee Chair Bryan Mekechuk, Monte Sereno 2. Committee Vice Chair Hung Wei, Cupertino 3. Dir. Evelyn Chua, Milpitas 4. Dir. Yvonne Martinez Beltran, Morgan Hill 	<ol style="list-style-type: none"> 1. Alt. Dir. Bryan Mekechuk, Monte Sereno 2. Dir. Margaret Abe-Koga, Mountain View 3. Alt. Dir. Sergio Lopez, Campbell 4. Vickie Rahman, Finance Analyst, Gilroy *City of Gilroy Staff Member nominated by Dir. Hilton

Finance and Administration Committee

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

Composition	2021 Roster	Expressed Interest for 2022
<ul style="list-style-type: none"> • Minimum of three and no more than six Directors of the Board or appointees by the Board (3-6 total) • Board Members, Alternate Board Members, and member agency staff nominated by a Board Member can serve • No more than one eligible Committee Member shall represent their respective Member Agency • Alternates to appointed committee members is prohibited 	<ol style="list-style-type: none"> 1. Committee Chair Rob Rennie, Los Gatos 2. Committee Vice Chair Bryan Mekechuk, Monte Sereno 3. Dir. Liz Gibbons, Campbell 4. Dir. Yvonne Martinez Beltran, Morgan Hill 5. Dir. Larry Klein, Sunnyvale 	<ol style="list-style-type: none"> 1. Dir. Liz Gibbons, Campbell 2. Alt. Dir. Hung Wei, Cupertino 3. Dir. Rob Rennie, Los Gatos 4. Alt. Dir. Bryan Mekechuk, Monte Sereno 5. Dir. Margaret Abe-Koga, Mountain View 6. Dir. Larry Klein, Sunnyvale

Agenda Item: 3**Agenda Date: 2/9/2022**

Attached are two documents: 1) the 2022 Committee Matrix Worksheet which summarizes who served on these respective committees in 2021 and who has expressed interest for 2022, and 2) a visual snapshot of the proposed 2022 committee assignments for SVCE.

STRATEGIC PLAN

Not applicable.

ALTERNATIVE

There is no alternative to selecting members of SVCE's committees.

FISCAL IMPACT

No fiscal impact as a result of selecting SVCE's committee members.

ATTACHMENTS

1. 2022 Committee Matrix Worksheet
2. 2022 Proposed SVCE Committee Assignments

2022 Committee Matrix Worksheet

<u>Committee</u>	<u>Description</u>	<u>Meeting Details</u>	<u>2021 Roster</u>	<u>Interest in serving for 2022</u>
<p>2022 Legislative and Regulatory Ad Hoc Committee</p>	<p>This Ad Hoc Board Committee was formed on January 12, 2022 to address the following priorities:</p> <ul style="list-style-type: none"> •Expansion of Direct Access •Reliability Planning and Procurement •Transparency and Accountability in Ratemaking •Public Safety Power Shutoffs & Wildfire Prevention and Cost Recovery •Affordability and Equity •Decarbonization <p>Makeup: This committee will consist of no greater than six members. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. No more than one Committee member shall represent a particular member agency.</p>	<p>Time: TBD Frequency: As needed Location: Virtual</p>	<p>N/A</p>	<ul style="list-style-type: none"> •Dir. Liz Gibbons, Campbell •Dir. Zach Hilton, Gilroy •Dir. Rob Rennie, Los Gatos •Dir. Yvonne Martinez Beltran, Morgan Hill •Dir. Margaret Abe-Koga, Mountain View •Dir. Gustav Larsson, Sunnyvale
<p>Finance & Administration Committee</p>	<p>The Finance and Administration Committee works with SVCE staff on items related to financial and administrative issues that impact the agency.</p> <p>Makeup: The Finance & Administration Committee consists of no fewer than three members and no greater than six members, and can be Board members, Alternate Board members, or a Board appointed Agency staff member. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Not more than one Committee member shall represent a particular member agency.</p>	<p>Time: TBD Frequency: Quarterly & as needed Location: Virtual</p>	<ul style="list-style-type: none"> •Rob Rennie (Chair) •Bryan Mekechuk (Vice Chair) •Yvonne Martinez Beltran •Liz Gibbons •Larry Klein 	<ul style="list-style-type: none"> •Dir. Liz Gibbons, Campbell •Alt. Dir. Hung Wei, Cupertino •Dir. Rob Rennie, Los Gatos •Alt. Dir. Bryan Mekechuk, Monte Sereno •Dir. Margaret Abe-Koga, Mountain View •Dir. Larry Klein, Sunnyvale
<p>Audit Committee</p>	<p>The Audit Committee works with SVCE staff on the initiation and receiving of the annual audit.</p> <p>Makeup: The Audit Committee consists of no fewer than three members and no greater than six members, and can be Board members, Alternate Board members, or a Board appointed Agency staff member. An alternate Director may not attend a Committee meeting on behalf of an absent regular Director. Not more than one Committee member shall represent a particular member agency.</p>	<p>Time: TBD Frequency: Twice yearly & as needed Location: Virtual</p>	<ul style="list-style-type: none"> •Bryan Mekechuk (Chair) •Hung Wei (Vice Chair) •Evelyn Chua •Yvonne Martinez Beltran 	<ul style="list-style-type: none"> • Alt. Dir. Sergio Lopez, Campbell • Vickie Rahman, Finance Analyst, Gilroy • Alt. Dir. Bryan Mekechuk, Monte Sereno • Dir. Margaret Abe-Koga, Mountain View

2022 SVCE Assignments and Committee Interests

Director	Agency	Executive Committee <i>5 Members</i>	2022 Leg and Reg Ad Hoc Committee <i>Meets as needed 6 Interested Members</i>	Audit Committee <i>Meets Twice Yearly & as needed 4 Interested Members</i>	Finance and Administration Committee <i>Meets Quarterly & as needed 6 Interested Members</i>
Liz Gibbons, Chair	Campbell	●	✓		✓
Sergio Lopez	Campbell (Alternate Director)			✓	
George Tyson, Vice Chair	Town of Los Altos Hills	●			
Jon Willey	City of Cupertino				
Hung Wei	City of Cupertino (Alternate Director)				✓
Zach Hilton	City of Gilroy		✓		
Vickie Rahman	City of Gilroy (Staff - Finance Analyst)			✓	
Neysa Fligor	City of Los Altos	●			
Rob Rennie	Town of Los Gatos		✓		✓
Evelyn Chua	City of Milpitas				
Javed Ellahie	City of Monte Sereno	●			
Bryan Mekechuk	City of Monte Sereno (Alternate Director)			✓	✓
Yvonne Martinez Beltran	City of Morgan Hill	●	✓		
Margaret Abe-Koga	City of Mountain View		✓	✓	✓
Tina Walia	City of Saratoga				
Larry Klein	City of Sunnyvale				✓
Gustav Larsson	City of Sunnyvale (Alternate Director)		✓		
Otto Lee	County of Santa Clara				

● = Confirmed appointment for 2022

✓ = To be ratified at Feb. 9, 2022 Board of Directors Meeting



Staff Report – Item 4

Item 4: Adopt Resolution to Implement SVCE Generation Rate Changes Effective March 2022

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
Don Bray, Director of Account Services and Community Relations

Date: 2/9/2022

RECOMMENDATION

Staff recommends that the Board of Directors adopt Resolution 2022-06, authorizing the CEO to implement SVCE generation rate changes at a 1% discount to PG&E generation rates taking effect when PG&E implements its next generation rate change, which is expected to occur on March 1, 2022.

Staff also seeks the Board's recommendation on any additional amount of funding to be transferred from the operating budget to the programs decarbonization fund. Depending on the Board's recommendation, staff will accordingly update the budget and will present it at the next Board meeting as part of the mid-year budget update.

EXECUTIVE COMMITTEE AND FINANCE AND ADMINISTRATION COMMITTEE REVIEWS

At the time the Executive Committee (November 17, 2021) and the Finance and Administration Committee (November 29, 2021) met to consider SVCE rate changes, we were expecting as in previous years that the CPUC in December would issue its decision on PG&E's Energy Resource Recovery Account (ERRA) Forecast Application authorizing PCIA and PG&E generation rate changes taking effect January 1, 2022. However, late in November, the Administrative Law Judge (ALJ) issued a ruling requesting PG&E to provide additional data on ERRA and other balancing accounts, which delayed the implementation of the rate changes. Based on a revised schedule, the CPUC issued the Proposed Decision on January 24, 2022, and is expected to issue its final decision on February 10, 2022, authorizing new rates effective March 1, 2022.

Although the implementation of the rate change is delayed, the scope of discussion at both Committees is still relevant. The discussion at both Committees centered on improved SVCE budget projections resulting from expected higher margins because of lower PCIA rates and higher PG&E generation rates than assumed in the fiscal year 2021-2022 (FY 22) budget. Considering the improved margins, the Committees engaged in robust discussion on providing additional customer discount, increasing funding for the decarbonization programs, and building adequate reserves to withstand risks from extreme but plausible events that can create significant financial hardship for the organization.

At the time of the Committee meetings, we were expecting the current fiscal year budget projection of contribution to reserves to increase from \$36.5 million to \$109 million. As explained in the next section, we are now projecting an increase to about \$61.9 million because of the delayed rate changes.¹ The loss of additional revenues in January and February of 2022, because of delayed implementation of rate changes, is

¹ This revised budget projection mainly accounts for updates to only revenues and power supply costs. Staff will revise the full budget projections as part of the mid-year budget update in March 2022.

Agenda Item: 4**Agenda Date: 2/09/2022**

now shifted to the next calendar year because the CPUC is expected to amortize the rate changes over a 12-month period beginning March 1, 2022.

At the November 17, 2021 meeting, the Executive Committee (EC) reached consensus to spend an additional \$20 million from the FY 22 budget because of the improved budget projections. On how to spend the money between decarbonization programs and additional customer discount, the EC decided to have that discussion with the full Board.

At the special session of the Finance and Administration Committee on November 29, 2021, the Committee voted unanimously to recommend that the Board maintain a 1% customer discount rate and to target a transfer of \$20 million to the Programs Fund at the March 2022 mid-year budget update.

BACKGROUND

When the Board approved the FY 22 budget in September 2021, the Board authorized to maintain the 1% customer discount to PG&E generation rates despite significant anticipated reduction in PCIA and increase in PG&E Generation rate. The Board agreed to revisit the discount rate at the December 2021 meeting expecting more certainty on PCIA and PG&E generation rates.

On November 8, 2021, PG&E filed its updated 2022 Energy Resource Recovery Account (ERRA) Forecast Application that showed higher SVCE implied margins than assumed in the FY 22 budget. Relative to the FY 22 budget assumptions, PG&E's generation rate was expected to increase by about 24% and PCIA was expected to decrease by about 54%, thereby improving SVCE's margin by about 44% in the calendar year 2022. As discussed in the previous section, the CPUC delayed issuing its ruling on the ERRA Application decision and is now expected to issue its decision on February 10, 2022. Based on the proposed decision issued on January 24, 2022, staff estimates that relative to the FY 22 budget assumptions, PG&E's generation rate will increase by about 21% and PCIA will decrease by about 20%, thereby improving SVCE's margin by about 32% over the next 12 months starting March 1, 2022.²

ANALYSIS & DISCUSSION

The table below shows the estimated budget projections³. These estimates are based on rates derived from the CPUC's Proposed Decision issued on January 24th, and the final rates are expected to be available in late February.

FY 22 Budget (\$ in thousands)	Budget	With Revised Margins **	Variance
Revenues*	342,105	376,802	34,697
Power Supply Cost	273,561	282,835	9,274
Operating Margin	68,544	93,967	25,423
Other Costs	32,060	32,060	-
Net Contribution to Reserves	36,484	61,907	25,423

* Potential customer write-offs included in other costs.

** Assumes 1% customer discount.

² Relative to the current rates, PG&E's generation rate is expected to increase by about 33% and PCIA is expected to decrease by about 58%, thereby improving SVCE's margin by about 100%.

³ The budget numbers in the table does not include the \$600,000 of transfer to Programs Fund for savings from PG&E nuclear allocation approved by the Board at the November 2021 meeting.

Agenda Item: 4**Agenda Date: 2/09/2022**

The column titled "Budget" displays that at the time the FY 22 budget was adopted, the anticipated contribution to reserves was about \$36.5 million. The revised margins column shows that if we were to maintain the customer discount to PG&E generation rates at the current level of 1%, then the contribution to margin would increase to about \$61.9 million because of the significant increase in PG&E generation rates and drop in the PCIA.

Given the improved budget projections and in deciding how to increase any spending by providing additional customer discount and/or additional funding towards SVCE's decarbonization programs fund, staff recommends the Board consider several risk factors. The higher margins result from extreme increases in power market prices, which in risk terminology can be referred to as a black-swan event. SVCE is fortunate that this black swan event occurred in its favor; however, future black-swan events can affect us adversely and draw substantial funds from the reserves and/or cause SVCE to increase customer rates to uncompetitive levels. As a result, it's important to have sufficient reserves that can withstand an adverse black-swan event. Also, PCIA and PG&E generation rates are based on estimates for 2022 cost of power. If the actual realized power cost is lower than the estimates, then the PCIA will be undercollected and PG&E's ERRA balance will be overcollected⁴. This market outcome would result in a higher 2023 PCIA and lower PG&E generation rate thereby reducing SVCE margin.

Staff modeled an adverse black-swan event for calendar year 2023 where market price for power plunges to historical low levels, near the one percentile of the recent power forward market prices. The analysis was conducted in November 2021 and was shared with the Executive Committee and the Finance and Administration Committee. Given the delay in the CPUC schedule, staff did not have sufficient time to update the analyses. While the absolute value of the numbers in the table will be different when accounting for final PG&E generation rate and PCIA values, the relative values among the modeled scenarios should be similar and therefore, the overall message from the analyses remains pertinent.

(\$ in thousands)	Cal 2023 Forecast	Stress Test 1.**	Stress Test 2.***
Revenues*	394,111	96,629	96,629
Power Supply Cost	251,249	219,867	251,249
Operating Margin	142,862	(123,238)	(154,620)
Other Costs	33,663	33,663	33,663
Net Contribution to Reserves	<u>109,199</u>	<u>(156,901)</u>	<u>(188,283)</u>

* Potential customer write-offs included in other costs.

** Hedges for Cal 2023 at current 70% level. Assumes 1% customer discount.

*** Assumes Cal 2023 is hedged 100% at today's prices. Assumes 1% customer discount.

The Cal 2023 Forecast column shows the current estimated contribution to reserves (for calendar year 2023) based on the November 2021 power market forward prices of about \$109 million. If market prices drop to the current one percentile level (for 2022 and 2023), which is close to where the market was trading about a year ago for power to be delivered in 2022, and depending on the level of hedges in place, SVCE could draw about \$157 million (70% hedged case) to \$188 million (100% hedged case) from the reserves. SVCE's reserves at the end of December 31, 2021 is at \$154 million.

⁴ The ERRA account tracks PG&E's cost to its generation customers (bundled customers) and the new generation rates will be based on the current forward prices or estimate for the future price of power. If the actual prices are lower than the forward prices used to set rates, then PG&E will overcollect because its actual cost of serving its customers will be lower than the estimate of power prices used to set rates. As a result, in 2023 PG&E will return the overcollection back to its customers, which will result in lower PG&E generation rates.

Agenda Item: 4

Agenda Date: 2/09/2022

Staff recommends that SVCE build reserves such that it can withstand the above modeled stress tests with 120 days of cash remaining, the minimum reserve target per the Board-approved Reserves Policy. The \$157 million and \$188 million draw from reserves under the stress test scenario translates to about 189 and 227 days cash on hand (DCOH), respectively. On an expected basis, the forecast DCOH at the beginning of 2023 is 348 (based on November 2021 analysis). Therefore, if the modeled stress conditions were to occur in 2023, the DCOH would drop to either 121 (348 less 227) or 159 (348 less 189). To maintain 120 DCOH, under the fully hedged stress test scenario, leaves one DCOH for additional expenditure, which is equivalent to about \$1 million and leaves 39 DCOH (159 less 120), under the 70% hedged stress test scenario, which is equivalent to about \$32 million. The table below summarizes these results.

Stress Tests	Beg. 2023 Forecast of Reserves (DCOH)	Draw on Reserves from Stress Case (DCOH)	Remaining (DCOH)	Available for Use* (Maintaining Min. Reserve Threshold of 120 DCOH)	Available for Use in \$ Millions
Price Drop to 1 percentile (100% Hedged Case)	348	227	121	1	1
Price Drop to 1 percentile (70% Hedged Case)	348	189	159	39	32

* Target to maintain 120 DCOH under the stress case scenario while ensuring that on an expected basis DCOH does not drop below the target threshold of 230 in FY22.

Based on the above stress test analyses, staff recommends that the Board consider keeping the maximum additional expenditure within the range of \$1 to \$32 million. From this range, staff recommends additional spending from the FY 22 budget of no more than \$20 million.

The table below shows some options for the Board's consideration in allocating the \$20 million between additional funding for programs and additional customer discount.⁵

Allocate to Programs Double Down Strategy* (Spend will occur over 3-to-5-year period)	Customer Discount % Relative to PG&E Generation Rate	Monthly Savings to Average Residential Customer	Monthly Savings to Small Commercial Customer	Monthly Savings to Medium Commercial Customer
20 million	1% (existing discount)	\$0.75	\$2.68	\$31.00
16.5 million	2% (add'l 1%)	\$1.50	\$5.36	\$62.00
13 million	3% (add'l 2%)	\$2.25	\$8.04	\$93.00

*Inclusive of equity program allocation to focus on low-income customers.

Timing and Uncertainty of CPUC's Approval of PG&E's ERRA Application

Based on the current schedule, the CPUC is expected to issue its final decision on PG&E generation rates and PCIA changes at its February 10, 2022, meeting. If the CPUC is delayed in issuing the decision, staff will implement the rate changes as soon as possible once PG&E publishes the final rates. Staff is aiming to have the new rates effective on the same day as the changes to PG&E's generation and PCIA rates go in effect. The current SVCE rates are very low, and a delay could cost SVCE as much as \$580,000 a day in forgone revenues.

SVCE's Data Services partner Calpine normally requires a minimum of two weeks to implement new rates into the billing system. Staff is working with Calpine to expediate the implementation of the rates. There's a small chance that if final PG&E rates are received too late relative to when they go in effect, SVCE may delay the

⁵ The amount allocated to the programs fund will not reduce the net contribution to reserves until the expense is incurred.

Agenda Item: 4**Agenda Date: 2/09/2022**

billing of generation charges for some customers to the following month. In other words, some customers may see two months of generation charges in the following month.

Rate Design and Update Methodology

SVCE will update all GreenStart generation rates to be exactly 1% below PG&E's corresponding generation rate, including surcharges (PCIA and Franchise Fee). This rate design approach has been used since the launch of SVCE and has the advantages of comparability and ease of customer communications in that the generation cost savings will be set at 1% for all customer rate classes.

100% Renewable Energy Option

The GreenPrime rate for 2022, SVCE's 100% renewable energy option, will remain unchanged from 2021. The charge is equivalent to the per unit cost difference between the default energy mix of 50% eligible renewable/carbon free energy and the 100% eligible renewable energy mix. This premium is calculated to be \$0.008 per kWh, which is added to the otherwise applicable rate for the default GreenStart service offering.

STRATEGIC PLAN

The recommendations support SVCE Strategic Plan Goal 13 – "Commit to maintaining a strong financial position" and the accompanying measures, "Set balanced rates that maintain customer value and support SVCE's financial stability" and "Balanced budget that achieves cash reserve targets and maintains customer value".

FISCAL IMPACT

The estimated financial impact of this recommendation for the FY2021-22, is an increase in revenues for the current fiscal year from \$342 million to \$378 million. This would be reflected in more detail in the mid-year budget update in March 2022. Every 1% increase in customer discount will reduce contributions to reserves of about \$3.5 million over the remaining months of the FY 22 (March 2022 to September 2022). Any additional spending on decarbonization programs will further reduce the contribution to reserves.

ATTACHMENT

1. Resolution 2022-06, Approving Customer Generation Rates

SILICON VALLEY CLEAN ENERGY AUTHORITY

RESOLUTION NO. 2022-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING CUSTOMER GENERATION RATES

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

WHEREAS, at the June 8, 2016 Board of Directors Meeting, the Board adopted the policy that the Authority’s customer generation rates for the default service will be 1% lower than Pacific Gas & Electric’s generation rates in place as of January 2017; and the policy allows reexamination of the rates, provided significant deviations in market prices or other extraordinary circumstances mandate an adjustment to the rates; and

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

WHEREAS, on February 10, 2021, the Board of Directors adopted Resolution No. 2021-04 which approved the methodology for the customer generation rates that currently are in effect; and

WHEREAS, due to the expected significant decrease in the Power Cost Indifference Charge (PCIA) and increase in PG&E generation rates and for the reasons described in more detail in the agenda report, staff is recommending maintaining SVCE’s generation rate discount at 1% effective when PG&E implements its next generation rate change, which is expected to occur on March 1, 2022; and

WHEREAS, since PG&E is not expected to issue its final customer generation rates until later in February 2022, the Board of Directors desire to grant the Chief Executive Officer the authority to adjust the Authority’s current electric generation rates for its customers when PG&E finalizes its 2022 rates.

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

Section 1. Upon the release of PG&E’s final customer generation rates, the Chief Executive Officer is hereby authorized to amend the Authority’s 2022 Electric Generation Rates Schedule adopted by Resolution No. 2021-04 to provide for a 1% discount from PG&E’s generation rates.

Section 2. The Authority’s electric generation rates, as adjusted by the Chief Executive Officer pursuant to Section 1 above, shall become effective within 15 days after PG&E releases its 2022 customer generation rates.

The Authority’s adjusted electric generation rates shall be set forth in a 2022 Electric Generation Rates Schedule. The Chief Executive Officer shall provide a copy of the 2022 Electric Generation Rates Schedule to the Board of Directors at its first meeting after the 2022 electric generation rates are adjusted.

Section 3. Resolution No. 2021-04 is hereby rescinded upon the effective date of the 2022 Electric Generation Rates Schedule.

ADOPTED AND APPROVED this 9th day of February 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Secretary



Staff Report – Item 5

Item 5: Authorize the Chief Executive Officer to Execute Necessary Agreements for Tumbleweed Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and LS Power’s Tumbleweed LLC

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources

Date: 2/9/2022

RECOMMENDATION

Staff recommends that the Board delegate authority to the Chief Executive Officer (CEO) to execute on behalf of Silicon Valley Clean Energy Authority (SVCE) as a member of California Community Power (“CC Power”) the following agreements and any necessary ancillary documents for the Tumbleweed Energy Storage for Long Duration Storage (LDS) with a delivery term of 15 years starting at the Commercial Operation Date on or about June 1, 2026, for a quantity not to exceed 22.41 MW and amount not to exceed \$100 million:

1. Project Participation Share Agreement (PPSA) between Silicon Valley Clean Energy Authority, California Community Power and participating community choice aggregators (CCAs) – Attachment 1
2. Energy Storage Service Agreement (ESSA) - Buyer Liability Pass Through Agreement (BLPTA) between Silicon Valley Clean Energy Authority, California Community Power and Tumbleweed Energy Storage, LLC – Attachment 2
3. Operations Agreement (COA) between Silicon Valley Clean Energy Authority, California Community Power and participating CCAs for Tumbleweed – To be developed, not attached.

BACKGROUND

Through the 2020 Integrated Resource Planning (IRP) proceeding, the California Public Utilities Commission (CPUC) had identified the need for additional storage including longer-duration storage to enable grid integration of a large fleet of intermittent resources to meet California’s greenhouse gas emission reduction goals and to replace several natural gas once-through-cooling (OTC) resources and the Diablo Canyon Nuclear Power Plant (DCNPP) slated to retire between 2023 and 2025.

In October 2020, SVCE along with nine other CCAs issued a request for offers (“Joint LDS RFO”) with the intent to procure cost effective LDS resource(s) to meet each CCA’s respective portfolio needs and in anticipation of potential procurement mandates by the CPUC. Subsequently, in June 2021, as part of the 2020 IRP the CPUC issued through a decision order (D.21-06-035) the Mid-term Reliability Procurement Order (“MTR Order”) requiring jurisdictional load serving entities (LSEs), such as SVCE, to procure and/or develop a collective 11,500 MW of new capacity by 2026. Included within the MTR Order is an identified need of 1,000 MW of LDS. SVCE’s obligation is approximately 22 to 26 MW depending on the CPUC’s final determination of effective load carrying capacity (ELCC) factors for LDS resources.

In February 2021, CC Power was formed by ten CCAs, including SVCE, to share resources and risk related to the procurement of difficult to acquire resources. Once formed, CC Power took over the Joint LDS RFO including shortlisting of projects and coordination of negotiations and development of necessary agreements.

Agenda Item: 5**Agenda Date: 2/9/2022**

Through the Joint LDS RFO, projects were evaluated, ranked and selected for shortlisting with the objective of meeting the RFO's cost effectiveness goals, criteria and requirements under the MTR Order and CC Power's enhanced contract conditions for labor, environment and environmental justice. Three projects were identified for consideration including LS Power's Tumbleweed. Of the original nine CCAs participating in the Joint LDS RFO in addition to SVCE, six CCAs have agreed to participate in the Tumbleweed LDS Project including:

1. Clean Power San Francisco (CPSF)
2. Peninsula Clean Energy (PCE)
3. Redwood Coast Energy Authority (RCEA)
4. San Jose Clean Energy (SJCE)
5. Sonoma Clean Power Authority (SCPA)
6. Valley Clean Energy (VCE)

In the aggregate the long duration storage mandate for the participating members, measured in Net Qualifying Capacity (NQC), is 96.5 MW. Table 1 is a summary of the MTR Order and PPSA entitlement share for each of the participating CCAs.

Table 1: MTR Order Net Qualifying Capacity (NQC) and Tumbleweed Entitlement Share

CCA	CPUC Capacity Obligation MW NQC	PPSA Entitlement Share	Tumbleweed Allocation (MW)	Tumbleweed Allocation NQC	Credit Rating
CPSF	15.5	16.06%	11.08	8.67	Moody's A2
PCE	19	19.69%	13.59	10.62	Moody's Baa2 Fitch BBB+
RCEA	3.5	3.62%	2.50	1.95	-
SJCE	21.5	22.28%	15.37	12.02	-
SVCE	20.5	21.25%	14.66	11.47	Moody's Baa2 S&P A
SCPA	12.5	12.95%	8.94	6.99	S&P A
VCE	4	4.15%	2.86	2.24	-
Total	96.5	100.00%	69.00	53.96	

Tumbleweed meets the conditions established in the MTR Order for LDS resources including the minimum eight-hour discharge duration, ten year contract term, start date and ability to meet resource adequacy requirements. If each participating CCA approves its PPSA entitlement share, SVCE will meet approximately 55% of its MTR Order requirements.

The Executive Committee at its November 17, 2021 meeting reviewed the Tumbleweed agreements and directed the CEO to vote on behalf of SVCE support of the Tumbleweed project at the CC Power Board meeting. The CC Power Board unanimously approved *Resolution No. R22-01-02 - Approval of Tumbleweed LDS Project and Authorization to Execute Associated Agreements (Attachment 3)* at its January 19, 2022 meeting. On January 24, 2022 CC Power and LS Power executed the Tumbleweed ESSA. The CCAs have 90 days from the ESSA effective date to get approval of the necessary agreements. Failure to gain approval will result in a termination of the Tumbleweed ESSA.

ANALYSIS & DISCUSSION

The Tumbleweed project is a 69 MW/552 MWh lithium-ion battery storage facility located in Kern County, CA. The anticipated commercial operations date of the project is June 2026. SVCE's expected share of the agreement is 21.25% or 14.66 MW/117 MWh.

Agenda Item: 5**Agenda Date: 2/9/2022****Overview of Project**

Project Name	Tumbleweed Energy Storage, LLC
Technology	Li-Ion Storage – 8 hour discharge duration
Storage Capacity	69 MW / 552 MWh
Commercial Operation Date & Term	6/1/2026, 15 years
Developer	REV Renewables, a subsidiary of LS Power
Location	Kern County, CA

The project has an executed interconnection agreement with the California Independent System Operator (CAISO) for Full Capacity Deliverability Status (FCDS) for the energy storage component, meaning it will provide resource adequacy attributes in addition to energy benefits. The project will interconnect to Southern California Edison's Whirlwind substation.

Under the contract, CC Power will pay for the use of the storage project at a fixed-price rate per kW-month, with no escalation, for the full term of the contract (15 years). CC Power is entitled to all product attributes from the facility, including energy arbitrage, ancillary services, and resource adequacy. Through the PPSA, SVCE will pay for its entitlement share of the project and also receive its share of the attributes and benefits of the LDS project.

Developer

The project is being developed by REV Renewables, which is a subsidiary of LS Power. LS Power was founded in 1990 and is a development, investment and operating company focused on the power and energy infrastructure sector. LS Power has developed more than 660 miles of high voltage transmission, and developed, constructed, managed, or acquired more than 45,000 MW of power generation, including utility-scale solar, wind, hydro, natural gas-fired and battery energy storage projects.

LS Power formed REV Renewables to accelerate investment in renewable energy and storage technologies. REV owns 1.9 GW of operating energy storage across the U.S. including 600MW of operating battery energy storage. REV has an additional 1.3 GW of battery energy storage in development.

Contract Structure

This project consists of three basic agreements to which CC Power is a party and a guarantee agreement to which the participating member and the developer are parties. The LDS contract structure allocates rights and obligations, project benefits, and cost and allocation of risks and liabilities as described below:

Energy Storage Service Agreement - The ESSA is between CC Power and an LDS developer and addresses issues such as (1) project requirements and milestones, (2) price, (3) quantity, (4) term, (5) payment obligations, and other key terms.

Buyer Liability Pass Through Agreements - The Intent of the BLPTA is to mirror the liability a participating CCA would have if executing the ESSA directly with an LDS developer. Through the BLPTAs, each CCA guarantees CC Power's payment obligations in proportion to each participating CCAs' share of the project. In exchange, the LDS developer agrees to release CC Power from liability and to limit recovery from each CCA to an amount proportionate to each CCA's share of the project.

Project Participation Share Agreement - Under the PPSA, participating CCAs agree to fund CC Power's payment obligations so that CC Power can make timely payments under the ESSA. The PPSA also addresses how participating CCAs will (1) share revenue from CC Power's sales of energy and ancillary services from the LDS facility into the CAISO market, (2) direct CC Power's actions under the ESSA, and (3) step in, with a cap, to cover any member default in order to avoid a CC Power default under the ESSA.

Operations Agreement - The contracting structure for this agreement also contemplates an Operating Agreement between CC Power and the participating CCAs. This agreement will authorize retention of a

Agenda Item: 5**Agenda Date: 2/9/2022**

scheduling coordinator and establish a decision-making structure to direct the scheduling coordinator to dispatch the LDS facility. The Operations Agreement is currently in the process of being developed by the participating CCAs and will be operational in nature. No dollar expenditures are contemplated under the Operations Agreement.

Consistent with the CC Power Board direction for enhanced contracting conditions, the project will be constructed under a project labor agreement, thus assuring payment of prevailing wages and use of apprenticeship programs. The project will also adhere to CC Power environmental and environmental justice conditions.

PPSA Allocation

Each participating CCA is seeking a minimum approval authority to cover their entitlement share plus two contingencies. The first contingency is to cover the unlikely event that one large CCA does not gain the necessary approvals to move forward. In such case, rather than allowing the ESSA to terminate, the remaining CCAs will increase their entitlement share. The second contingency is intended to cover a step-up provision included in the PPSA, where if a CCA defaults after the PPSA is executed, the remaining CCAs will need to step up to take additional allocation. The step-up provision is capped at 125% of the PPSA entitlement share.

SVCE's expected entitlement share is 21.25% or 14.66 MW, however is seeking authority to receive an allocation of up to 22.41 MW to cover the two contingencies.

STRATEGIC PLAN

Execution of the Tumbleweed project agreements supports the goals of the Board adopted Strategic Plan including:

- Goal 5 - Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner
- Goal 6 - Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives

ALTERNATIVE

SVCE can decide to procure LDS resources on its own and not through CC Power. This alternative is not recommended as LDS resources are not considered cost-effective at this time and it is difficult to procure the exact amount required of SVCE via the MTR Order. Procuring on its own, may require SVCE to over-procure while participating through the LDS Project will allow SVCE to minimize the amount of capacity procured.

SVCE can choose not to abide by the MTR Order. Doing so would expose SVCE's ratepayers to significant cost in the form of "back-stop" procurement undertaken by Pacific Gas & Electric and imposed on SVCE's customers in addition to CPUC penalties imposed on SVCE.

FISCAL IMPACT

Ultimate execution of the agreements needed to effect the LDS Project will result in cost to SVCE starting in Fiscal Year 2025-26, which will be included in the budget at that time. Additional costs to administer the monitoring and implementation of the LDS Project agreements through CC Power are expected for FY 2021-22 and have been included in Operating Budget.

ATTACHMENTS

1. Project Participation Share Agreement
2. Redacted Energy Storage Service Agreement with Buyer Liability Pass Through Agreement
3. California Community Power Resolution No. R22-01-01

**TUMBLEWEED ENERGY STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT**

among

**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS
PUBLIC UTILITIES COMMISSION CLEANPOWERSF**

and

PENINSULA CLEAN ENERGY

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

ARTICLE 1 DEFINITIONS	1
1.1. Definitions.....	1
1.2. Rules of Interpretation	15
ARTICLE 2 EFFECTIVE DATE AND TERM	16
2.1. Term.....	16
ARTICLE 3 AGREEMENT	16
3.1. Transaction.....	16
ARTICLE 4 ENTITLEMENT SHARE	17
4.1. Initial Entitlement Share	17
4.2. Change of Entitlement Share.	17
4.3. Reduction of Entitlement Share to Zero	17
ARTICLE 5 OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER	17
5.1. Obligations of CCP	17
5.2. Role of CCP Board.	21
5.3. Role of CCP Manager.....	23
ARTICLE 6 PROJECT COMMITTEE	23
6.1. Establishment and Authorization of the Project Committee.....	23
6.2. Project Committee Membership	23
6.3. Project Committee Operations, Meetings, and Voting	24
6.4. Project Committee Responsibilities.....	24
6.5. Subcommittees.....	27
6.6. Representative’s Expenses.....	27
6.7. Inaction by Committee.....	27
6.8. Delegation.....	27
ARTICLE 7 OPERATING COMMITTEE	27
7.1. Operating Committee.....	27
ARTICLE 8 OPERATING ACCOUNT	28
8.1. Calculation of Estimated Monthly Project Cost.	28
8.2. Operating Account	28
ARTICLE 9 BILLING	29
9.1. Monthly Costs.....	29
9.2. Billing Statements.....	29
9.3. Disputed Monthly Billing Statement	29
9.4. Payment Adjustments; Billing Errors	29

9.5.	Payment of Invoice Amount	29
9.6.	Withdrawal of Invoice Amount from Operating Account.....	30
9.7.	Late Payments.....	30
ARTICLE 10 UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION.....		30
10.1.	Unconditional Payment Obligation.....	30
10.2.	Authorizations.....	31
10.3.	Conflicts.....	31
10.4.	Litigation.....	31
10.5.	San José Clean Energy.....	31
10.6.	Clean Power San Francisco.. ..	31
ARTICLE 11 PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS’ RIGHTS AND OBLIGATIONS UNDER THE ESSA.....		32
11.1.	CCP Rights and Obligations under the ESSA	32
ARTICLE 12 NONPERFORMANCE AND PAYMENT DEFAULT.....		32
12.1.	Nonperformance by Project Participants	32
12.2.	Payment Default.....	33
12.3.	Payment Default Notice.....	33
12.4.	Cured Payment Default.....	33
12.5.	Suspension of Project Participant’s Project Revenue Rights.....	33
12.6.	Termination and Disposal of Project Participant’s Project Rights	34
12.7.	Step-Up Invoices.....	34
12.8.	Step-Up Allocation of Project Participant’s Project Rights.....	35
12.9.	Elimination or Reduction of Payment Obligations.....	37
ARTICLE 13 LIABILITY		37
13.1.	Project Participants’ Obligations Several	37
13.2.	No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants’ and CCP Manager’s Directors, Officers, Employees Not Individually Liable.....	38
13.3.	Extent of Exculpation; Enforcement of Rights.....	38
13.4.	No General Liability of CCP	38
13.5.	Indemnification.....	38
ARTICLE 14 NOTICES		39
14.1.	Addresses for the Delivery of Notices	39
14.2.	Acceptable Means of Delivering Notice.....	39
ARTICLE 15 ASSIGNMENT		39
15.1.	General Prohibition on Assignments	39
ARTICLE 16 GOVERNING LAW AND DISPUTE RESOLUTION.....		39
16.1.	Governing Law	39

16.2. Dispute Resolution.....	40
ARTICLE 17 MISCELLANEOUS	40
17.1. Entire Agreement; Integration; Exhibits.....	40
17.2. Amendments	40
17.3. No Waiver.....	40
17.4. Severability	40
17.5. Counterparts.....	40
17.6. Electronic Delivery	40
17.7. Binding Effect.....	41
17.8. Forward Contract	41
17.9. City of San Francisco Standard Provisions.....	41
17.10. City of San José Standard Provisions.	42
17.11. Further Assurances.....	43
EXHIBIT A NOTICES.....	A-1
EXHIBIT B SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS	B-1
EXHIBIT C PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT’S ENTITLEMENT SHARE	C-Error! Bookmark not defined.
EXHIBIT D PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING.....	D-Error! Bookmark not defined.

DRAFT

TUMBLEWEED ENERGY STORAGE PROJECT PARTICIPATION SHARE AGREEMENT

PREAMBLE

This Project Participation Share Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and among the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Peninsula Clean Energy, a California joint powers authority, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a “**Project Participant**” and collectively referred to as the “**Project Participants**”) and California Community Power (“**CCP**”), a California joint powers authority. CCP and the Project Participants 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 CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the certain energy storage products of Tumbleweed Energy Storage (the “**Project**” as defined in Exhibit A of the ESSA), and CCP is to enter into an Energy Storage Service Agreement (“**ESSA**”), which is incorporated herein by this reference, with Tumbleweed Energy Storage, LLC, a Delaware limited liability company (“**Project Developer**”), providing for purchase of the energy storage products, and associated rights, benefits, and credits from the Project on behalf of the Project Participants.

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant’s associated share of the energy storage products and associated rights, benefits, and credits of the Project.

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

“**AC**” means alternating current.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and any Exhibits, schedules, and any written supplements hereto.

“**Amended Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q of the ESSA, as each is defined in the CAISO Tariff.

“**Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**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.

“**Billing Statement**” has the meaning set forth in Section 9.2 of this Agreement.

“**Buyer Liability Pass Through Agreement**” or “**BLPTA**” means, for each Project Participant, the form set forth in Exhibit L of the ESSA, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

“**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.

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” 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.

“Capital Improvements” means any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the CCP Board or (ii) required by any governmental agency having jurisdiction over the Project.

“CCP Board” means the Board of Directors of California Community Power.

“CCP Manager” means the General Manager of California Community Power.

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

“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 charge, discharge, and deliver to the Delivery Point at a particular moment and that can be purchased, sold, or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“CEQA” means the California Environmental Quality Act, as amended or supplemented from time to time.

“Chairperson” has the meaning set forth in Exhibit D.

“Change of Control” has the meaning set forth in Section 1.1 of the ESSA.

“**Charging Energy**” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by CCP’s SC or the CAISO to Project Developer, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions.

“**Commercial Operation**” has the meaning set forth in Section 1.1 of the ESSA.

“**Commercial Operation Date**” or “**COD**” has the meaning set forth in Section 1.1 of the ESSA.

“**Commercial Operation Delay Damages**” has the meaning set forth in Section 1.1 of the ESSA.

“**Communications Protocols**” has the meaning set forth in Section 1.1 of the ESSA.

“**Community Choice Aggregator**” has the meaning set forth in California Public Utilities Code § 331.1.

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

“**Construction Start**” has the meaning set forth in Exhibit B of the ESSA.

“**Construction Start Date**” has the meaning set forth in Exhibit B of the ESSA.

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

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

“**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.

“**Coordinated Operations Agreement**” means the agreement by and among CCP and all Project Participants for purposes of operating the Project.

“**Costs**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant to which it has hedged its obligations; and all reasonable attorneys’ fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

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

“Cured Payment Default” means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

“Daily Delay Damages” has the meaning set forth in Section 1.1 of the ESSA.

“Damage Payment” means the amount to be paid by the ESSA Defaulting Party to the ESSA Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a) of the ESSA.

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

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

“Defaulting Project Participant” has the meaning set forth in Section 12.1.

“Delivery Point” means the Facility Pnode on the CAISO grid.

“Delivery Term” means the period of Contract Years set forth on the Cover Sheet of the ESSA beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of the ESSA.

“Designated Fund” has the meaning set forth in Section 10.5.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet of the ESSA.

“Discharging Energy” means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by CCP’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh.

“Effective Date” has the meaning set forth in the Preamble.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

“Emission Reduction Credits” or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“**Energy**” means electrical energy, measured in kilowatt-hours or Megawatt-hours or multiple units thereof.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Energy Storage Service Agreement**” or “**ESSA**” means the agreement between CCP and Project Developer for the purchase of energy storage products of Tumbleweed Energy Storage, executed on _____.

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

“**ESSA Non-Defaulting Party**” has the meaning set forth in Section 11.2 of the ESSA.

“**Entitlement Share**” means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled “Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps”) attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

“**Entitlement Share Reduction Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Notice**” has the meaning set forth in Exhibit C.

“**Environmental Attributes**” shall mean any and all attributes 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 Facility and its displacement of conventional energy generation.

“**Estimated Monthly Project Cost**” has the meaning set forth in Section 8.1.

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

“**Expected Commercial Operation Date**” means the date set forth on the Cover Sheet of the ESSA.

“**Facility**” means the energy storage facility described on the Cover Sheet of the ESSA and in Exhibit A of the ESSA, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of the ESSA.

“**Facility Energy**” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**Facility Meter**” has the meaning set forth in Section 1.1 of the ESSA.

“**Facility Metering Point**” means the location(s) of the Facility Meter shown in Exhibit R of the ESSA.

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

“**Flexible Capacity**” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“**Flexible RAR**” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

“**Gains**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Environmental Attributes and Capacity Attributes.

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**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*, “Governmental Authority” shall not in any event include any Party, except to the extent that the Party is acting solely in its governmental capacity.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet of the ESSA, as such date may be extended pursuant to Exhibit B of the ESSA.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet of the ESSA, as such date may be extended pursuant to Exhibit B of the ESSA.

“**Installed Capacity**” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I of the ESSA, as such capacity may be adjusted pursuant to Section 5 of Exhibit B of the ESSA.

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

“**Invoice Amount**” has the meaning set forth in Section 9.2.

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

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which CCP is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Late Payment Notice**” means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

“**Late Payment Charge**” has the meaning set forth in Section 9.7.

“**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.

“**Letter(s) of Credit**” has the meaning set forth in Section 1.1 the ESSA.

“**Local Capacity Area Resource**” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirements in other regulatory proceedings or legislative actions.

“**Losses**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term of the ESSA and must include the value of Environmental Attributes and Capacity Attributes.

“**Marketable Emission Trading Credits**” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“**Month**” means a calendar month.

“**Monthly Costs**” has the meaning set forth in Section 9.1.

“**Monthly Capacity Payment**” means the payment required to be made by CCP to Project Developer each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C of the ESSA.

“**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.

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

“**Non-Defaulting Project Participant**” has the meaning set forth in Section 12.1.

“**Normal Vote**” has the meaning set forth in Exhibit D.

“**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).

“**Operating Account**” means an account established by CCP for each Project Participant pursuant to Section 8.2.

“**Operating Cost**” means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement.

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q of the ESSA.

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

“**Payment Default**” has the meaning set forth in Section 12.2.

“**Payment Default Termination Deadline**” has the meaning set forth in Section 12.6.

“**Performance Guarantees**” has the meaning set forth in Section 4.3(b) of the ESSA.

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

“**Permitted Transferee**” has the meaning set forth in Section 1.1 of the ESSA.

“**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.

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

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

“**Product**” has the meaning set forth in Section 3.1

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

“**Project**” shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the ESSA, including but not limited to all rights, liabilities, interests, and obligations associated with the Product, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and administration of the Facility and the ESSA and the rights, liabilities, interests and obligations associated therewith.

“**Project Committee**” means the committee established in accordance with Section 6.1.

“**Project Developer**” means Tumbleweed Energy Storage, LLC, a Delaware limited liability company, or assignee as permitted under the ESSA.

“**Project Participants**” means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity’s successors or assigns.

“**Project Revenue Rights**” means all rights of a Project Participant under this Agreement to any revenue associated with the Facility Energy or Ancillary Services associated with the Facility.

“**Project Rights**” means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, its right to receive the Product from the Facility, and its right to vote on Project Committee matters.

“**Project Rights and Obligations**” means the Project Participants’ Project Rights and obligations under the terms of this Agreement.

“**Proposed Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

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

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” has the meaning set forth in Section 1.1 of the ESSA.

“RA Guarantee Date” means the date by which the Facility is expected to achieve Full Capacity Deliverability Status, which is the Commercial Operation Date.

“RA Shortfall Month” has the meaning set forth in Section 1.1 of the ESSA.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Receiving Party” has the meaning set forth in Section 18.2 of the ESSA.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4 of the ESSA.

“Replacement RA” has the meaning set forth in Section 1.1 of the ESSA.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” has the meaning used in Resource Adequacy Rulings.

“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, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 21-06-035 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable

Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“**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(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), 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 Services Agreement**” means the agreement between CCP and a Scheduling Coordinator that was approved by the CCP Board pursuant to Section 5.2(a)(xiii).

“**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 Facility Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by the Project Developer for electric generation or storage facilities owned by Project Developer other than the Facility.

“**Showing Month**” means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” has the meaning set forth in Section 1.1 of the ESSA, as further described in Exhibit A of the ESSA.

“**Station Use**” means the Energy that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Step-Up Allocation Cap**” has the meaning set forth in Section 12.8(a).

“**Step-Up Invoice**” means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant’s Payment Default, which invoice shall separately

identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

“Step-Up Invoice Amount” has the meaning set forth in Section 12.7.

“Step-Up Invoice Amount Cap” has the meaning set forth in Section 12.7.

“Step-Up Reserve Account” has the meaning set forth in Section 12.7(a)(i).

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

“System Emergency” means any condition that requires, as determined, and declared by CAISO or the Transmission Provider, 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 any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities.

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

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

“Transmission Provider” means any entity that owns, operates, and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy 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.

“Unanimous Vote” has the meaning set forth in Exhibit D.

“Uncontrollable Forces” means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated

SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, licenseor permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the ESSA, as defined therein.

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 Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation, or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

(g) the terms “include” and “including” mean “include or including (as applicable) 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) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the ESSA or the Coordinated Operations Agreement, the terms and provisions of this Agreement shall control.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the ESSA and (ii) the termination of the Buyer Liability Pass Through Agreement for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement (“**Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3

AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Facility Energy, Capacity Attributes, Ancillary Services, and Environmental Attributes associated with the Facility and any Replacement RA provided pursuant to the ESSA (collectively the “**Product**”), on behalf of the Project Participants. Pursuant to the procedures set forth in the Coordinated Operations Agreement, CCP shall cause Project Developer to deliver each Project Participant’s Entitlement Share of the Product to such Project Participant, including but not limited to (i) any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility, and (ii) the Capacity Attributes and Environmental Attributes associated with the Facility or

otherwise provided to CCP pursuant to the ESSA. CCP shall administer the ESSA and oversee the operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

ARTICLE 4 **ENTITLEMENT SHARE**

4.1. **Initial Entitlement Share.** Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.2. **Change of Entitlement Share.** Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

4.3. **Reduction of Entitlement Share to Zero.** If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Capacity Payments, Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA.

ARTICLE 5 **OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER**

5.1. **Obligations of CCP.**

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Project Committee or CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the ESSA or other applicable agreements, CCP may also be authorized by the Project Participants to assume responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the ESSA, CCP shall also provide such other services, as approved by the Project Committee or CCP Board, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the ESSA.

(c) **Adoption of Annual Budget.** The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare and submit to the Project Committee a proposed Annual Budget at least ninety (90) days prior to the beginning of each Contract Year during the term of this Agreement. The proposed Annual Budget shall be based on the prior Contract Year's actual costs and shall include reasonable estimates of the costs CCP expects to incur during the applicable Contract Year in association with the administration of the ESSA, including the cost of insurance coverages that are determined to be attributable to the Project by action of the CCP Board. Upon approval of the proposed Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Contract Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(ii) At any time after the adoption of the Annual Budget for a Contract Year, the CCP Manager may prepare and submit to the Project Committee a proposed Amended Annual Budget for and applicable to the remainder of such Contract Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. Upon approval of the proposed Amended Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Contract Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Contract Year shall be subject to an annual audit. Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the design, financing, refinancing, development, operation, administration, maintenance, and ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(f) Consultants and Advisors Available. CCP shall make available to the Project Committee all consultants and advisors, including financial advisors and legal counsel that

are retained by CCP, and such consultants, counsel and advisors shall be authorized to consult with and advise the Project Committee on Project matters. CCP agrees to waive any conflicts of interest or any other applicable professional standards or rules as required by consultants, counsel, and advisors to advise the Project Committee on Project matters.

(g) Deposit of Insurance Proceeds. CCP shall promptly deposit any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project into the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP, or applied against payments otherwise due by CCP pursuant to the ESSA or each Project Participant's respective BLPTA, by the Project Developer shall be deposited on a pro rata share, based on each Project Participant's Entitlement Share into each Project Participant's Operating Account. Liquidated Damages include, but are not limited to Daily Delay Damages, RA Deficiency Amount, Damage Payment, and Termination Payment.

(i) Charging and Discharging Energy. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Charging Energy from the grid to the Point of Delivery to enable CCP to exercise its rights and obligations in connection with Charging Energy in accordance with the requirements of the ESSA. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Discharging Energy from the Point of Delivery to the grid to enable CCP to maximize the value of the ESSA to the Project Participants in accordance with the requirements of the ESSA.

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the

service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the extent CCP is so relieved pursuant to the ESSA, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the ESSA and distribute any remedies obtained pursuant to Section 5.1(h).

(l) **Insurance.** Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) **Commercial General Liability.** CCP shall maintain, or cause to be maintained, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering CCP's obligations under this Agreement and including each Project Participant as an additional insured.

(ii) **Employer's Liability Insurance.** CCP, if it has employees, shall maintain Employers' Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(iii) **Workers' Compensation Insurance.** CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) **Business Auto Insurance.** CCP shall maintain at all times during the Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) **Public Entity Liability Insurance.** CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim, and an annual aggregate of not less than One Million Dollars (\$1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) **Evidence of Insurance.** Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of

California, in a form evidencing all coverages set forth above. Such certificates shall specify that each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the ESSA shall be subject to the ultimate control at all times of the CCP Board. The CCP Board, shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Facility, and CCP's rights and interests in the Facility.

(ii) ESSA. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the ESSA.

(iii) Capital Improvements. The CCP Board shall review, modify, and approve, if appropriate, all Capital Improvements undertaken with respect to the Project and all financing arrangements for such Capital Improvements. The CCP Board shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development associated with the Project.

(iv) Committees. The CCP Board shall exercise such review, direction, or oversight as may be appropriate with respect to the Project Committee and any other committees established pursuant to this Agreement.

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, approved by a Normal Vote of the Project Committee, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of ESSA. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(ii) of this Agreement, as to an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iii) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iv) of this Agreement, as to an assignment by CCP to a financing entity pursuant to Section 14.5 of the ESSA.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(v) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Project Committee or which is specified as being within the authority of the Project Committee pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Committee or CCP Manager as may be provided for under this Agreement and under the ESSA, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the Project Committee may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP, the Project Developer to the extent authorized under the ESSA, and any other counterparty under any agreement to the extent allowable, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Contract Year. CCP shall promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP, and/or the Project Developer to the extent authorized under the ESSA.

(xiii) Scheduling Coordinator Services Agreement. Upon a recommendation by Normal Vote of the Project Committee pursuant to Section 6.4(b)(vi), the CCP Board shall review, modify, and approve, or delegate the authority to approve, a Scheduling Coordinator Services Agreement or amendment thereto.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members

representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

5.3. Role of CCP Manager.

(a) In addition to the duties and responsibilities set forth elsewhere in this Agreement, the CCP Manager is delegated the following authorities and responsibilities:

(i) Request for Tax Documentation. Respond to any requests for tax-related documentation by the Project Developer.

(ii) Request for Financial Statements. Provide the Project Developer with Financial Statements as may be required by the ESSA.

(iii) Request for Information by Project Participant. Respond to any request by a Project Participant for information or documents that are reasonably available to allow the Project Participant to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(iv) Coordinate Response to a Request for Confidential Information. Upon a request or demand by any third person that is not a Party to the ESSA or a Project Participant, for Confidential Information as described in Section 18.2 of the ESSA, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

(v) Invoices. The CCP Manager shall review each invoice submitted by Project Developer and shall request such other data necessary to support the review of such invoices.

ARTICLE 6

PROJECT COMMITTEE

6.1. Establishment and Authorization of the Project Committee. The Project Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided for in this Section 6 for the purpose of (a) providing coordination among, and information to, the Project Participants and CCP, (b) making any recommendations to the CCP Board regarding the administration of the Project, and (c) execution of the Project Committee responsibilities set forth in Section 6.4.

6.2. Project Committee Membership. The Project Committee shall consist of one representative from each Project Participant. The CCP Manager shall be a non-voting member of the Project Committee. Within thirty (30) days after the Effective Date, each Project Participant shall provide notice to each other of such Project Participant's representative on the Project Committee. Alternate representatives may be appointed by similar written notice to act on the Project Committee, or on any subcommittee established by the Project Committee, in the absence of the regular representative. An alternate representative may attend all meetings of the Project Committee but may vote only if the representative for whom they serve as alternate for is absent.

No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant which they represent.

6.3. Project Committee Operations, Meetings, and Voting. Project Committee operations, meetings, and voting shall be in accordance with the procedures and requirements specified in Exhibit D.

6.4. Project Committee Responsibilities. The Project Committee shall have the following responsibilities:

(a) General Responsibilities of the Project Committee.

(i) Provide a liaison between CCP and the Project Participants with respect to the ongoing administration of the Project.

(ii) Exercise general supervision over any subcommittee established pursuant to Section 6.5.

(iii) Oversee, as appropriate, the completion of any Project design, feasibility, or planning studies or activities.

(iv) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the ESSA.

(v) Perform such other functions and duties as may be provided for under this Agreement, the ESSA, or as may otherwise be appropriate or beneficial to the Project or the Project Participants.

(b) Recommendations to the CCP Board by a Normal Vote.

(i) Budgeting. Review, modify, and approve by a Normal Vote each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(ii) Early Termination of ESSA. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(iii) Assignment by Project Developer. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(iv) Buyer Financing Assignment. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an assignment by CCP to a financing entity pursuant to Section 14.5 of the ESSA.

(v) Change of Control. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(vi) Scheduling Coordinator. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding the selection of a Scheduling Coordinator and the form of the Scheduling Coordinator Services Agreement, including any amendments thereto. Such Scheduling Coordinator Services Agreement shall: (i) require that the scheduling and dispatch of the Project is in accordance with the criteria set forth in Exhibit C of the Coordinated Operations Agreement; (ii) include the Scheduling Coordinator responsibilities specified in Exhibit D of the Coordinated Operations Agreement; and (iii) address requirements relating to CAISO settlements, the Operating Restrictions, and communications and reporting from the Scheduling Coordinator to the Project Participants.

(c) Actions Delegated to the Project Committee by this Agreement Subject to a Unanimous Vote.

(i) Project Design. Review, modify, and approve by a Unanimous Vote any recommendations to the Project Developer on the design of the Project.

(ii) Extension of Guaranteed Construction Start Date and Guaranteed Commercial Operation Date. Review and confirm that requirements of Exhibit B of the ESSA have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been extended.

(iii) Event of Default. Direct CCP to exercise its rights under the ESSA if an Event of Default has occurred under Section 11.1 of the ESSA or under the Scheduling Coordinator Services Agreement.

(d) Actions Delegated to the Project Committee by this Agreement Subject to a Normal Vote.

(i) Make recommendations to the CCP Manager, the CCP Board, the Project Participants or to the Project Developer, as appropriate, with respect to the development, operation, and ongoing administration of the Project.

(ii) Review, develop, and, if appropriate, modify and approve rules, procedures, and protocols for the administration of the Project, including rules, procedures, and protocols for the management of the costs of the Facility and the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Environmental Attributes associated with the Facility and the control and use of the Facility.

(iii) Review, develop, and, if appropriate, modify rules, procedures, and protocols for the monitoring, inspection, and the exercise of due diligence activities relating to the operation of the Facility.

(iv) Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, Facility-related data and

storage information, technical information, facility reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the Project which are furnished to the Project Committee by the CCP Manager, the Project Developer, experts, consultants or others.

(v) Review, formulate, and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Facility, and the supply, scheduling, and use of Charging Energy.

(vi) Review and act upon any matters involving any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the ESSA, the Development Security or the Performance Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(vii) Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by CCP or Project Developer for determining or estimating storage resources or the values, quantities, volumes, or costs of the Product from the Facility.

(viii) Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Facility).

(ix) Review, to the extent permitted by this Agreement, the ESSA, or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, or any other matters with respect to the Facility.

(x) Review and approve any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the ESSA.

(xi) Review and approve the submission of the written acknowledgement of the Commercial Operation Date in accordance with Section 2.2 of the ESSA.

(xii) Review and approve the return of the Development Security to Project Developer in accordance with Section 8.7 of the ESSA.

(xiii) Review and approve the return of any unused Performance Security to Project Developer in accordance with Section 8.8 of the ESSA.

(xiv) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the ESSA and participate in any associated regularly scheduled meetings with Project Developer to discuss construction progress.

(xv) Direct CCP to collect any liquidated damages owed by Project Developer to CCP under the ESSA, and to the extent authorized by ESSA, draw upon the Development Security or Performance Security.

(xvi) Review invoices received by CCP from the Project Developer and, if appropriate, direct CCP to dispute an invoice pursuant to Section 8.5 of the ESSA.

(xvii) Review invoices received by CCP from the Scheduling Coordinator and, if appropriate, direct CCP to collect any damages owed by the Scheduling Coordinator to CCP under the Scheduling Coordinator Services Agreement or to take any action permitted by law to enforce its rights under the Scheduling Coordinator Services Agreement, including but not limited to bringing any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement, or obligation against the Scheduling Coordinator.

6.5. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the ESSA or this Agreement.

6.6. Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Project Committee or any other committee in connection with their duties on such committee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.7. Inaction by Committee. It is recognized by CCP and Project Participants that if the Project Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the ESSA, then CCP may take such commercially reasonable action as CCP determines is necessary for its timely performance under any requirement pursuant to the ESSA or this Agreement, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow CCP to act in violation of the express terms of the ESSA or this Agreement.

6.8. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the ESSA, in appropriate cases, duties and responsibilities of the CCP Board or the Project Committee, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

ARTICLE 7

OPERATING COMMITTEE

7.1. Operating Committee. The Operating Committee is established through the Coordinated Operations Agreement, as may be subsequently amended.

7.2. Operating Committee Responsibilities. In addition to any specific roles and responsibilities identified in the Coordinated Operations Agreement, the Project Committee may, through a Normal Vote, assign additional tasks to the Operating Committee as long as such additional tasks are within the scope of the Operating Committee's authority set forth in the Coordinated Operations Agreement.

ARTICLE 8 **OPERATING ACCOUNT**

8.1. Calculation of Estimated Monthly Project Cost.

(a) No later than one hundred and eighty (180) days after the Effective Date, the CCP Manager shall present to the Project Committee a proposed Estimated Monthly Project Cost, which shall be equal to a forecast of expected Monthly Capacity Payments over an entire Contract Year, divided by twelve (12). The Project Committee shall review, and, if appropriate, recommend, modify, or approve through a Normal Vote, the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant that is accessible to and can be drawn upon by both CCP and the applicable Project Participant. Such Operating Accounts are for the purpose of providing a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the Estimated Monthly Project Cost multiplied by three, the product of which is multiplied by such Project Participant's Entitlement Share ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than three hundred and sixty-five (365) days after the Effective Date, each Project Participant shall deposit into such Project Participant's Operating Account an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP shall draw upon each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share. As required by Section 9.5, each Project Participant must deposit sufficient funds into such Project Participant's Operating Account by the deadline specified in Section 9.5.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the ESSA, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the ESSA, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9

BILLING

9.1. **Monthly Costs.** The amount of Monthly Costs for a particular Month shall be the sum of the Project Participant's Entitlement Share multiplied by the Monthly Capacity Payments for the Product, as specified in Section 8.2 of the ESSA for such Month and to the extent such payment is made by CCP to the Project Developer, plus the Project Participant's Entitlement Share multiplied by the Operating Cost for such Month and subtracting the Project Participant's Entitlement Share multiplied by the positive revenue associated with the sale of any Facility Energy or Ancillary Services net of any CAISO costs or Scheduling Coordinator costs for such Month, as shown in the following formula:

Monthly Cost = ((Project Participant's Entitlement Share) × (Monthly Capacity Payments)) + ((Project Participant's Entitlement Share) × (Operating Costs)) – ((Project Participant's Entitlement Share) × (revenue from sale of Facility Energy or Ancillary Services, net of any CAISO costs or Scheduling Coordinator costs))

9.2. **Billing Statements.** By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month of each Contract Year pursuant to Section 8.1 of the ESSA, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "**Invoice Amount.**"

9.3. **Disputed Monthly Billing Statement.** A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect, CCP will deposit the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment into the Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. **Payment Adjustments; Billing Errors.** If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. **Payment of Invoice Amount.** Each Project Participant shall deposit the Invoice Amount for the applicable Month into such Project Participant's Operating Account by no later than the twentieth (20th) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall deposit the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Withdrawal of Invoice Amount from Operating Account. No sooner than five (5) calendar days after CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall withdraw the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall deposit such funds into the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately deposit the Invoice Amount into the Project Participant's Operating Account and informing the Project Participant that such Project Participant must pay a charge ("**Late Payment Charge**"). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to the Invoice Amount minus any partial payment that was deposited into such Project Participant's Operating Account multiplied by the Interest Rate specified in Section 8.2 of the ESSA for the period from the deadline specified in Section 9.5 until the date on which the Project Participant deposits the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and deposit any such Late Payment Charge into the Operating Accounts of all other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10

**UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS;
LITIGATION.**

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Facility products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Capacity Payment shall be limited to the amount of Monthly Capacity Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

10.6. Clean Power San Francisco. With regard to Clean Power San Francisco only, (1) obligations under this Agreement are special limited obligations of Clean Power San Francisco payable solely from the revenues of Clean Power San Francisco, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-Clean Power San Francisco moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San

Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11
PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS UNDER THE ESSA.

11.1. CCP Rights and Obligations under the ESSA. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Facility (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs (including costs related to Charging Energy), capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the ESSA shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the ESSA in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the ESSA or the Scheduling Coordinator Services Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the ESSA or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the ESSA shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the ESSA and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the ESSA ("**Defaulting Project Participant**"), CCP may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant's rights under

this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (“**Non-Defaulting Project Participant**”) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP’s rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. Payment Default. If any Project Participant fails to deposit the Invoice Amount into the Project Participant’s Operating Account by the deadline specified in Section 9.5, and if such Participant has not deposited the Invoice Amount plus the Late Payment Charge into such Project Participant’s Operating Account within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP, then such occurrence shall constitute a “**Payment Default.**”

12.3. Payment Default Notice. Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant’s Project Revenue Rights have been suspended and that such Defaulting Project Participant’s Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. Cured Payment Default. If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant’s Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default, the Defaulting Project Participant must deposit the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties into its Operating Account.

12.5. Suspension of Project Participant’s Project Revenue Rights and Treatment of Capacity Attributes.

(i) Upon the occurrence of a Payment Default, the Defaulting Project Participant’s Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue associated with the Facility Energy or Ancillary Services associated with the Facility shall be deposited by CCP into the Step-Up Reserve Account, as specified in Section 12.7.

(ii) For any Month where the funds remaining in a Defaulting Project Participant’s Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant’s Operating Account and shall cause the delivery of the Defaulting Project Participant’s Entitlement Share of the Capacity

Attributes and Environmental Attributes associated with the Facility or otherwise provided for pursuant to the ESSA. For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes and Environmental Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes or Environmental Attributes associated with the Facility or otherwise provided for under the ESSA.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the "**Step-Up Invoice Amount Cap**").

(i) Each Non-Defaulting Project Participant shall deposit the Step-Up Invoice Amount into such Non-Defaulting Project Participant's Operating Account by the later of the twentieth (20th) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may withdraw the amount of the Step-Up Invoice from each Project Participant's Operating Account and deposit such funds in a separate account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion draw upon in order to ensure that CCP can meet the payment obligations of the ESSA. CCP first shall withdraw all funds from a Defaulting Project Participant's Operating Account before withdrawing funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap, of such other Project Participant. If any Non-Defaulting Project Participant has not deposited the full amount of its share of the Step-Up Invoice Amount into its Operating Account by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has deposited the full amount of its Step-Up Invoice Amount and the Late Payment Charge into its Operating Account.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants ("**Step-Up Allocation**") pursuant to the process set forth in this Section 12.8. If a Project Participant has defaulted in the performance of any of its obligations under its BLPTA, and any applicable cure periods under the BLPTA have expired, the Project Participants shall, to the extent required by each respective Project Participant's BLPTA, utilize the procedures set forth in this Section 12.8 to allocate the Project Rights and Obligations of the Project Participant that has defaulted under the BLPTA to the Project Participants that have not defaulted under the BLPTA, subject to the Step-Up Allocation Cap specified in Section 12.8(a).

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars (\$0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up

Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the ESSA. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue base on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal of such Defaulting Project Participant's Project Rights and Obligations pursuant to Section 12.8, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

ARTICLE 13 **LIABILITY**

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the ESSA. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 8.2 of the ESSA. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the ESSA.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or

asserted against any Party arising by manner of any breach of this Agreement, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any Party or any Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14 **NOTICES**

14.1. 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 in Exhibit A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. 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, five (5) 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 after 5:00 pm, 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 15 **ASSIGNMENT**

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 16 **GOVERNING LAW AND DISPUTE RESOLUTION**

16.1. 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 or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of San Francisco.

16.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law or in equity.

ARTICLE 17 **MISCELLANEOUS**

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

17.3. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

17.4. 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.

17.5. 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.

17.6. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect,

validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that the Parties 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.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County of San Francisco; (c) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County of San Francisco; or (e) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

(e) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(f) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender

identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José's Compliance Officer may require the Parties to file, and cause any Party's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. Further Assurances. Each of the Parties hereto agrees 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]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

<p>California Community Power</p> <p>By: _____ Name: _____ Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____ Name: _____ Title: _____</p>	<p>Clean Power San Francisco</p> <p>By: _____ Name: _____ Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____ Name: _____ Title: _____</p>
<p>Peninsula Clean Energy</p> <p>By: _____ Name: _____ Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____ Name: _____ Title: _____</p>	<p>Redwood Coast Energy Authority</p> <p>By: _____ Name: _____ Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____ Name: _____ Title: _____</p>

<p>San José Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Silicon Valley Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>Sonoma Clean Power</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Valley Clean Energy</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

EXHIBIT A

NOTICES

Party	<i>All Notices</i>	<i>Invoices</i>
California Community Power	<p>California Community Power Tim Haines _____ _____ timhaines@powergridsymmetry.com</p>	
Clean Power San Francisco	<p>Clean Power San Francisco Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sfwater.org</p>	
Peninsula Clean Energy	<p>Peninsula Clean Energy Jan Pepper, CEO Peninsula Clean Energy 2075 Woodside Road Redwood City, California 94061 jpepper@peninsulacleanenergy.com</p>	
Redwood Coast Energy Authority	<p>Redwood Coast Energy Authority Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org</p>	

Party	<i>All Notices</i>	<i>Invoices</i>
San José Clean Energy	<p>San José Clean Energy Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov</p>	
Silicon Valley Clean Energy	<p>Silicon Valley Clean Energy Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org</p>	
Sonoma Clean Power	<p>Sonoma Clean Power Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org</p>	
Valley Clean Energy	<p>Valley Clean Energy Gordon Samuel Assistant General Manager & Director of Power Resource 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org</p>	

EXHIBIT B

**SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES
AND STEP-UP ALLOCATION CAPS**

Dated: _____

A	B	C	D	E
Project Participant	Entitlement Share <i>As of Effective Date</i>	Entitlement Share <i>As Modified Pursuant to Section 4.2</i>	Entitlement Share <i>As Modified Pursuant to Section 12.8(b) or 12.8(c)</i>	Step-Up Allocation Cap <i>125% multiplied by Column B or C as applicable</i>
Clean Power San Francisco	16.06%			
Peninsula Clean Energy	19.69%			
Redwood Coast Energy Authority	3.62%			
San José Clean Energy	22.28%			
Silicon Valley Clean Energy	21.25%			
Sonoma Clean Power	12.95%			
Valley Clean Energy	4.15%			
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share (“**Entitlement Share Reduction Amount**”) and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the “**Entitlement Share Reduction Notice**”).

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the ESSA from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the “**Proposed Entitlement Share Reduction Compensation Amount.**” The CCP Manager shall call a meeting of the Project Committee and present the Proposed Entitlement Share Reduction Compensation Amount to the Project Committee. The Project Committee shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Committee shall be the “**Entitlement Share Reduction Compensation Amount.**” The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the Project Committee through a Normal Vote.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, and upon approval of such transfer by the Project Committee, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(k)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a community choice aggregator that is not a CCP Member. If any community choice aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the community choice aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the community choice aggregator becoming a Project Participant. The compensation amount associated with the community choice aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the community choice aggregator and the offering Project Participant.

EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

(a) Chairperson of Project Committee. The chairperson of the Project Committee (“**Chairperson**”) shall be the CCP Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Project Committee in a manner and to the extent permitted by law.

(b) Conducting Meetings. Conducting of Project Committee meetings and actions taken by the Project Committee may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof, to the extent permitted by law.

(c) Calling of Meetings.

(i) The Chairperson may call a meeting of the Project Committee at their discretion.

(ii) The Chairperson shall promptly call a meeting of the Project Committee at the request of any representative of a Project Participant.

(d) Unanimous Votes. Certain actions, as designated in Section 6.4(c), require a unanimous affirmative vote by all Project Participants (“**Unanimous Vote**”). No such vote may be taken unless a representative from every Project Participant is present at the meeting of the Project Committee. If any Project Participant’s Entitlement Share is reduced to zero through the process specified in Exhibit C, such Project Participant shall not be required to be present or be entitled to vote in order for such vote to be a Unanimous Vote.

(e) Normal Votes. All actions not designated as requiring unanimous vote, shall proceed pursuant to the “**Normal Vote**” process set forth in this paragraph (e).

(i) Quorum. No Normal Vote of the Project Committee shall be taken unless a representative is present for at least fifty percent (50%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to paragraph (e)(iii), all actions requiring a Normal Vote, as specified in Section 6.4(b) or 6.4(d), shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an “**Alternate Normal Vote**”). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

(A) If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.

(B) If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

DRAFT

Execution Version

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Tumbleweed Energy Storage, LLC, a Delaware limited liability company

Buyer: California Community Power, a California joint powers authority

Description of Facility: 69 MW/552 MWh grid-connected battery energy storage facility (CAISO Queue 1217) located near Rosamond, Kern County, California, as further described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	8/12/2019
Conditional Use Permit obtained	████████
Phase I and Phase II Interconnection study results obtained	6/1/2018
Interconnection Agreement executed	11/12/2018
Major equipment procured	████████
Federal and state discretionary permits issued	████████
Expected Construction Start Date	████████
Guaranteed Construction Start Date	12/31/2025
Initial Synchronization	4/1/2026
Network Upgrades completed	12/31/2025
Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity is obtained	3/16/2018
Expected Commercial Operation Date	4/15/2026
Guaranteed Commercial Operation Date	6/1/2026

Delivery Term: 15 Contract Years

Guaranteed Capacity: 69 MW of Installed Capacity at eight (8) hours of continuous discharge

Dedicated Interconnection Capacity: 69 MW

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1-15	83.3%

Contract Price:

Contract Year	Contract Price
1 – 15	\$ [REDACTED] /kW-mo. (flat) with no escalation and subject to adjustments in <u>Exhibit C</u>

Product:

- Discharging Energy
- Installed Capacity and Effective Capacity
- Ancillary Services
- Capacity Attributes

Scheduling Coordinator:

Prior to Commercial Operation Date: Seller

From Commercial Operation Date through the Delivery Term: Buyer

Security Amount:

Development Security: \$ [REDACTED] /kW of Guaranteed Capacity

Performance Security: \$ [REDACTED] /kW of Guaranteed Capacity

TABLE OF CONTENTS

Page

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS.....	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	21
ARTICLE 2 TERM; CONDITIONS PRECEDENT	22
2.1 Contract Term.....	22
2.2 Commercial Operation; Conditions Precedent	23
2.3 Development; Construction; Progress Reports.....	24
2.4 Remedial Action Plan	24
2.5 Pre-Commercial Operation Actions.....	25
ARTICLE 3 PURCHASE AND SALE	25
3.1 Product	25
3.2 Discharging Energy	25
3.3 Capacity Attributes	25
3.4 Ancillary Services; Environmental Attributes.....	26
3.5 Resource Adequacy Failure.....	26
3.6 Buyer’s Re-Sale of Product	27
ARTICLE 4 OBLIGATIONS AND DELIVERIES	27
4.1 Delivery.....	27
4.2 Interconnection	28
4.3 Performance Guarantees	28
4.4 Facility Testing	28
4.5 Testing Costs and Revenues	29
4.6 Facility Operations.....	30
4.7 Dispatch Notices	30
4.8 Facility Unavailability to Receive Dispatch Notices	30
4.9 Energy Management	31
4.10 Capacity Availability Notice.....	33
4.11 [Reserved].....	33
4.12 Outages	33
ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS.....	34
5.1 Allocation of Taxes and Charges.....	34
5.2 Cooperation.....	35
5.3 Environmental Costs.....	35
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY	35
6.1 Maintenance of the Facility.	35
6.2 Maintenance of Health and Safety.....	36
6.3 Shared Facilities.....	36
ARTICLE 7 METERING	36

7.1	Metering.....	36
7.2	Meter Verification.....	37
ARTICLE 8 INVOICING AND PAYMENT; CREDIT		37
8.1	Invoicing	37
8.2	Payment.....	37
8.3	Books and Records	38
8.4	Payment Adjustments; Billing Errors	38
8.5	Billing Disputes	38
8.6	Netting of Payments.....	39
8.7	Seller’s Development Security	39
8.8	Seller’s Performance Security.....	39
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	39
8.10	Buyer Credit Arrangements	40
ARTICLE 9 NOTICES.....		41
9.1	Addresses for the Delivery of Notices	41
9.2	Acceptable Means of Delivering Notice.....	41
ARTICLE 10 FORCE MAJEURE		42
10.1	Definition	42
10.2	No Liability If a Force Majeure Event Occurs	43
10.3	Notice.....	43
10.4	Termination Following Force Majeure Event.....	43
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION		43
11.1	Events of Default	43
11.2	Remedies; Declaration of Early Termination Date.....	46
11.3	Damage Payment; Termination Payment	47
11.4	Notice of Payment of Termination Payment or Damage Payment.....	48
11.5	Disputes With Respect to Termination Payment or Damage Payment	48
11.6	Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date	48
11.7	Rights And Remedies Are Cumulative.....	49
11.8	Mitigation.....	49
11.9	Pass Through of Buyer Liability.....	49
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....		49
12.1	No Consequential Damages.....	49
12.2	Waiver and Exclusion of Other Damages.....	49
12.3	Limitation on Pre-COD Liability.....	50
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS		50
13.1	Seller’s Representations and Warranties	50
13.2	Buyer’s Representations and Warranties	51
13.3	General Covenants	52
13.4	Seller’s Covenants	52

ARTICLE 14 ASSIGNMENT	53
14.1 General Prohibition on Assignments	53
14.2 Collateral Assignment.....	54
14.3 Permitted Assignment.....	54
14.4 Portfolio Financing	54
14.5 Buyer Financing Assignment.....	55
ARTICLE 15 DISPUTE RESOLUTION	55
15.1 Governing Law.	55
15.2 Dispute Resolution.....	55
15.3 Attorneys’ Fees.	55
ARTICLE 16 INDEMNIFICATION.....	55
16.1 Indemnification.....	55
16.2 Claims.....	56
ARTICLE 17 INSURANCE.....	57
17.1 Insurance	57
ARTICLE 18 CONFIDENTIAL INFORMATION	58
18.1 Definition of Confidential Information.....	58
18.2 Duty to Maintain Confidentiality.....	58
18.3 Irreparable Injury; Remedies	59
18.4 Further Permitted Disclosure	60
18.5 Press Releases	60
ARTICLE 19 MISCELLANEOUS	60
19.1 Entire Agreement; Integration; Exhibits.....	60
19.2 Amendments	60
19.3 No Waiver.....	60
19.4 No Agency, Partnership, Joint Venture or Lease.....	60
19.5 Severability	60
19.6 Mobile-Sierra	61
19.7 Counterparts.....	61
19.8 Electronic Delivery	61
19.9 Binding Effect.....	61
19.10 No Recourse to Members of Buyer	61
19.11 Forward Contract	61
19.12 Change in Electric Market Design.....	62
19.13 Further Assurances.....	62

Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities

Exhibit E	Progress Reporting Form
Exhibit F	Form of Monthly Expected Available Capacity Report
Exhibit G	Form of Daily Availability Notice
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Liability Pass Through Agreement
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	[Intentionally Omitted]
Exhibit T	Form of Collateral Assignment Agreement
Exhibit U	Material Permits
Exhibit V	Project Participants and Liability Shares

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement (“**Agreement**”) is entered into as of 01/24/2022 (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, construct, own, and operate the Facility;
and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services, in each case that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, as each is defined in the CAISO Tariff.

“**Approved Maintenance Hours**” means up to [REDACTED] per Contract Year of Planned Outages for Facility maintenance scheduled in accordance with Section 4.12.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Adjustment**” has the meaning set forth in Exhibit C.

“**Availability Notice**” has the meaning set forth in Section 4.10.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“**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.

“**Battery Charging Factor**” means a fraction, the numerator of which is the amount of Charging Energy absorbed by the Facility after the first ten (10) hours of the charging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

“**Battery Discharging Factor**” means one (1) minus a fraction, the numerator of which is the amount of Discharging Energy discharged during the first eight (8) hours of the discharging phase of the applicable Capacity Test, and the denominator of which is the Effective Capacity.

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

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

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

“**Buyer Dispatched Test**” has the meaning in Section 4.4(c).

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 16.1(a).

“Buyer Liability Pass Through Agreement” means the form set forth in Exhibit L.

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

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” 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, 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.

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

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

“Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Capacity Test” or **“CT”** means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity or Efficiency Rate or, subject to the qualifications set forth in Exhibit O, any other test conducted pursuant to Exhibit O.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**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*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy not consumed in Electrical Losses or used for Station Use shall be used solely to charge the Facility.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit T.

“**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice of the same to Buyer; *provided*, Commercial Operation shall occur no sooner than the Expected Commercial Operation Date.

“**Commercial Operation Capacity Test**” means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Commercial Operation Date**” or “**COD**” means the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

“**Compliant Project Participant**” means a Project Participant that is not a Defaulted Project Participant.

“**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(a).

“**Contract Year**” means a period of twelve (12) consecutive months (plus, in the case of the first Contract Year only, if the Commercial Operation Date does not occur on the first day of a calendar month, the period from the Commercial Operation Date through the end of the calendar month in which the Commercial Operation Date occurs). 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 or, if the Commercial Operation Date does not occur on the first day of a calendar month, the anniversary of the first day of the first full calendar month following 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.

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

“**CPUC**” means the California Public Utilities Commission, or any successor entity performing similar 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.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Discharging 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 Transmission Provider 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 Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

“Cycles” means the number of equivalent charge/discharge cycles of the Facility during a specified time period, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy discharged from the Facility (expressed in MWh) divided by (b) eight (8) hours times the weighted average Effective Capacity for such time period.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

“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” means the maximum instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

“Defaulted Liability Share” means the Liability Share of a Defaulted Project Participant.

“Defaulted Project Participant” means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under the Project Participation Share Agreement have been suspended or terminated.

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

“**Delivery Point**” means the Facility Pnode on the CAISO grid.

“**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 (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Discharging Energy**” means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

“**Dispatch Notice**” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate, for a specified period of time, and/or to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions.

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Capacity**” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective Flexible Capacity**” or “**EFC**” has the meaning set forth in the CAISO Tariff.

“**Efficiency Rate**” means the tested rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate test has been conducted in such calendar month and different tested Efficiency Rates apply during such calendar month.

“**Efficiency Rate Adjustment**” has the meaning set forth in Exhibit C.

“**Electrical Losses**” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy.

“**Emission Reduction Credits**” or “**ERCs**” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“**Energy**” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Environmental Attributes**” shall mean any and all attributes 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 Facility and its displacement of conventional energy generation. “Environmental Attributes” do not include (i) Tax Credits or other tax benefits or attributes, including any cash payments in lieu thereof, (ii) any governmental grants, subsidies or other incentive payments related to the construction, ownership or operation of the Facility, or (iii) any Emission Reduction Credits or Marketable Emission Trading Credits.

“**Environmental Cost**” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the

decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

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

“**Expected Commercial Operation Date**” means the date set forth on the Cover Sheet.

“**Facility**” means the energy storage 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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“**Facility Meter**” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3% accuracy class), CAISO-approved 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 Facility Metering Point and the amount of Discharging Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“**Facility Metering Point**” means the location(s) of the Facility Meter shown in Exhibit R.

“**Federal Investment Tax Credit Legislation**” means validly enacted federal legislation that either (a) applies the ITC in its current form to the Facility, or (b) extends federal Tax Credits associated with capital investment in the construction of energy storage facilities or equipment used to store energy for which Seller, as the owner of the Facility, is eligible.

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

“**Flexible Capacity**” has the meaning set forth in the CAISO Tariff.

“**Flexible RAR**” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“**Forced Labor**” has the meaning set forth in Section 13.4(c).

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

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

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

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**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*, “Governmental Authority” shall not in any event include any Party.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Availability**” has the meaning set forth in Section 4.3(a).

“**Guaranteed Amount**” has the meaning set forth in each Project Participant’s Buyer Liability Pass Through Agreement, which amount may be different for each Project Participant given each Project Participant’s Liability Share.

“**Guaranteed Capacity**” means the maximum dependable operating capability of the Facility to discharge electric energy, as measured in MW AC at the Delivery Point for eight (8) hours of continuous discharge, as set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Efficiency Rate**” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“**Guaranteed Flexible Capacity**” means, at any point in time, the maximum quantity of Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity, and performing with

operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

“Guaranteed Net Qualifying Capacity” means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage facility having a storage capacity of 69 MW with eight (8) hours of continuous discharging at the maximum rate of discharge, having achieved PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity, and performing with operational characteristics equal to those required by the Guaranteed Availability, Guaranteed Efficiency Rate, and the Operating Restrictions may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

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

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

“Indemnified Party” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Indemnifying Party” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Initial Liability Share” means the Liability Share of each Project Participant shown on Exhibit V as of the Effective Date.

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the Facility Meter and adjusted for Electrical

Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity.

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

“Interconnection Agreement” means the interconnection agreement entered into by Seller or a Seller 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.

“Interconnection Point” has the meaning set forth in Exhibit A.

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

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

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a 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 (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Liability Share” means the percentage amount set forth for each Project Participant in Exhibit V.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes. Seller’s lost revenue under this Agreement resulting from a Buyer Default shall not be considered to be consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of determining Losses under this Agreement.

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“Master File” has the meaning set forth in the CAISO Tariff.

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit U.

“**Maximum Charging Capacity**” means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

“**Maximum Discharging Capacity**” means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

“**Milestones**” means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.

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

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

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

“**Most Offer Obligations**” means the obligations to offer the Net Qualifying Capacity in order to satisfy Resource Adequacy Requirements, including under Section 40.6 of the CAISO Tariff.

“**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**” or “**NQC**” 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).

“**Notification Deadline**” in respect of a Showing Month shall be fifteen (15) days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

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

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“**Outage Schedule**” has the meaning set forth in Section 4.12(a)(i).

“**Partial Capacity Deliverability Status**” or “**PCDS**” has the meaning set forth in the CAISO Tariff.

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

“**Payment Demand**” has the meaning set forth in Exhibit L.

“**Performance Guarantees**” has the meaning set forth in Section 4.3(b).

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

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

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

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

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

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.12(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

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

“**Portfolio**” means the portfolio of electrical energy generating, electrical energy storage, 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 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.

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4(b).

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

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

“Project Labor Agreement” has the meaning set forth in Section 13.4(b).

“Project Participant” means each Person identified in Exhibit V that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

“Project Participant Approval” means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

“Project Participation Share Agreement” means that certain Tumbleweed Energy Storage Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer’s responsibilities and liabilities under this Agreement, and any successor agreement.

“Project Participant Payment Default” means any failure by a Project Participant to pay any material amount under the Project Participation Share Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer’s obligations under this Agreement.

“Pro Rata” means, for purposes of calculating a Project Participant’s Revised Liability Share, the ratio of (i) such Project Participant’s Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

“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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

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

“RA Compliance Showing” means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“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 3.5(b).

“RA Guarantee Date” means the Commercial Operation Date, which is the date by which the Facility is expected to have achieved Partial Capacity Deliverability Status sufficient to fully deliver the Facility’s Guaranteed Capacity.

“RA Penalties” means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

“RA Shortfall Month” means any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which either:

(a) the Facility has not achieved PCDS sufficient to fully deliver the Facility’s Guaranteed Capacity; or

(b) the Net Qualifying Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity of the Facility for such Showing Month; or

(c) the Effective Flexible Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Flexible Capacity of the Facility for such Showing Month.

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

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

“Replacement RA” means Resource Adequacy Benefits, if any, (a) 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, unless Buyer consents to accept Replacement RA from another facility, and (b) located within the CAISO Balancing Authority Area.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by the CPUC, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Capacity” or **“RA Capacity”** has the meaning set forth in the CAISO Tariff.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“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, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“Revised Liability Share” means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed one hundred twenty-five percent (125%) of such Participant’s Initial Liability Share.

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

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

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

“Scheduled Energy” means the Charging Energy or Discharging Energy, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM

Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO 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 Indemnified Parties**” has the meaning set forth in Section 16.1(b).

“**Seller Initiated Test**” has the meaning set forth in Section 4.4(c).

“**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 shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages for purposes of this Agreement, except to the extent that Seller’s lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses.

“**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 Discharging Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

“**Showing Month**” shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**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 any such update to the Site that includes real property that was not originally contained within the Site boundaries

described in Exhibit A shall be subject to Buyer's approval of such updates in its sole discretion. "Site" does not include any land rights or interests in the real property constituting the Site that relate to or are used by other projects constructed or owned by Seller or its Affiliates.

"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.

"State of Charge" or **"SOC"** means the ratio of (a) the Storage Level of the Facility to (b) the Effective Capacity multiplied by eight (8) hours, expressed as a percentage.

"Station Use" means the Energy that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

"Step-Up Event" means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Share Agreement or otherwise or by Buyer hereunder.

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

"Subsequent Purchaser" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"Supplementary Capacity Test Protocol" has the meaning set forth in Exhibit O.

"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 Transmission Provider, 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.

"System RAR" means the Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. "System RAR" may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

"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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

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

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

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Discharging Energy 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.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means Rev Renewables, LLC, a Delaware limited liability company.

“**Unplanned Outage**” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

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 Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

(g) the terms "include" and "including" mean "include or including (as applicable) 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) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein, including Section 2.1(b) ("Contract Term"); *provided,*

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) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within ninety (90) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Development Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. Upon Buyer's approval of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity, if applicable;

(d) 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;

(e) Seller has obtained CAISO Certification for the Facility; The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(f) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(g) Seller has Site Control;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(i) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, 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 agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably 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. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, 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; *provided*, in the event Seller misses any Milestone and Seller provides Notice to Buyer that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date as may be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages and as its exclusive remedy, and neither Party shall have any further liability under this Agreement arising after the date of

termination. Such termination right must be exercised, if at all, within ten (10) Business Days after Buyer's receipt of Seller's Notice that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Exhibit B).

2.5 **Pre-Commercial Operation Actions**. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. In addition, Seller shall have the right to operate the Facility [REDACTED] prior to the Commercial Operation Date, so long as such operation does not interfere with Seller's ability to perform its obligations under this Agreement from and after the Commercial Operation Date.

ARTICLE 3 PURCHASE AND SALE

3.1 **Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller has all rights to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith [REDACTED] and after the Delivery Term. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement.

3.2 **Discharging Energy**. Subject to the terms and conditions of this Agreement, Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes**. Seller shall request Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity 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 Partial Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall maintain Partial Capacity Deliverability Status sufficient to fully deliver the Facility's Guaranteed Capacity for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.4 **Ancillary Services; Environmental Attributes.**

(a) **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

(b) **Environmental Attributes.** Buyer shall have the exclusive rights during the Delivery Term to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties in their discretion have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of:

(i) The greater of:

(A) the difference, expressed in kW, of the then applicable Guaranteed Net Qualifying Capacity of the Facility, minus the then applicable Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Replacement RA that was able to be included in Supply Plans for the Showing Month by Buyer; and

(B) the difference, expressed in kW, of the then applicable Guaranteed Effective Capacity of the Facility, minus the then applicable Effective Flexible Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in Supply Plans in the Showing Month by Buyer;

(ii)

(c) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity and/or Guaranteed Flexible Capacity, as applicable, of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity and/or Effective Flexible Capacity, as applicable, of the Facility with respect to such Showing Month; *provided*, that any Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least sixty (60) days before the RA Shortfall Month.

3.6 **Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) Subject to the provisions of this Agreement, including Section 4.9(a),

commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Commencing as of the Commercial Operation Date, the Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer in accordance with Exhibit D.

(b) Seller shall be permitted to reduce deliveries of applicable Products during periods of Planned Outages, Unplanned Outages, Force Majeure Events and Curtailment Orders and as necessary to maintain health and safety pursuant to Section 6.2.

4.2 **Interconnection**. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall maintain the Dedicated Interconnection Capacity for the Facility's sole use.

4.3 **Performance Guarantees**.

(a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than [REDACTED] (the "**Guaranteed Availability**"), which Monthly Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit O. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the "**Performance Guarantees**".

(c) Buyer's sole remedies for Seller's failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the Efficiency Rate Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C.

4.4 **Facility Testing**.

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests.

(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall conduct such additional testing as necessary to ensure the Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

(c) Any testing of the Facility requested by Buyer after the Commercial Operation Capacity Tests, and all required annual tests pursuant to Section B of the section headed “Capacity Test Notice and Frequency” in Exhibit O, shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below [REDACTED], any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test other than a Capacity Test required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive

remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be deemed unavailable for purposes of calculating the Monthly Capacity Availability.

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility from the Delivery Point. Seller shall maintain, repair or replace equipment in Seller's possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall be responsible for issuing all Charging Notices necessary or required in connection with the Must Offer Obligations.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.

(d) **Discharging Notices.** Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice. Buyer shall be responsible for issuing all Discharging Notices necessary or required in connection with the Must Offer Obligations and all CAISO charges and penalties for failing to comply with the Must Offer Obligation.

(e) **No Unauthorized Discharging.** Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility

maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom, and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch or Seller negligently or intentionally fails to accurately communicate to Buyer the Facility's availability, Seller shall be responsible for all CAISO charges and penalties resulting from such deviations (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)).

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Agreement or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the Operating Restrictions.

(j) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice shall not be considered Station Use, (iii) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (iv) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties or charges for Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii) or over the same circuit as Charging Energy and Discharging Energy as

provided in clause (iii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties or charges.

4.10 **Capacity Availability Notice.**

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("**Monthly Forecast**").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **[Reserved].**

4.12 **Outages**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of applicable Products during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i). Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse

impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.12(a), during the months of June through September, Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Facility by more than the lesser [REDACTED]

[REDACTED] 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 of the months of June through September, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) **Planned Outage Timing.** To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) **Notice of Unplanned Outages** Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than thirty (30) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within thirty (30) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5

TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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 (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). 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) or on Charging Energy prior to its delivery to Seller. 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 to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and 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*, 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 **Environmental Costs.** Seller shall be solely responsible for:

- (a) All Environmental Costs;
- (b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy;
- (c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations, and
- (d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility.**

(a) Seller shall construct, operate, and maintain the Facility so that Buyer may dispatch the Facility within the operating parameters of the Operating Restrictions. Nothing herein shall limit Seller's right to replace or augment existing batteries and other equipment to maintain the capacity of the Facility.

(b) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(c) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Discharging Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to charge or discharge the Facility up to the Dedicated Interconnection Capacity; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (iv) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter, which shall be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use except to the extent drawn from Charging Energy or Discharging Energy. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the Facility 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 Facility 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 shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** If Seller or Buyer have reason to believe there may be a Facility Meter malfunction, Seller shall test the Facility 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 Facility Meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall reflect (a) records of metered data, including, to the extent the available, (i) CAISO metering and transaction data reflecting the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) Seller's records of metered data, including data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Beginning on the Commercial Operation Date, 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; *provided*, however, that the Parties acknowledge and agree that CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month may not be available or be final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) becomes available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the next monthly invoice.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account

provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within (30) days of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. 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, or there is determined to have been a Facility Meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the

extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after receipt of Project Participant Approval. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the applicable amount. 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.

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. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller 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.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for

in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

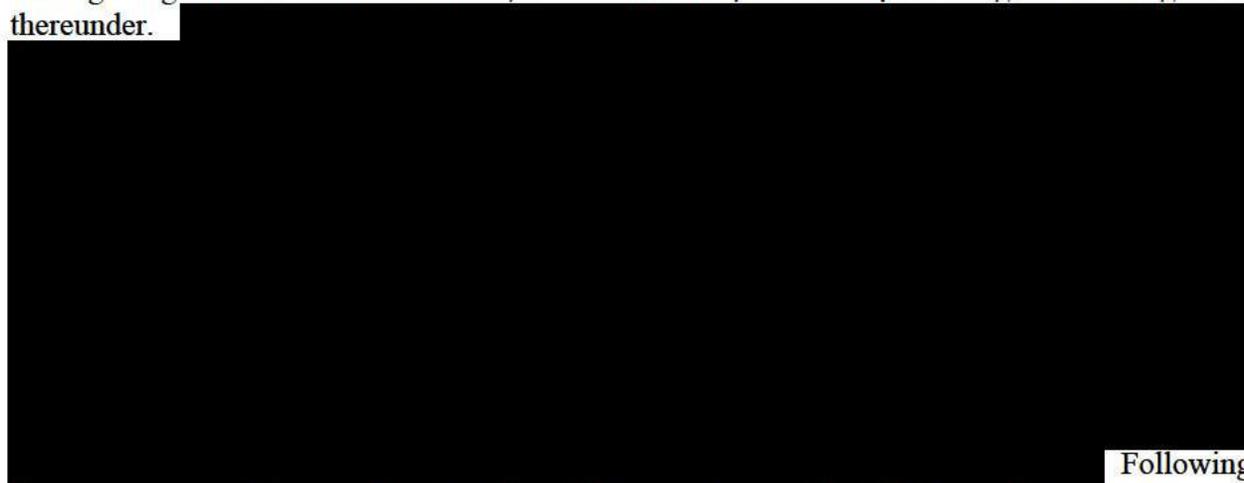
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.10 **Buyer Credit Arrangements.**

(a) To secure its obligations under this Agreement, Buyer shall deliver to Seller, within ninety (90) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer's delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Buyer may propose amendments to Exhibit V, including with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share. Seller shall have ten (10) Business Days to evaluate any such proposed amendments to Exhibit V in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit V, Buyer shall have thirty (30) days to provide Seller with replacement Buyer Liability Pass Through Agreements with Liability Shares executed by Buyer and the applicable Project Participants that incorporate the Liability Shares set forth in the amended Exhibit V. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder.

(b) Within thirty (30) days following a Step-Up Event, (A) Buyer shall provide Seller with replacement Buyer Liability Pass Through Agreements from all Compliant Project

Participants executed by Buyer and the applicable Compliant Project Participants that reflect each Compliant Project Participant's Revised Liability Share following such Step Up Event, and, (B) Exhibit V will be amended to reflect the Compliant Project Participants' Revised Liability Shares following such Step Up Event. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Compliant Project Participant within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning or failure to countersign any such Buyer Liability Pass Through Agreement shall affect Buyer's or the Project Participant's rights or obligations thereunder.



Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit V to set forth the Revised Liability Shares of the remaining Project Participants.

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 in 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 after 5 pm, 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 commercially 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 (excluding impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date); 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 or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product 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, except to the extent such Curtailment Order is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement

in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. 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 except as provided above, (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 Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies 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*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or substantially 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 Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(c), 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 (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)-day 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 (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, (B) failures related to the Monthly Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P, and (C) failure to maintain the Guaranteed Efficiency Rate, the exclusive remedies for which are set forth in Exhibit C), 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)-day 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, if applicable; or

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

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

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

(ii) the failure by Seller to (A) achieve Construction Start on or before [REDACTED] the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended

by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year, the simple average of the Monthly Capacity Availability calculations for such Contract Year is not equal to at least [REDACTED] of the Guaranteed Availability, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure of the simple average of the Monthly Capacity Availability calculations for such Contract Year to equal at least [REDACTED] of the Guaranteed Availability, 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 [REDACTED] ("**Cure Plan**") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a 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 (thirty (30) days in the case of subsection (A)) 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.

(c) [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

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, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

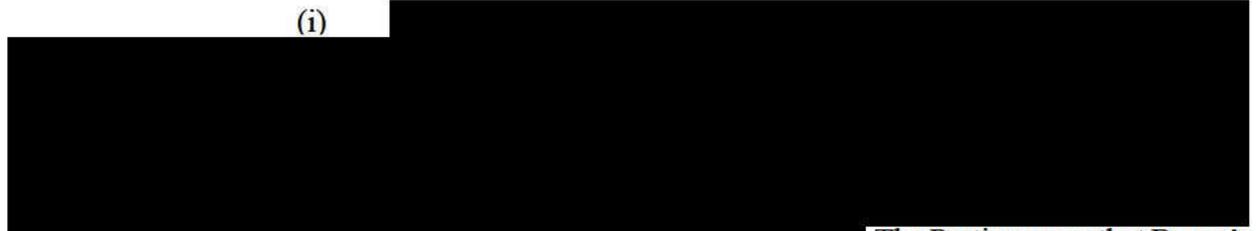
(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, 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 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i)

 The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) Seller's Losses, including Seller's lost revenue under this Agreement resulting from a Buyer Default, which shall not be considered to include consequential, incidental, punitive, exemplary, indirect, or business interruption damages for purposes of this Agreement, plus (ii) without duplication of any costs or expenses covered by preceding clause, all actual, documented and verifiable Costs that have been actually incurred, or become payable, by Seller arising out of the termination of this Agreement, less (B) Seller's Gains. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date**. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and 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. 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 (i) 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, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) 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 or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), 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 or Damage Payment, as 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 or Damage Payment, as applicable, 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 or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.

[REDACTED]

[REDACTED]

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy herein, 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.

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

11.9 Pass Through of Buyer Liability. Notwithstanding any other provision of this Agreement, if Buyer fails 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, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the ESSA as the result of an Event of Default by Buyer.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH

OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

12.3 **Limitation on Pre-COD Liability.** Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller’s aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Delay Damages, Commercial Operation Delay Damages and the Damage Payment, shall not exceed [REDACTED] of the amount of the Development Security. For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has achieved Commercial Operation.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct

business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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

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

authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

(e) Buyer 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 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 **Seller's Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) **Compliance with Laws.** To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual

orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) Workforce Development. Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); and (ii) be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations (“**Project Labor Agreement**”). Seller will request that the following or similar language be included in any Project Labor Agreement executed after the Effective Date: “Union members agree not to make any written or verbal statements about CC Power or its members that are disparaging, untrue or inaccurate.”

(c) Prohibition Against Forced Labor. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

(d) Permits. Seller shall obtain and maintain any and all permits and approvals necessary for the construction and operation of the Facility, including without limitation, environmental clearance under CEQA or other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

(e) Site Control. Seller shall maintain Site Control throughout the Delivery Term.

ARTICLE 14 ASSIGNMENT

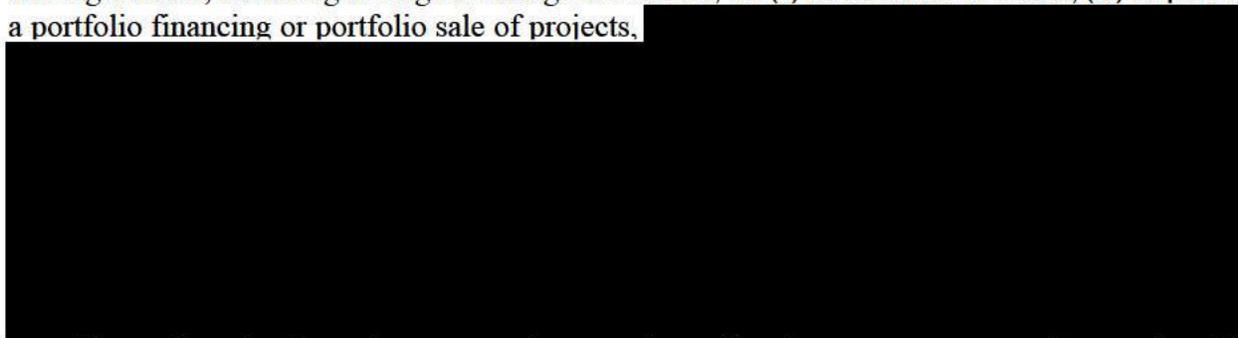
14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall pay the

other Party's reasonable expenses 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 without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"), which shall be substantially in the form of Exhibit T. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing of the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify this Agreement.

14.3 **Permitted Assignment**.

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to: (i) an Affiliate of Seller, (ii) as part of a portfolio financing or portfolio sale of projects,



Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3(a) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (A) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody's, and (B) is a load serving entity; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer, its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio

Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any respect and that Seller is reimbursed for all costs and expenses incurred by Seller and its Lenders in connection with such transaction.

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 or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of San Francisco.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

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

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.**

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach

of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the “**Seller’s Indemnified Parties**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer’s breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.

(c) Seller shall indemnify, defend, and hold harmless Buyer’s Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement.

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

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

ARTICLE 17 INSURANCE

17.1 Insurance.

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

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, including Seller (and Lender, if any) as additional named insureds.

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of [REDACTED] per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(g) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard “all risk” property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

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

(j) 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 with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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. The Party receiving Confidential Information

(the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s members, employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

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

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally

acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **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 electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 officers, directors, advisors, contractors, consultants or employees 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 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then 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 of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

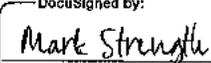
19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption 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.

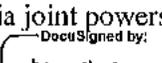
[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

TUMBLEWEED ENERGY STORAGE, LLC

CALIFORNIA COMMUNITY POWER, a
California joint powers authority

By: 
Name: Mark Strength
Title: senior vice president

By: 
Name: Tim Haines
Title: Interim General Manager

Signature Page

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Tumbleweed Energy Storage (75 MW) (CAISO Queue 1217)

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

City: [REDACTED] near Rosamond, CA

County: Kern

Zip Code: 93560

Latitude and Longitude: [REDACTED]

Facility Description: 69 MW/552 MWh grid-connected battery energy storage facility, as depicted on the following page.

Interconnection Point: The Project shall interconnect to Whirlwind Substation 230 kV

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: [REDACTED]

Transmission Provider: Southern California Edison (SCE)

Additional Information: The Facility may include a co-located 1 MW solar generation system which will only serve onsite load.

Site Diagram (indicative only, will change prior to construction):

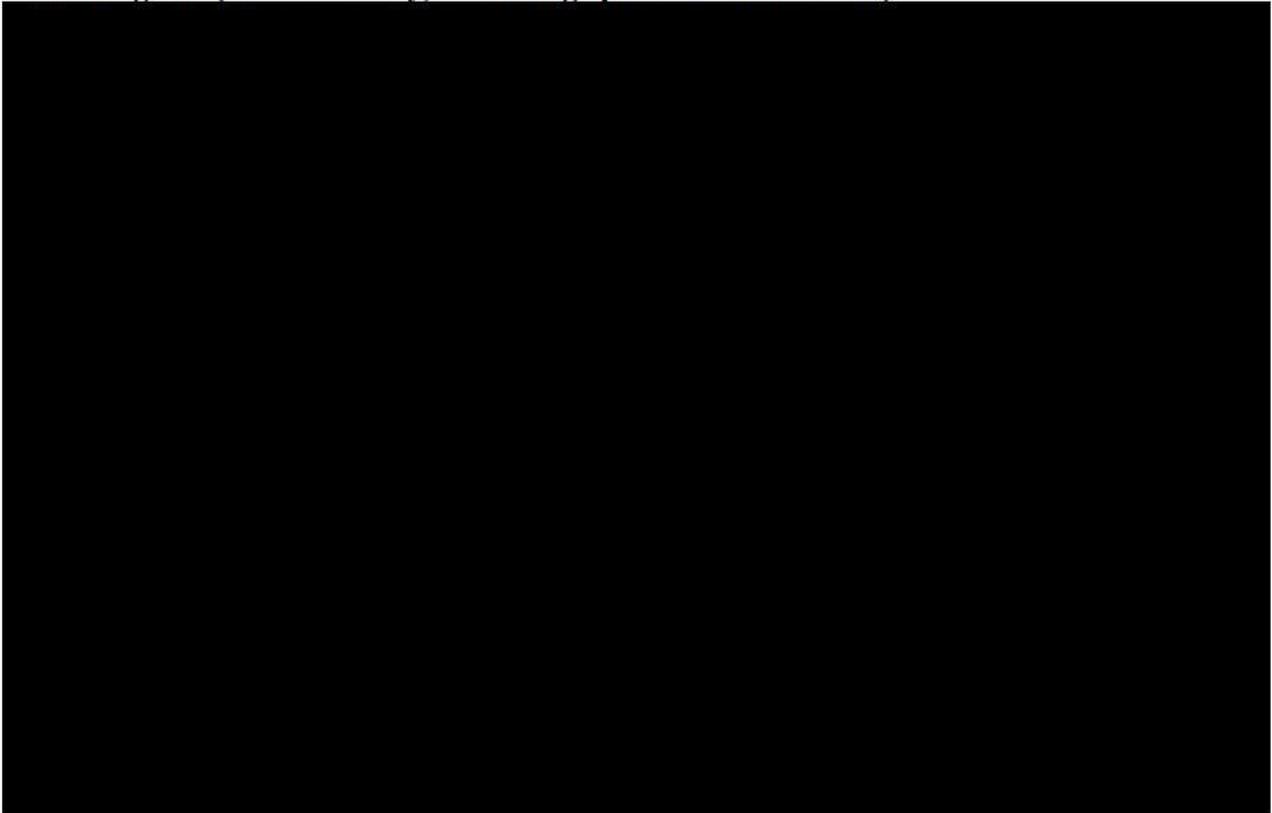


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of the conditional use permit and other applicable discretionary permits for the construction of the Facility, and once Seller has engaged one or more contractors, and ordered all long lead time equipment as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin, and has executed one or more engineering, procurement, and construction contract and issued a notice to proceed under the applicable contract that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations) 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 shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date for all purposes hereunder, including Section 11.1(b)(ii), by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Construction Start Date, Seller may provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

2. Commercial Operation of the Facility.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.
- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date for all purposes hereunder, including

Section 11.1(b)(ii), by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current (including any previous extensions) Guaranteed Commercial Operation Date, Seller may provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), 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 shall, subject to notice and documentation requirements set forth below, both 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 to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or
 - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Discharging Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and

any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days. Upon request from Buyer, Seller shall provide documentation reasonably demonstrating that the delays described in subsections (a) and (c) above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.
6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

(a) Monthly Compensation. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity and/or Efficiency Rate are applicable.

(b) Availability Adjustment. The “Availability Adjustment” (or “AA”) is calculated as follows:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

(c) Efficiency Rate Adjustment. The “Efficiency Rate Adjustment” is calculated as follows:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



(d) Tax Credits. If, prior to the commencement of Commercial Operation of the Facility, Federal Investment Tax Credit Legislation is enacted that is applicable to the Facility, Seller shall use commercially reasonable efforts (including taking into consideration any increased costs that may be required in order to qualify for any New Tax Credit) to cause the ITC or other Tax Credits provided by such Federal Investment Tax Credit Legislation ("New Tax Credit") to be available for the Facility; *provided*, however, that the Parties' obligations hereunder, including for delivery and purchase of the Product, shall be effective regardless of whether the Facility or the sale of Product hereunder is eligible for or receives the New Tax Credit, and the Contract Price shall not be revised if Seller does not receive the New Tax Credit or if the New Tax Credit expires, ceases to apply or is repealed before it can be used by Seller.



EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Unless Buyer agrees in its absolute discretion to provide Scheduling Coordinator services prior to the Commercial Operation Date, beginning on the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (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 Commercial Operation Date, 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 Commercial Operation Date. On and after the Commercial Operation Date, 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, real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Beginning on the Commercial Operation Date, 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 shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Delivery Point; *provided, however*, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller's default, breach or other failure to perform as required by this Agreement, (ii) incurred by 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), or (iii) to the

extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, 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 Seller's responsibility.

(d) CAISO Settlements. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall 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 such 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 in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

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

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

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

(h) NERC Reliability Standards. Beginning on the Commercial Operation Date, Buyer

(as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
Day 1																									
Day 2																									
Day 3																									
Day 4																									
Day 5																									
[insert additional rows for each day in the month]																									
Day 29																									
Day 30																									
Day 31																									

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

EXHIBIT G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Comments
	(MW)			
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				
0:00				

Comments: _____

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to California Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service 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, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers' specifications.
4. The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.
8. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: _____
Its: _____
Date: _____

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (“**Certification**”) of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 that a Capacity and Efficiency Rate Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW AC to the Delivery Point at eight (8) hours of continuous discharge, (ii) a Battery Charging Factor of __%, (iii) a Battery Discharging Factor of __%, and (iv) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: _____
Its: _____
Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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:

(such description shall amend the description of the Site in Exhibit A of the Agreement.)

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. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

California Community Power,
a California joint powers authority
[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of California Community Power, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage [Service] 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] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in San Francisco, California.

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. [XXXXXXXX] 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.

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 that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer 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. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least ninety (90) 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. [XXXXXXXX]. 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: California Community Power, a California joint powers authority, [Title], [Address]. 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]

EXHIBIT A

(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 California Community Power, [ADDRESS], 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 Energy Storage Service 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

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 [] 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 [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [____], 20__ (the “**BLPTA Effective Date**”) by and between [____], a [____] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and [____], a [____] (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “**ESSA**”) dated as of [____], 20__;

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the ESSA;

WHEREAS, Project Participant is named as a Project Participant under the ESSA and will derive substantial direct and indirect benefits from the execution and delivery of the ESSA;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

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:

AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [X%] (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, [*Note: Insert percentage from Exhibit V*] of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the ESSA, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the ESSA, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the ESSA shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s

Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the ESSA, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives:

a) all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the ESSA, but the foregoing waiver does not apply to any other right or remedy of Seller under the ESSA, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the ESSA or any other amounts incurred or accrued prior to termination of the ESSA and the right to terminate the ESSA as the result of an Event of Default by Buyer

3. **Demand Notice.** For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the ESSA and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4, as applicable. If CC Power fails to pay any amount when due pursuant to the ESSA, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit V to the ESSA will be deemed amended to reflect the Project Participant's Revised Liability Share; *provided* that the Project Participant's Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant's Initial Liability Share.

5. **Scope and Duration of BLPTA.** The obligations under this BLPTA are

independent of the obligations of CC Power under the ESSA, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the ESSA. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the ESSA has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the ESSA are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

- a) The extension of time for the payment of any Guaranteed Amount; or
- b) Any amendment, modification or other alteration of the ESSA; or
- c) Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
- d) 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 CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the ESSA 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
- e) Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
- f) The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
- g) CC Power's inability to pay any Guaranteed Amount or perform its obligations under the ESSA; or
- h) 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 Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. Waivers by Project Participant. Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against California Community Power under the ESSA or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the ESSA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the ESSA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the ESSA and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. Project Participant Representations and Warranties. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, 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 member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. Seller Representations and Warranties. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, 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 Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. California Community Power Representations and Warranties. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA 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 BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, 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 member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. Notices. Notices under this BLPTA 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 (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. 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 Seller, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. Governing Law and Forum Selection. This BLPTA 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 BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of _____.

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA 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 BLPTA 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 BLPTA and all other provisions shall remain in full force and effect. This BLPTA 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 BLPTA 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.

13. Assignment. Except as provided below in this Paragraph 12, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the ESSA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

14. No Recourse to Members of Project Participant. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the ESSA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

16. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a) Designated Fund. CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("SFPUC") or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b) Controller Certification. CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c) Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d) Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e) Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f) Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h) Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j) Consideration of Criminal History in Hiring and Employment Decisions.

Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k) Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l) Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller’s board of directors; Seller’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as

expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

17. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("SJCE") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall

be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[PROJECT PARTICIPANT]:

By: _____

Printed Name: _____

Title: _____

**CALIFORNIA COMMUNITY POWER, a
California joint powers authority:**

By: _____

Printed Name: _____

Title: _____

[SELLER]:

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

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

Pursuant to Section 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

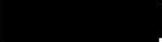
By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

<i>Tumbleweed Energy Storage, LLC</i> ("Seller")	California Community Power, a California joint powers authority ("Buyer")
All Notices: Street: 5000 Hopyard Road, Suite 480 City: Pleasanton, CA 94588 Attn: Contract administration Phone: C: 510-363-7124 O: 925-201-5232 Email: GBrehm@RevRenewables.com	All Notices: Street: 70 Garden Court, Suite 300 City: Monterey, CA 93940 Attn: Tim Haines Phone: 916-207-4078 Email: timhaines@powergridsymmetry.com
Scheduling: Attn: Edward Warner Phone: 925-201-5233 C: 925-519-0031 Email: EWarner@RevRenewables.com	Scheduling: Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: Greg Brehm Phone: C: 510-363-7124 O: 925-201-5232 Email: GBrehm@RevRenewables.com	Confirmations: Attn: TBD Phone: TBD Email: TBD
Invoices: Attn: Adekunle Adebayo Phone: 732-867-5910 E-mail: AAdebayo@RevRenewables.com	Invoices: Attn: TBD Phone: TBD E-mail: TBD
Payments: Attn: Adekunle Adebayo Phone: 732-867-5910 E-mail: AAdebayo@RevRenewables.com	Payments: Attn: TBD Phone: TBD E-mail: TBD
Wire Transfer: BNK:  ABA:  ACCT: 	Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD
Reference Numbers: Duns: N/A Federal Tax ID Number: 85-3069929	Reference Numbers: Duns: Federal Tax ID Number:
Credit and Collections: Attn: Scott Tansey Street: One Tower Center, 21st Floor City: East Brunswick, NJ 08816 Phone: 732 867-5881 Email: stansey@lspower.com	Credit and Collections:

<i>Tumbleweed Energy Storage, LLC</i> ("Seller")	California Community Power, a California joint powers authority ("Buyer")
With additional Notices of an Event of Default to: Attn: David Sass VP & Assistant General Counsel Street: One Tower Center, 21st Floor City: East Brunswick, NJ 08816 Phone: 732 867-5853 Facsimile: 732 249-7290 Email: DSass@RevRenewables.com	With additional Notices of an Event of Default to: Attn: Brittany Iles, Attorney Street: 555 Capitol Mall, Ste 570 City: Sacramento, CA 95814 Phone: 916 326-5812 Facsimile: 916 330-4337 Email: iles@braunlegal.com

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Capacity Test. In addition to the annual capacity test, if Buyer has reason to believe that the Effective Capacity or the Efficiency Rate is materially less than shown by the most recent test results, Buyer shall have the right to require a Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data

with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
 - (1) Electrical output at maximum discharging level (MW) for eight (8) continuous hours; and
 - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed ten (10) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:
 - (1) Time;
 - (2) The amount of Discharging Energy to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

- (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter); and
 - (4) Storage Level (MWh).
- C. Site Conditions. During each CT, 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 Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for ten (10) consecutive hours (or such lesser time as is required to reach 100% SOC) pursuant to A(2) above;
 - (4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
 - (5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
 - (6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
 - (7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.
- E. Test Conditions.
- (1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.
 - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller

may postpone or reschedule all or part of such CT 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 CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT 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 CT results or Buyer's rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary 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 Capacity Tests based on the then current design of the Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
- (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the SOC.
- (3) Command a real power charge that results in an AC power of Facility's maximum charging level and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.
- (4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.
- (6) Following an agreed-upon rest period (not to exceed 5 minutes), command a real power discharge that results in an AC power output of the Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.

- (7) Record and store the SOC after eight (8) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation Capacity Test) for eight (8) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
 - (8) Record and store the Discharging Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
 - (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC.
 - (10) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached a 0% SOC pursuant to either Part III.A.7 or Part III.A.9, as applicable.
- Test Results:
 - (1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by eight (8) hours.
 - (2) The total amount of Discharging Energy (as reported under Section III.A(10) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

Note: The following tests (B) through (E), or alternative tests consistent with CAISO rules, may be conducted in connection with the initial Commercial Operation Capacity Test and any subsequent Capacity Test to the extent permitted under applicable Laws, including CAISO rules, but the results of these tests will not affect the determination of whether or not the Facility has passed a Capacity Test and will only be used to determine whether the Facility is performing with operational characteristics equal to those required by the Operating Restrictions.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the facility's full charging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 35 MW for ten (10) minutes.

(3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 35 MW for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the “**Monthly Capacity Availability**” for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Capacity Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

m = relevant month “ m ” in which Monthly Capacity Availability is calculated;

MONTHRS_m is the total number of hours for the month;

AVAILHRS_m is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy between the Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point. If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

EXCUSEDHRS_m is the total number of hours, or partial hours, in the month that are not included as AVAILHRS_m due to Approved Maintenance Hours, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer breach or default, or any circumstances at the high-voltage side of the Delivery Point or beyond that point that may limit Seller’s delivery of Product (each, an “**Excused Event**”). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being unavailable during any applicable hour, or partial hour, the EXCUSEDHRS_m for such time period shall be calculated by multiplying such EXCUSEDHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of such Effective Capacity amount that is not reported as available by (i) Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity. For avoidance of doubt, the total of AVAILHRS_m plus EXCUSEDHRS_m for any hour, or partial hour, shall never exceed 1.

EXHIBIT Q

OPERATING RESTRICTIONS

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

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium-ion	
Storage Unit Name:	[Unit Name and Number]	
A. Contract Capacity		
Guaranteed Capacity (MW):	69	
Effective Capacity (MW):	69	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	230	
Maximum State of Charge (SOC) during Charging	100%	
Minimum State of Charge (SOC) during Discharging	0%	
Maximum Storage Level (MWh):	552	
Minimum Storage Level (MWh):	0	
Maximum Charging Capacity (MW):	69	
Maximum Discharging Capacity (MW):	69	
C. Daily/Monthly/Annual Cycles		
Maximum annual Cycles:	365	
D. Charge and Discharge Rates		
Mode	Ramp Rate (MW/minute) Description	
Energy	40 MW/minute to 80 MW/minute	
E. Ancillary Services		
Frequency regulation is included:	yes	
Spinning reserve is included:	yes	
Non-spinning reserve is included:	yes	
Regulation up is included:	yes	
Regulation down is included:	yes	
Black start is included:	no	
Voltage support is included:	yes, in form of Automatic Voltage Regulation (AVR)	

EXHIBIT R
METERING DIAGRAM

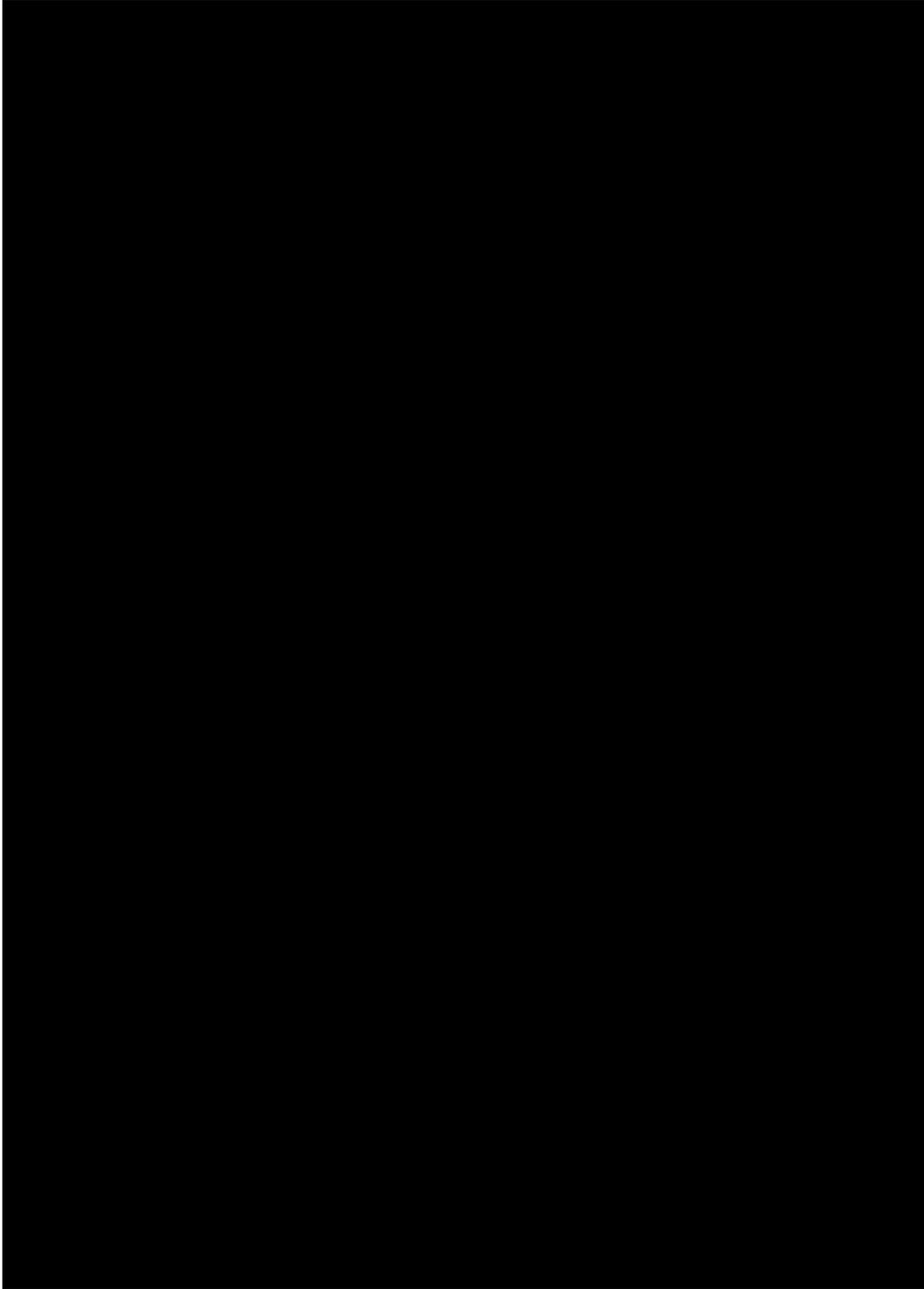


Exhibit R - 1

EXHIBIT S
[INTENTIONALLY OMITTED]

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) California Community Power, a California joint powers authority (“CCP”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESSA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CCP have entered into that certain Energy Storage Service Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“ESSA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CCP, and CCP will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the ESSA, Project Company has agreed to provide to CCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the “ESSA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESSA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the ESSA that CCP and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CCP hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the ESSA (subject to CCP's rights and defenses under the ESSA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the ESSA or makes any claims with respect to payments or other obligations under the ESSA, the terms and conditions of the ESSA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CCP is authorized to act in accordance with Collateral Agent's instructions, and that CCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), CCP will not terminate or suspend its performance under the ESSA until it first gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA. In addition, if Collateral Agent gives CCP written notice prior to the expiration of the applicable cure period under the ESSA of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of ninety (90) days (or, if such ESSA Default is for failure by the Project Company to pay an amount to CCP which is due and payable under the ESSA other than to provide ESSA Collateral, thirty (30) days, or, if such ESSA Default is for failure by Project Company to provide ESSA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such ESSA Default from CCP to cure such ESSA Default; *provided*, (a) if possession of the

Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has commenced foreclosure proceedings within ninety (90) days after notice of the ESSA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed two hundred seventy (270) days after the notice of the ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a ESSA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CCP with reports concerning the status of efforts to cure a ESSA Default upon CCP's reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the ESSA, and, subject to Sections 1.7(b) and 1.7(c) below, CCP and Substitute Owner will recognize each other as counterparties under the ESSA and will continue to perform their respective obligations (including those obligations accruing to CCP and the Project Company prior to the existence of the Substitute Owner) under the ESSA in favor of each other in accordance with the terms thereof; *provided*, before CCP is required to recognize the Substitute Owner, the Substitute Owner must (i) be a permitted assignee under the ESSA or (ii) have demonstrated to CCP's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience *[TBD]* (a "Permitted Transferee"). For purposes of the foregoing, CCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the ESSA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the ESSA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CCP shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the ESSA remaining to be performed having terms substantially the same as the terms of the ESSA with respect to the remaining Term ("Replacement ESSA"); *provided*, before CCP is required to enter into a Replacement ESSA, the Replacement Owner must have demonstrated to CCP's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner

is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement ESSA, to the extent CCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESSA, CCP may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Project Company under the ESSA or Replacement ESSA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the ESSA and a Replacement ESSA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CCP’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CCP all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESSA or Replacement ESSA, as applicable, including posting and collateral assignment of the ESSA Collateral. Upon such assignment and the cure of any outstanding ESSA Default, and payment of all other amounts due and payable to CCP in respect of the ESSA or such Replacement ESSA, the transferor shall be released from any further liability under the ESSA or Replacement ESSA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the ESSA, including posting and collateral assignment of the ESSA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESSA.

(c) No Liability.

CCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESSA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the ESSA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement ESSA, Collateral Agent shall not have any personal liability to CCP under the ESSA or Replacement ESSA and the sole recourse of CCP in seeking enforcement of such

obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CCP's right to seek equitable or injunctive relief against Collateral Agent, or CCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral.

1.8 Delivery of Notices.

CCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CCP to Project Company pursuant to the ESSA relating to (a) a ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by CCP under the ESSA, (c) any notice of dispute under the ESSA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CCP's obligation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to CCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CCP will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CCP under the ESSA as between CCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CCP receives a Financing Document Default Notice, CCP shall deal exclusively with Project Company in connection with the performance of CCP's obligations under the ESSA. From and after such time as CCP receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CCP shall, until Collateral Agent confirms to CCP in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CCP's obligations under the ESSA, and CCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CCP agrees that it will not, without the Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESSA

2.1 Payments.

Unless and until CCP receives written notice to the contrary from Collateral Agent, CCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. CCP, Project Company, and Collateral Agent acknowledge that CCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that CCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by CCP under the ESSA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESSA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CCP

CCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CCP is a joint powers authority and community choice aggregator duly organized and validly existing 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. CCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of CCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CCP which, if not obtained, will prevent CCP from performing its obligations hereunder or under the ESSA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESSA is in full force and effect, have been duly executed and delivered on behalf of CCP by the appropriate officers of CCP, and constitute the legal, valid and binding obligation of CCP, enforceable against CCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CCP nor, to CCP's actual knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) CCP and, to CCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to CCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

CCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESSA, except as previously disclosed in writing and consented to by CCP.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CCP:

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the ESSA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement

of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the ESSA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CCP and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESSA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized

courier service, and shall be directed (a) if to CCP or Project Company, in accordance with *[Notice Section of the ESSA]* of the ESSA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[]*, Fax: *[]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>		<p>CALIFORNIA COMMUNITY POWER, a California joint powers authority.</p>
<p>By:</p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>		<p>By:</p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p>By:</p> <p>_____</p> <p><i>[Name]</i> <i>[Title]</i></p> <p>Date: _____</p>		

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT U
MATERIAL PERMITS

<i>No.</i>	<i>Permits</i>
1	[REDACTED]
2	[REDACTED]

EXHIBIT V

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
Clean Power San Francisco	16.06%
Peninsula Clean Energy	19.69%
Redwood Coast Energy Authority	3.62%
San Jose Clean Energy	22.28%
Silicon Valley Clean Energy	21.25%
Sonoma Clean Power	12.95%
Valley Clean Energy	4.15%

**California Community Power
Resolution 22-01-02**

**APPROVAL OF TUMBLEWEED LDS PROJECT AND AUTHORIZATION
TO EXECUTE ASSOCIATED AGREEMENTS**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”) to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, the current Members of CC Power began a solicitation process in 2020, in advance of CC Power formation, to consider and evaluate Long Duration Energy Storage (“LDS”) projects; and

WHEREAS, the CC Power Board accepted the Project Development Process establishing a roadmap for the development and progress of CC Power projects and programs; and

WHEREAS, the LDS Project Oversight Committee made up of CC Power member staff, along with project negotiators and project counsel (“Project Team”), has completed negotiations on the Tumbleweed LDS Project, an 8-hour discharge duration, lithium-ion battery project; and

WHEREAS, the Project Team, through the negotiation process, has developed and negotiated an Energy Storage Service Agreement, Buyer Liability Pass Through Agreement, and Project Participation Share Agreement associated with the Tumbleweed Project; and

WHEREAS, pursuant to Section 6.02 of the CC Power JPA, on October 8, 2021, the CC Power Board was provided written notice of intent to bring the Tumbleweed Project to the Board for approval; and

WHEREAS, while the structure of CC Power is predicated on voluntary project participation and not all Members will be participating in the Tumbleweed LDS project, the JPA requires action by the full Board, not simply the project participating members, to approve projects within the purview of CC Power; and

WHEREAS, it is the intent that the CC Power Board approve the Tumbleweed LDS Project and associated agreements with the understanding that approval by participating members is a condition precedent to the effectiveness of the agreements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the Tumbleweed Project as within the purpose and power of CC Power.
2. Approve the Energy Storage Service Agreement and associated Buyer Liability Pass Through Agreement, in substantially final form, attached hereto as Attachment A.
3. Approve the Project Participation Share Agreement, in substantially final form, attached hereto as Attachment B.
4. Delegate the authority to the General Manager to execute the Tumbleweed Project Agreements described above and attached hereto, on behalf of CC Power.

**California Community Power
Resolution 22-01-02**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19th day of January, 2022, by the following vote:

		Aye	No	Abstain	Absent
Central Coast Community Energy	Tom Habashi	X			
CleanPowerSF	Barbara Hale	X			
East Bay Community Energy	Nick Chaset	X			
Marin Clean Energy	Dawn Weisz	X			
Peninsula Clean Energy	Jan Pepper	X			
Redwood Coast Energy Authority	Matthew Marshall	X			
San José Clean Energy	Lori Mitchell	X			
Silicon Valley Clean Energy	Girish Balachandran	X			
Sonoma Clean Power Authority	Geof Syphers	X			
Valley Clean Energy	Mitch Sears	X			

DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3...
Chair

DocuSigned by:
C. Anthony Braun
B8EAA3BA621742F...
Attest by: Secretary



Staff Report – Item 6

Item 6: Clean Energy Procurement Informational Update

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources

Date: 2/9/2022

SVCE staff will provide an update on the state of SVCE’s clean energy portfolio and upcoming procurement needs and efforts. No action requested of the Board.

ATTACHMENTS

The presentation for this item is posted to the SVCE website.



Silicon Valley Clean Energy
Board of Directors Meeting

February 9, 2022

Appendix A

Power Resource Contracts Executed by CEO

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”) and **Peninsula Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of December 17, 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

**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 shall 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (h) 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.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such

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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a 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 having the same Capacity Attributes of the Unit(s) originally identified in Appendix B, including 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:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month;
- (b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;
- (c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings;
- (d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product; and
- (e) 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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.
- (d) Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Purchaser's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3
PAYMENTS

3.1 Payment

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 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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
HOLD-BACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

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 Purchaser²

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 either Parties constituent members, or the officers, directors, advisors, contractors, consultants or employees of either Party or either Parties constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

² For EBCE, 3CE, PCE, and SVCE only.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 9.4 is deleted in its entirety and replaced with the following:
- “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, with notice of the objection given to the other Party. 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 two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”
- (b) 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.”
- (c) 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.
- (d) 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.”
- (e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

- (f) 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.”

- (g) 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.
- (h) 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”.
- (i) 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.”

- (j) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (k) The following shall be inserted as a new Section 34.5:

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

“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.”

- (l) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (m) 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.*

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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, 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

Silicon Valley Clean Energy Authority

By: DocuSigned by:
Janis C. Pepper
AF3E8A7990AD404...

By: DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C9...

Name: Janis Pepper _____

Name: Girish Balachandran _____

Title: CEO _____

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.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“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.

“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.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“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 twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR 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” 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.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.



“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“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: CAISO System

Resource Category (MCC Bucket): 4

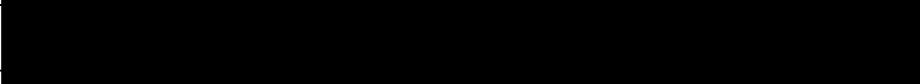
CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 1

Delivery period 

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
		

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
		

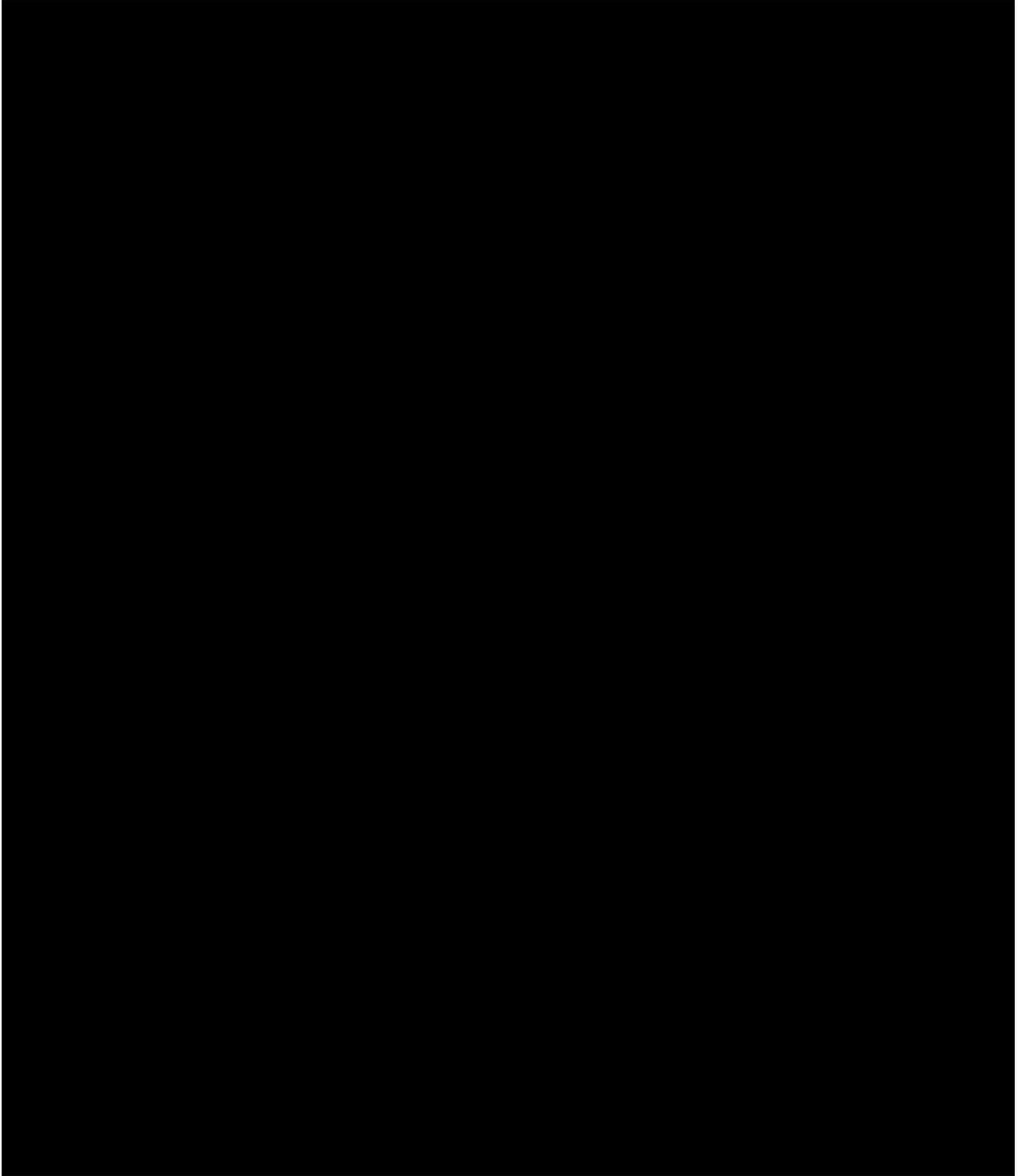
Unit 1

Unit Specific Information	
Resource Name	REDONDO GEN STA. UNIT 8
Physical Location	Redondo Beach, CA
CAISO Resource ID	REDOND_7_UNIT 8
SCID of Resource	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):	480
Unit EFC by month (e.g., Jan=30, Feb=50)	350
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

**APPENDIX C
NOTICE INFORMATION**

Seller: Peninsula Clean Energy Authority

Purchaser: Silicon Valley Clean Energy Authority



**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Peninsula Clean Energy Authority**, a California joint powers authority (“Seller”) and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of December 17, 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

**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 shall 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (h) 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.
- (c) Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller's option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the "Swap Reduction Option"); provided, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such

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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Confirmation.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a 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 having the same Capacity Attributes of the Unit(s) originally identified in Appendix B, including 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:

- (a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser's Compliance Showings related to such Showing Month;
- (b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;
- (c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser's Compliance Showings;
- (d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product; and
- (e) 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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.
- (d) Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Purchaser's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3
PAYMENTS

3.1 Payment

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 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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
HOLD-BACK AND SUBSTITUTE CAPACITY**

No later than three (3) Business Days before the 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

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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 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.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

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 Purchaser²

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 either Parties constituent members, or the officers, directors, advisors, contractors, consultants or employees of either Party or either Parties constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

² For EBCE, 3CE, PCE, and SVCE only.

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

For this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 9.4 is deleted in its entirety and replaced with the following:
- “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, with notice of the objection given to the other Party. 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 two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”
- (b) 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.”
- (c) 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.
- (d) 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.”
- (e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

- (f) 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.”

- (g) 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.
- (h) 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”.
- (i) 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.”

- (j) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (k) The following shall be inserted as a new Section 34.5:

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

“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.”

- (l) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (m) 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.*

**Joint CCA WSPP Standard RA Confirmation
30 August 2021 (Swap language added)**

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, 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.

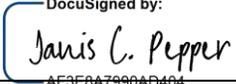
6.10 Entire Agreement; No Oral Agreements or Modifications

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:

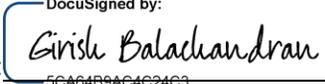
Peninsula Clean Energy Authority

By:  _____
DocuSigned by:
AF3E0A7990AD404...

Name: Janis Pepper _____

Title: CEO _____

Silicon Valley Clean Energy Authority

By:  _____
DocuSigned by:
5CA64B9AC4C24C9...

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.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“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.

“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.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“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 twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR 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” 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.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.



“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“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: _____

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 1

Delivery period: [REDACTED]

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
[REDACTED]		

Flexible Capacity, if applicable

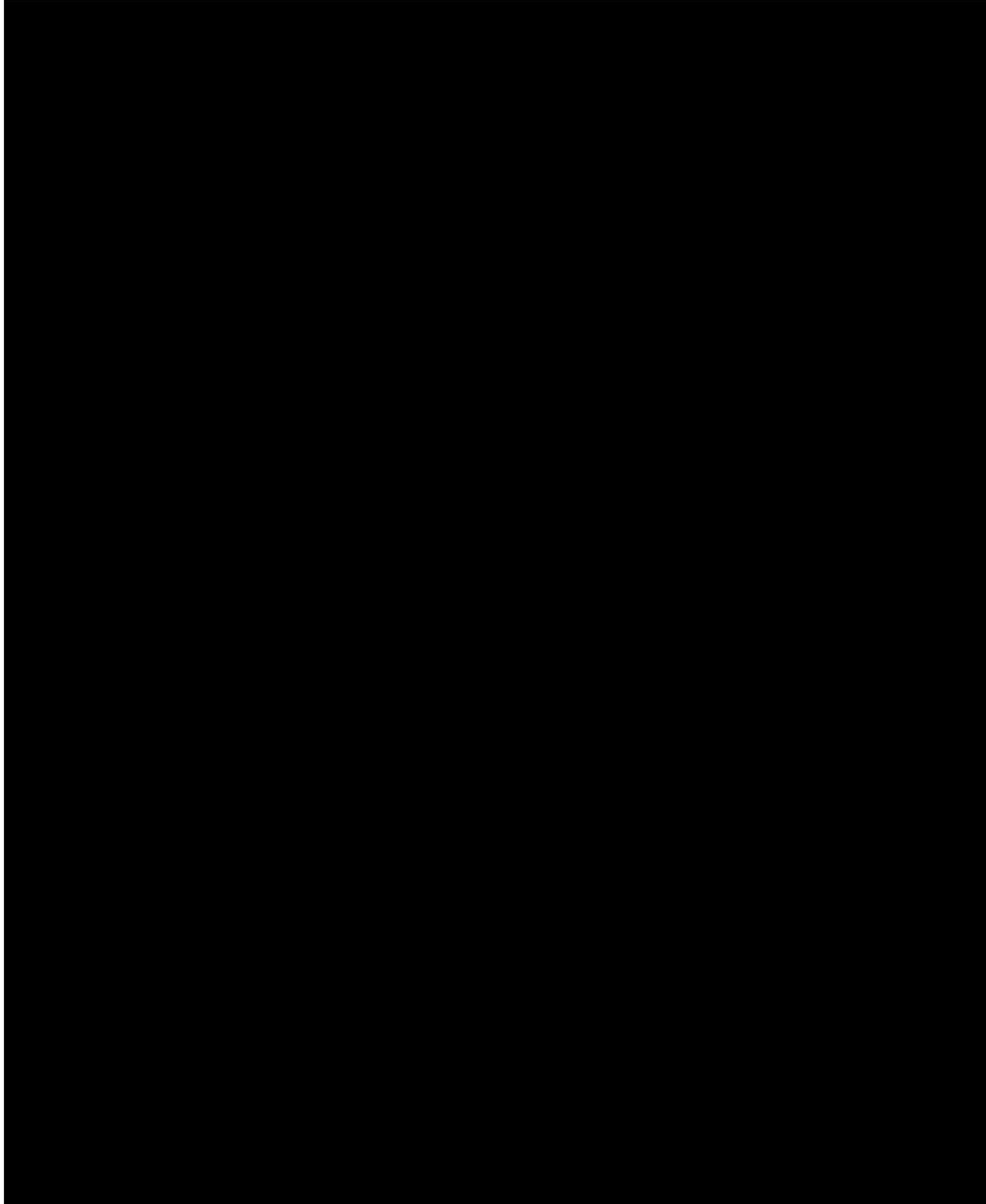
Showing Month and Year	Contract Quantity	Contract Price
[REDACTED]		

Unit 1

Unit Specific Information	
Resource Name	GEYSERS UNIT 18 (HEALDSBURG)
Physical Location	Healdsburg, CA
CAISO Resource ID	GEYS18_7_UNIT18
SCID of Resource	CALJ
Unit NQC by month (e.g., Jan=50, Feb=65):	45
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Geothermal
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	NCNB
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

**APPENDIX C
NOTICE INFORMATION**

Seller: Peninsula Clean Energy Authority	Purchaser: Silicon Valley Clean Energy Authority
---	---



**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
DIRECT ENERGY BUSINESS MARKETING, LLC**

This confirmation letter ("Confirmation") (which includes the Special Terms and Conditions attached hereto as Attachment A (the "Special Terms")) confirms the Transaction between Silicon Valley Clean Energy Authority, a California Joint Powers Authority ("Seller") and Direct Energy Business Marketing, LLC, a Delaware Limited Liability Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of January 13, 2022 (the "Confirmation Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation. This Transaction is governed by the Western Systems Power Pool Agreement effective as of August 12, 2021, along with any annexes and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". The Special Terms supplement and modify the WSPP Agreement, and the WSPP Agreement, as so supplemented and modified, is incorporated into and forms a part of this Transaction Confirmation. Any conflict between this Transaction Confirmation (together with the Special Terms) and the WSPP Agreement shall be resolved in favor of this Transaction Confirmation and the Special Terms. Any conflicts between the WSPP Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the WSPP Agreement. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

**ARTICLE 1
DEFINITIONS**

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.4 "CAISO" means the California Independent System Operator or its successor.
- 1.5 "CAISO Control Area" has the meaning set forth in the Tariff.
- 1.6 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 21.3(a)(2) of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.7 "Confirmation" has the meaning specified in the introductory paragraph hereof.

- 1.8 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.
- 1.10 "Contract Price" means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape for such period.
- 1.11 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.12 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC, including CPUC Decisions 13-06-024, 14-06-050, 15-06-063, 16-06-045, and 17-06-027.
- 1.13 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.14 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.15 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.16 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.
- 1.17 "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.18 "Flexible Capacity Category" has the meaning set forth in the CPUC Decisions.
- 1.19 "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.20 "Flexible RA Product" has the meaning specified in Section 3.2 hereof.
- 1.21 "FCR Attributes" means, with respect to a Unit, any and all FCR attributes, consistent with the operational limitations and physical characteristics of such Unit, that can be counted toward an LSE's FCR, as they are identified as of the Confirmation Effective Date by the Tariff, CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.22 "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.23 "GADS" means the Generating Availability Data System or its successor.

- 1.24 "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.25 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.26 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.27 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability) consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the Tariff, CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.28 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.29 "LRA" has the meaning set forth in the Tariff.
- 1.30 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.31 "Master Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.32 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.33 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.34 "NERC" means the North American Electric Reliability Council, or its successor.
- 1.35 "NERC/GADS Protocols" means the GADS protocols established by NERC, as may be updated from time to time.
- 1.36 "Net Qualifying Capacity" or "NQC" has the meaning set forth in the Tariff.
- 1.37 "Non-Availability Charges" has the meaning set forth in the Tariff.

- 1.38 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.39 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (as defined below).
- 1.40 "Planned Outage" means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.41 "Price Shape" means the Price Shape specified in the Monthly Payment Price Shape Table in Section 4.9 hereof.
- 1.42 "Product" has the meaning specified in Article 3 hereof.
- 1.43 "RA Availability" means, for each Unit, expressed as a percentage, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Contract Quantity, provided that a Unit's RA Availability shall not exceed 1.00.
- 1.44 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit. For the avoidance of doubt, RA Capacity does not encompass any other capacity attributes or other defined characteristics of a Unit other than the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.
- 1.45 "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.9 hereof.
- 1.46 "RAR" means the resource adequacy requirements, exclusive of LAR established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.47 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes consistent with the operational limitations and physical characteristics of such Unit, as they are identified as of the Confirmation Effective Date by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.48 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.
- 1.49 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.50 "Replacement Unit" means a generating unit with equivalent RAR Attributes, LAR Attributes, and/or FCR Attributes (if applicable). For purposes of this Confirmation a Replacement Unit may be located north or south of Path 26.
- 1.51 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

- 1.52 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.53 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.54 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing and FCR Showing, as set forth in the Tariff or CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.55 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes and/or FCR Attributes, as applicable.
- 1.56 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.
- 1.57 "Transaction" has the meaning specified in the introductory paragraph hereof.
- 1.58 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.59 “Unit EFC” means with respect to the Unit on any date of determination, the Effective Flexible Capacity set and deemed final by the CAISO for the applicable Unit as of such date of determination.
- 1.60 “Unit NQC” means with respect to the Unit on any date of determination, the Net Qualifying Capacity set and deemed final by the CAISO for the applicable Unit as of such date of determination.

**ARTICLE 2
UNIT INFORMATION**

Name	REDOND. GEN STA. Unit 5
Location	Redondo Beach, CA
CAISO Resource ID	REDOND 7 UNIT 5
Unit NQC	178.87
Unit EFC	168.87
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Path 26 (North or South)	South
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A
Run Hour Restrictions	N/A

**ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be a Contingent Firm RA Product, as specified in Section 3.3 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit’s Contract Quantity and any RAR Attributes, LAR Attributes and/or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes, from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Unit specified in Article 2, in the amount of the applicable Contract Quantity; provided, however, that if the Unit is not available to provide the full amount of the Contract Quantity, then Seller may provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if Seller has provided Buyer with notice by the Notification Deadline pursuant to Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

**ARTICLE 4
DELIVERY AND PAYMENT**

4.1 Delivery Period

The Delivery Period shall be: [REDACTED]

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Month	REDOND_7_UNIT 5	Contract Quantity (MWs)
[REDACTED]		

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** Seller is obligated to meet the Tariff obligations with respect to securing approvals from CAISO. Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a CAISO-approved Planned Outage during the applicable Showing Month; provided, Seller notifies Buyer, no later than the Notification Deadline for that Showing Month, of the amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings and/or FCR Showings applicable to that month as a result of such Planned Outage. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide some or all Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 4.5. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month shall be adjusted to reflect a daily pro rata amount.
- (c) **Reductions in Unit NQC:** If the Product is Generic RA Product, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit NQC was reduced since the Confirmation Effective Date, divided by (iii) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the right, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (A) the same Unit, provided the Unit has sufficient remaining and available Product and/or (B) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (d) **Reductions in Unit EFC:** If the Product is Flexible RA Product, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (i) the applicable Showing Month Contract Quantity and (ii) the total amount (in MW) Unit EFC was reduced since the Confirmation Effective Date, divided by (iii) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the right, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such

Showing Month from (A) the same Unit, provided the Unit has sufficient remaining and available Product and/or (B) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

4.5 Notification Deadline and Replacement Units

- (a) The “Notification Deadline” shall be ten (10) days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable, or (b) the CAISO supply plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall identify Replacement Unit(s) meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (c) If Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for a Showing Month, then Buyer may, but shall not be required to, purchase replacement Product from a third party.
- (d) In the event that Seller fails to provide the Contract Quantity to Buyer, Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if Seller has delivered written notice to Buyer by the Notification Deadline.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer by the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes, as applicable, as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible RA Product), then Buyer may replace such portion of the Designated RA Capacity with capacity that also has LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) (“Replacement Capacity”) by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 21.3(a)(4) of the Master Agreement the following damages in lieu of damages specified in Section 21 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller’s failure to provide any portion of the Designated RA Capacity as filed in the CAISO Supply Plan for the respective Showing Month for the Delivery Period;
- (b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.3, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse

Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit before the applicable Showing Month in accordance with the payment terms described in this Section 4.9. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places). For any month that Seller fails to deliver the RA Capacity, it will refund to Buyer the Monthly RA Capacity Payment it paid for that month on a pro-rata basis.

RA CAPACITY FLAT PRICE TABLE

Contract Year/Month	RA Capacity Flat Price (\$/kW-month)

The respective monthly Price Shape, set forth in the Monthly Payment Price Shape Table below, shall apply throughout the entire Delivery Period.

MONTHLY PAYMENT PRICE SHAPE TABLE

Monthly Delivery Period (or Showing Month)	Price Shape (%)

All invoices under this Confirmation shall be due and payable in accordance with each Party's invoice instructions on or before the later of the tenth (10th) day after each Showing Month, or the tenth (10th) day after Buyer's receipt of the invoice or, if such day is not a Business Day, then on the next Business Day.

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and

for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period. In accordance with Section 4.9 of this Confirmation and Sections 9 (Payments) of the Master Agreement, all such revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 (Netting) of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5 CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6
GENERAL REPRESENTATIONS AND WARRANTIES

In addition to the representations and warranties contained in Section 37 of the Master Agreement, each of Buyer and Seller represents and warrants to the other party that, as of the Effective Date:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all contractual, governmental, regulatory and legal authorizations necessary for it to legally perform its obligations under this Confirmation;
- (c) the execution, delivery and performance of this Confirmation are within its powers, and have been duly authorized by all necessary action;
- (d) this Confirmation and each other document executed and delivered in accordance with this Confirmation constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending;
- (e) it is acting for its own account, has made its own independent decision to enter into this Confirmation and as to whether this Confirmation is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other.

ARTICLE 7
OTHER BUYER AND SELLER COVENANTS

7.1 Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by

the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR or FCR so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

7.2 Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR or analogous obligations in any non-CAISO market;
- (d) Each Unit is, or is forecast to be, by the first Showing Month of this Confirmation, connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative amounts of LAR Attributes, RAR Attributes and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and FCR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the

Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the buyer revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8 RESERVED

ARTICLE 9 BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10 MARKET BASED RATE AUTHORITY

If allowed by Applicable Laws, Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11 COLLATERAL REQUIREMENTS

11.1 Current Mark-to-Market Value

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero.

ARTICLE 12 GENERAL PROVISIONS

12.1 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any

competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer.

12.2 Dodd-Frank Act

Each Party represents and warrants to the other that it is an “eligible contract participant” within the meaning of United States Commodity Exchange Act §1a(18). Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

12.3 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

12.4 Severability

The provisions of this Agreement are severable, and if any one or more such provisions is determined to be judicially unenforceable, the remaining provisions shall nevertheless be binding and enforceable.

12.5 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 to the contrary, this Transaction may be confirmed only through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

12.6 Notice

For a notice or other communication to a Party under this Agreement to be valid, it must be addressed using the information specified in Appendix B below for that Party or any other information subsequently specified by that Party in writing.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority

Direct Energy Business Marketing, LLC

By:  5CA64B9AG4C24C3

Name: Girish Balachandran

Title: CEO

By: 

Name: Vafa Mohtashami

Title: Vice

Attachment A
Special Terms and Conditions

These Special Terms and Conditions are incorporated into and made a part of the Transaction Confirmation to which they are attached, and supplement and modify the WSPP Agreement specified in such Transaction Confirmation (the "WSPP Agreement"). In the event of a conflict between the provisions of the WSPP Agreement and the Transaction Confirmation, the Transaction Confirmation shall control.

The WSPP Agreement, together with the schedules and any written supplements thereto, this Transaction Confirmation and all other Transaction Confirmations in effect between the Parties under the WSPP Agreement shall form a single integrated agreement between the Parties, referred to below as the "Agreement."

1. The following events shall be added to Section 22.1, EVENTS OF DEFAULT, of the WSPP Agreement:

“(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.”

2. Section 22.2(b) of the WSPP Agreement is amended by (i) inserting “and is continuing” after “Event of Default occurs” in the first line thereof, and (ii) deleting the second sentence of such paragraph in its entirety.

3. Section 22.3 of the WSPP Agreement is amended by:

(1) In Section 22.3(e)(i), deleting the clause “with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful” in the last sentence thereof; and

(2) In Section 22.3(f), deleting the clause “thereafter binding dispute resolution pursuant to Section 34.22 if the informal dispute resolution does not succeed in resolving the dispute”.

4. Section 24, GOVERNING LAW, of the WSPP Agreement is deleted and replaced in its entirety with the following:

“This Agreement (as well as any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of laws rules thereof other than as set forth in N.Y. General Obligations Law §5-1401.”

5. Section 24, GOVERNING LAW, of the WSPP Agreement is amended by adding the following new Section 24(a) to the end thereof:

“24(a). Jury Trial Waiver. The Parties waive any right to a trial by jury in any judicial action arising hereunder.”

6. Section 27, CREDITWORTHINESS, of the WSPP Agreement is amended by striking the following subparagraph and renumbering the subsequent subparagraphs accordingly:

“(3) The Second Party or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.”

7. The netting provisions of Section 28, NETTING, of the WSPP Agreement shall apply to the transaction covered by this Transaction Confirmation as if Buyer and Seller had both executed Exhibit A, NETTING, to the WSPP Agreement.
8. The following shall be added to Section 30, CONFIDENTIALITY, of the WSPP Agreement, following the clause “to any person”:

“other than Purchaser’s or Seller’s directors, officers, employees, attorneys, accountants, auditors, consultants, contractors, advisors, and agents, or any other person”.

9. There is added a new Section 33.1.3 as follows:

“33.1.3 The Seller is responsible for all losses, costs, charges and penalties related to the transmission of energy up to the Delivery Point, including imbalance energy and penalties assessed by the applicable transmission provider or any other control area operator, and the Purchaser is responsible for all losses, costs, charges and penalties related to the transmission of energy at and from the Delivery Point.”

10. Section 34 of the WSPP Agreement is amended by:

- (1) Deleting “binding dispute resolution or” in the first sentence of Section 34.1;
- (2) Deleting Section 34.2 in its entirety; and
- (3) Deleting the phrase “arbitration or” from the first line of Section 34.4.

11. The WSPP Agreement is hereby amended to include the following agreement between the Parties:

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), by FERC acting *sua sponte* or by non-parties will be the

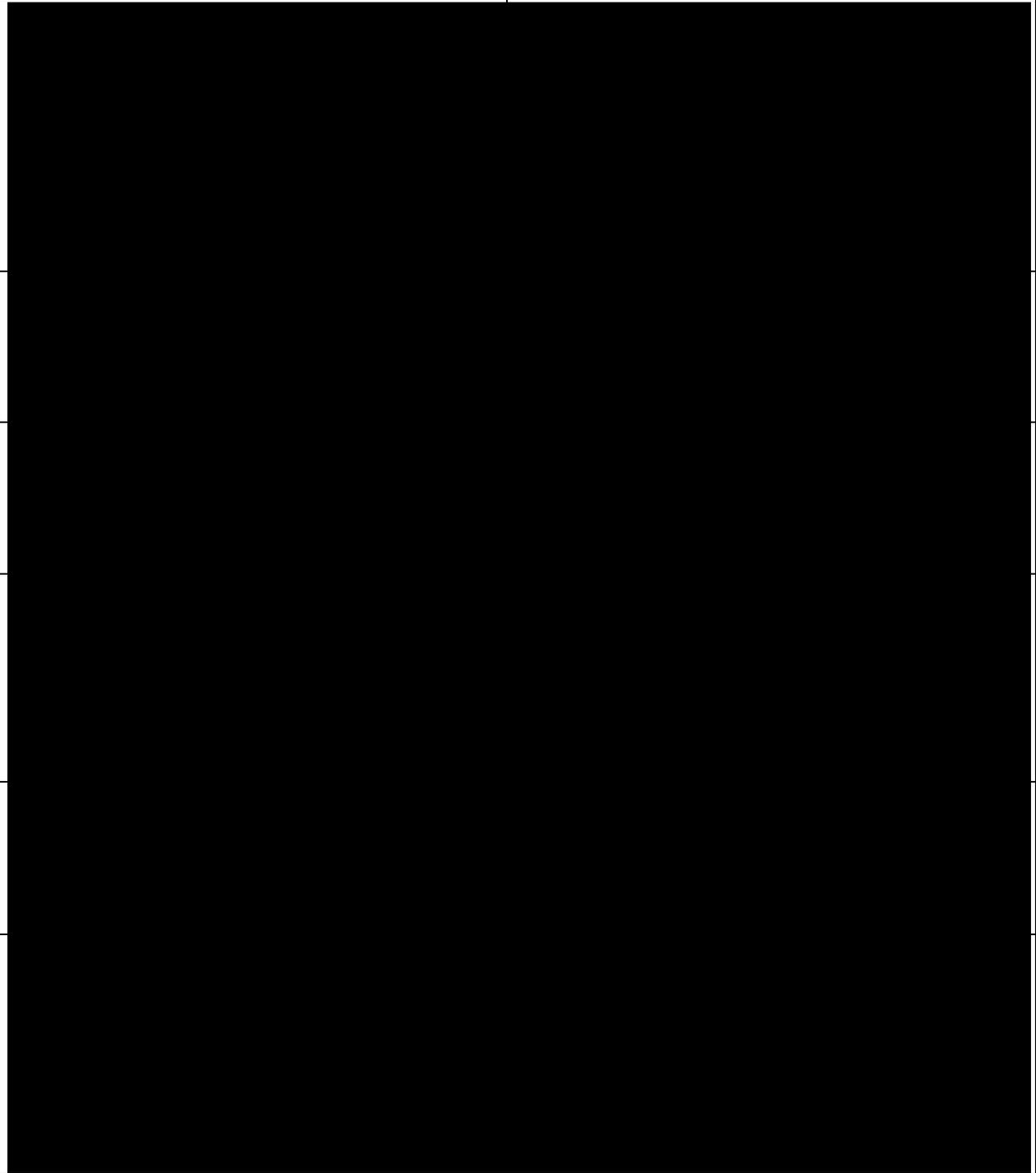
“public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by NRG Power Marketing LLC v. Maine Pub. Util. Comm’n, 558 U.S. 165 (2010) (commonly known as the “Mobile-Sierra doctrine).”

- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

**APPENDIX B
NOTICE INFORMATION**

Buyer: Direct Energy Business Marketing,
LLC

Seller: Silicon Valley Clean Energy Authority



**MASTER POWER PURCHASE AND SALE AGREEMENT
CARBON FREE ENERGY ALLOCATION CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY (“PARTY A”)
AND
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Party A, as Buyer, and Party B, as Seller, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer the Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of October 25, 2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement or the Tariff (defined below), as applicable. Section references herein are to this Confirmation unless otherwise noted.

**ARTICLE 1
TRANSACTION AND CONDITIONS PRECEDENT**

1.1 Transaction. Buyer, as an Eligible LSE, shall accept and Seller shall deliver the Total Allocation Amount in consideration for Buyer’s agreement in this Transaction that (a) the sale and delivery of the Product is a reasonable manner for the Seller to manage the Resource Pools and (b) through December 31, 2022, Buyer waives its ability to make petitions, arguments, or filings to the California Public Utilities Commission or California Legislature asserting Seller has not offered any allocation, sale, or transfer of Carbon Free Energy or environmental attributes associated with such Carbon Free Energy.

**ARTICLE 2
PRODUCT AND ALLOCATION AMOUNT**

2.1 Product. The “Product” shall mean Buyer’s exclusive right (a) to the Carbon Free Energy, and (b) to account for or report to a Governmental Entity its Allocation Amount of the Carbon Free Energy. Carbon Free Energy shall mean the Energy generated from Seller’s Resources in the Resource Pools as selected by Buyer below in this Section 2.1. The list of Resources in each Resource Pool is in Appendix B.

Large Hydroelectric; and/or

Nuclear

2.2 Changes to Resource Pool(s). Seller has no obligation to retain Resources that are within a Resource Pool. Seller may remove a Resource from a Resource Pool for the following reasons: (i) if the power purchase agreement corresponding to the Resource has expired or is

terminated, (ii) if the Resource is no longer in Seller’s portfolio for some other reason, or (iii) if the Resource is owned by Seller, but ceases operation for Seller. Seller shall retain the sole and absolute discretion to enforce or terminate its power purchase agreements for Resources during the Delivery Period. Buyer shall not have any right to or discretion to request changes to Buyer’s selected Resource Pool or the Resource(s) during the Delivery Period.

2.3 Allocation Amount. The “Allocation Amount” shall mean the quantity of Product to be delivered to Buyer each calendar month during the Delivery Period corresponding to each Buyer’s Allocation Ratio. The Allocation Amount is calculated with the monthly Allocation Ratio multiplied by the Carbon Free Energy generated and delivered by the Resources in the Buyer selected Resource Pool(s) in each month during the Delivery Period. If the Delivery Period commences after the first of the month, then the Allocation Amount for that month shall equal the total daily generation of the Resources within the Resource Pool from the first day of the Delivery Period through the end of the month, multiplied by the allocation ratio for that month. The “Total Allocation Amount” shall mean the sum of the monthly Allocation Amounts during the Delivery Period.

$$\text{Allocation Amount} = \text{Allocation Ratio}^{\text{month } n} \times \text{Resource Pool generation (MWh)}^{\text{month } n}$$

2.4 Allocation Ratio. The Allocation Ratio is a monthly percentage of the Buyer’s PCIA Load Share, calculated by dividing the Buyer’s monthly PCIA-eligible load during the Delivery Period by the total PG&E distribution service territory PCIA-eligible load during each month of the Delivery Period, using the load forecast volumes recorded in Table 2-2 and Table 2-3 of PG&E’s most recent ERRRA Forecast Application as of the Execution Date. Buyer’s monthly Allocation Ratios are as set forth below:

Month	Allocation Ratio (AR)

2.5 Fixed Allocation Ratio. If Buyer gains or loses PCIA Load Share during the Delivery Period, Seller will not change the Allocation Ratio for the Delivery Period.

ARTICLE 3 **DELIVERY**

3.1 Delivery. Throughout the Delivery Period, Seller shall deliver, and Buyer shall receive the Product in accordance with the Confirmation. Seller will act as Scheduling Coordinator to deliver the Product in each hour to the CAISO at the Delivery Point. Title to the Product shall be deemed to pass from Seller to Buyer at the Delivery Point.

3.2 Delivery Point. The Delivery Point is and shall mean where Seller shall deliver to, and Buyer shall take possession of, the Product, which shall be NP 15.

3.3 Delivery Period. The Delivery Period shall commence on [REDACTED]
[REDACTED]

ARTICLE 4 **REPORTING REQUIREMENTS**

4.1 Quarterly Reports. Seller shall provide to Buyer a Quarterly Report that includes the Allocation Amount within the Resource Pool for each month using the most accurate settlement information of the Resources available at the time. Each Quarterly Report shall be cumulative, and the Allocation Amount for each month will be updated with the most accurate settlement information of the Resources. The final Quarterly Report may be combined with the Final Report.

4.2 Final Report. Seller shall provide to Buyer the Total Allocation Amount with the monthly generation of the Resources from the Resource Pools in a final report following the Delivery Period (the "Final Report"). The Final Report will include the Product delivered from Seller to Buyer from each Resource from the selected Resource Pool(s) as indicated in Section 2.1. Seller will provide Buyer with the Final Report on or about April 15, 2023.

4.3 Notification to the California Energy Commission. Seller shall notify the California Energy Commission (CEC) pursuant to the then-current CEC regulations of the sale of the Total Allocation Amount of Carbon Free Energy for purposes of Power Content Label (PCL) reporting. Seller will report as a "sale" in its Power Source Disclosure Report the Total Allocation Amount from the Resources consistent with the Final Report. Buyer may report as a "purchase" in its Power Source Disclosure Report the Total Allocation Amount from the Resources consistent with the Final Report.

ARTICLE 5 **COMPENSATION**

5.1 One-Time Cash Settlement Amount. Buyer shall pay Seller the One-Time Cash Settlement Amount, in arrears, for the Delivery Period.

The "One-Time Cash Settlement Amount" for the Delivery Period shall be equal to (a) minus (b), where:

- (a) equals the sum, over all hours of the Delivery Period, of the Index Price multiplied by the quantity of Product delivered to the Delivery Point during that hour; and
- (b) equals the sum, over all hours of the Delivery Period, of the Index Price multiplied by the quantity of Product delivered to the Delivery Point during that hour.

5.2 Payment. Notwithstanding anything to the contrary in Article Six of the Master Agreement, Buyer shall pay Seller the One-Time Cash Settlement Amount on or before the later of (a) the twentieth (20th) day of the month in which the Buyer receives from Seller an invoice for the Delivery Period to which the One-Time Cash Settlement Amount pertains, or (b) within ten (10) days following receipt of an invoice issued by Seller for the Delivery Period or, if such day is not a Business Day, then on the next Business Day.

ARTICLE 6 **CREDIT TERMS**

The credit and collateral terms set forth in the Master Agreement shall not apply to either Party to this Confirmation.

ARTICLE 7 **SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS**

7.1 Seller represents and warrants the following:

7.1.1 that it has the contractual rights to sell all rights, title, and interest in the Product to be delivered hereunder;

7.1.2 it has not sold the Product required to be delivered hereunder, or any attribute thereof, to any other person or entity;

7.1.3 it will not substitute or purchase any Product from any generating resource other than from the Resources in the Resource Pool for delivery hereunder; and

7.1.4 it will not include the Product in any of its own Power Content Label (PCL) reporting except to allow it to provide the Product to Buyer consistent with Section 4.3.

7.1.5 it will provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements as set forth herein and as otherwise required by applicable law with respect to this Product, including documents that Buyer is required to maintain or provide to the California Air Resources Board (CARB) in accordance with Assembly Bill (AB) 32. Seller shall maintain adequate records to reasonably assist Buyer in meeting any reporting, verification, transfer, registration, or retirement requirements of a Governmental Authority associated with the Confirmation.

7.2 Seller makes no representation, warranty or covenant with respect to the following:

7.2.1 Characterization, qualities, presence, or non-presence of any greenhouse gas (GHG) emissions of the Resources in the Resource Pools, including whether Resources in the Resource Pools emit GHGs, the type of GHGs, the carbon intensity of the Resources or Resource Pool or anything related to the environmental attributes of the Resources within the Resource Pools.

7.2.2 The ability of Buyer to use the Product for any compliance, regulatory, or reporting purpose.

[Signatures on following page.]

ACKNOWLEDGED AND AGREED TO:

Buyer, or Party A:
SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

Seller, or Party B:
PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation

DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3...
Sign: _____
Print: Girish Balachandran
Title: CEO
Date: 12/12/2021

Scott Ranzal
Sign: _____
Print: Scott Ranzal
Title: Director, Portfolio Management
Date: 12/20/2021

APPENDIX A

DEFINED TERMS

Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“Allocation Amount” has the meaning set forth in Section 2.3.

“Allocation Ratio” has the meaning set forth in Section 2.4.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Product, or the terms of the Agreement.

“Buyer” means Party A.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CEC” means the California Energy Commission.

“CPUC” means the California Public Utilities Commission.

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Carbon Free Energy” means the Energy generated from Resources from the selected Resource Pool. Carbon Free Energy does not include any California RPS-eligible Energy generated from any Resource in the Resource Pool, nor does it include any California RPS-eligible attributes or any other current or future attributes associated with the Product.

“CEC” means the California Energy Commission.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 3.3.

“Delivery Point” has the meaning set forth in Section 3.2.

“Eligible LSE” means a load serving entity that (1) has forecasted load identified in the PG&E’s ERRA Forecast Application for the calendar year in which the Allocation Amount is accepted; and (2) serves customers who pay the PCIA departing load charges for the above market costs of the Resource Pools.

“Energy” means electrical energy, measured in MWh.

“ERRA Forecast Application” means the Energy Resource Recovery Account Forecast proceedings filed by PG&E each year on June 1, to set generation rates for the subsequent calendar year.

“FERC” means the Federal Energy Regulatory Commission.

“Final Report” has the meaning set forth in Section 4.2.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Index Price” means the NP 15 Trading Hub price (as defined in the Tariff) measured in \$/MWh, for each MWh of Product, and associated with the Product to the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

“Large Hydroelectric” has the meaning set forth in Cal. Code Regs., Title 20, § 1391(k)

“MW” means megawatt.

“MWh” means megawatt-hour.

“NP 15” means the transmission area north of Path 15.

“Nuclear” means the Diablo Canyon Power Plant.

“One-Time Cash Settlement Amount” has the meaning set forth in Section 5.1.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“PCIA” or “Power Charge Indifference Adjustment” means the mechanism to recover the above market costs associated with Buyer’s generation resource portfolio, as set forth in the CPUC’s Rulemaking 17-06-026.

“PCIA Load Share” has the meaning set forth in Section 2.4.

“Power Content Label” has the meaning set forth in Cal. Code Regs., Title 20, § 1393(a)(3).

“Power Source Disclosure Report” means the reporting requirements as required by the California Energy Commission and codified in Cal. Code Regs., Title 20, § 1391-1394.

“Product” has the meaning set forth in Section 2.1.

“Quarterly Report” has the meaning set forth in Section 4.1.

“Resource” means generation units contracted for through power purchase agreement by Seller or owned by Seller, which corresponding costs are recovered through the PCIA.

“Resource Pool” means aggregate of all Large Hydroelectric generation facilities or Nuclear generation facilities that are Resources.

“Scheduling Coordinator (SC)” means an entity certified by the CAISO to perform the functions as described in the Tariff.

“Seller” means Party B.

“Tariff” means the FERC-approved California Independent System Operator Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as may be amended, supplemented or replaced from time to time.

“Total Allocation Amount” has the meaning set forth in Section 2.3.

“Transaction” has the meaning set forth in Section 1.1.

APPENDIX B
LIST OF RESOURCES BY RESOURCE POOL

Resource Pool: Large Hydroelectric

Resource Name	CAISO Resource ID	EIA IDs
Balch #1 PH	BALCHS 7 UNIT 1	217
Balch #2 PH	BALCHS 7 UNIT 2 BALCHS 7 UNIT 3	218
Belden	BELDEN 7 UNIT 1	219
Bucks Creek	BUCKCK 7 PL1X2	220
Butt Valley	BUTTVL 7 UNIT 1	221
Caribou 1	CARBOU 7 UNIT 1 CARBOU 7 PL2X3	222
Caribou 2	CARBOU 7 PL4X5	223
Cresta	CRESTA 7 PL1X2	231
Drum #1	DRUM 7 PL1X2 DRUM 7 PL3X4	235
Drum #2	DRUM 7 UNIT 5	236
Electra	ELECTR 7 PL1X3	239
Haas	HAASPH 7 PL1X2	240
James B Black	BLACK 7 UNIT 1 BLACK 7 UNIT 2	249
Kerckhoff #2 PH	KERKH2 7 UNIT 1	682
Kings River	KINGRV 7 UNIT 1	254
Pit 1	PIT1 7 UNIT 1 PIT1 7 UNIT 2	265
Pit 3	PIT3 7 PL1X3	266
Pit 4	PIT4 7 PL1X2	267
Pit 5	PIT5 7 PL1X2 PIT5 7 PL3X4	268
Pit 6	PIT6 7 UNIT 1 PIT6 7 UNIT 2	269
Pit 7	PIT7 7 UNIT 1 PIT7 7 UNIT 2	270
Poe	POEPH 7 UNIT 1 POEPH 7 UNIT 2	272
Rock Creek	RCKCRK 7 UNIT 1 RCKCRK 7 UNIT 2	275
Salt Springs	SALTSP 7 UNITS	279
Stanislaus	STANIS 7 UNIT 1	285
Tiger Creek	TIGRCK 7 UNITS	287
NID-Chicago Park	CHICPK 7 UNIT 1	412

Resource Pool: Nuclear

Resource Name	CAISO Resource ID	EIA IDs
----------------------	--------------------------	----------------

Diablo Canyon Power Plant Unit 1	DIABLO_7_UNIT 1	6099
Diablo Canyon Power Plan Unit 2	DIABLO_7_UNIT 2	6099