Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the Clerk for the Authority at (408) 721-5301 x1005. Notification 48 hours prior to the meeting will enable the Authority to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.105 ADA Title II).

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

Teleconference Meeting
Webinar: https://svcleanenergy-org.zoom.us/j/86929313165

Telephone (Audio Only):
US: +1 669 219 2599
Webinar ID: 869 2931 3165

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.
Roll Call

Public Comment on Matters Not Listed on the Agenda

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

Consent Calendar (Action)

1a) Approve Minutes of the February 9, 2022, Board of Directors Meeting
1b) Receive January 2022 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) Authorize the Chief Executive Officer Ability to Modify and Extend Scheduling Services Agreement with ZGlobal Inc.
1e) Adopt Resolution Delegating Authority to the Chief Executive Officer to Amend Existing Renewable Resources Power Purchase Agreements (PPAs) and Energy Storage Service Agreements (ESSAs) As Exigent Circumstances Arise Consistent with Policies and Financial Parameters Initially Established in the Approval of the PPAs
1f) Approve Bill Credits to CARE/FERA Customers to Implement Board Direction to Distribute $3 Million in Customer Relief Funding
1g) Approve and Authorize the Chief Executive Officer to Execute Agreement with School of Thought for Marketing and Advertising Services
1h) Receive SVCE Rate Schedules Effective March 1, 2022
1i) Accept Committee Report and Authorize Support for Legislation to Amend the Brown Act to Promote Remote Meetings
1j) Executive Committee Report
1k) Finance and Administration Committee Report
1l) Audit Committee Report
1m) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report
1n) California Community Power Report
Regular Calendar

2) Receive Audit Results and Accept the Findings from Independent Auditor (Action)

3) CEO Report (Discussion)

4) Approve the Mid-Year 2021-22 Adjusted Operating Budget (Action)

5) Authorize the Chief Executive Officer to Execute Necessary Agreements for Goal Line Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and Goal Line BESS 1, LLC (Action)

6) Adopt Resolution Approving Funding Allocations for “Double Down” on Decarbonization Programs (Action)

7) Update on New Construction Reach Codes and Existing Building Electrification Policies (Discussion)

Board Member Announcements and Direction on Future Agenda Items

Adjourn
SVCE GLOSSARY OF TERMS

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

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

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

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

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

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

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

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

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

DAC – Disadvantaged Community

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

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

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

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

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

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

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

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

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

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

**EV – Electric Vehicle**

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

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

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

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

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

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

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

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

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

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

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

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

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

NRDC – Natural Resources Defense Council

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

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

MWH – Megawatt-hour – measure of energy

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

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

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

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

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

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

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

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

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

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

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

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

**SCE – Southern California Edison**

**SDG&E – San Diego Gas & Electric**

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

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

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

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

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

**VPP – Virtual Power Plant** – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.
Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, February 9, 2022
7:00 pm

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

DRAFT MINUTES

Call to Order:
Chair Gibbons called the meeting to order at 7:01 p.m.

Roll Call
Present:
Liz Gibbons (Chair), Campbell
George Tyson (Vice Chair), Los Altos Hills
Jon Robert Willey, Cupertino
Zachary Hilton, Gilroy
Neysa Fligor, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Javed Ellahie, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill
Margaret Abe-Koga, Mountain View
Tina Walia, Saratoga
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County (arrived at 7:05 p.m.)

Absent:
None.

All present Board members participated via teleconference.

Chair Gibbons welcomed Director Larry Klein.

Public Comment on Matters Not Listed on the Agenda
Chair Gibbons noted a comment from a member of the public was received and distributed to the Board of Directors.

No speakers.

Board Clerk Andrea Pizano announced Director Lee had joined the meeting.

Consent Calendar

1a) Approve Minutes of the January 12, 2022, Board of Directors Meeting
1b) Receive December 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) 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
1e) Approve 2022 Updates to Exhibit C, Annual Energy Use, and Exhibit D, Voting Shares, of the SVCE Joint Powers Agreement
1f) Approve Cancellation of July 13, 2022 Board of Directors Meeting and Receive 2022 Board of Directors Regular Meeting Schedule
1g) Authorize the Chief Executive Officer to Extend the Contract Terms and Spending Under Innovation Onramp Participant Agreement with UtilityAPI, Inc. for Data Hive
1h) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions
1i) Executive Committee Report
1j) Finance and Administration Committee Report
1k) Audit Committee Report
1l) California Community Power Report

There were no questions or comments from the Board; there were no requests from the public to speak on any matter on the Consent Calendar.

MOTION: Director Rennie moved and Director Klein seconded the motion to approve the Consent Calendar, Items 1a through 1l.

The motion carried unanimously by verbal roll call vote.

Regular Calendar

2) CEO Report (Discussion)
CEO Balachandran reported on the following:
• Net Energy Metering 3.0 decision, noting it was on hold and would not appear on the agenda until further discussions take place;
• SVCE mid-year budget which would be brought to the Board of Directors in March,
• Announcement of Senior Regulatory Analyst Poonum Agrawal and Director of Legislative and Regulatory Policy Melicia Charles leaving the organization;
• Introduction of Aidas Baublys, SVCE’s new Senior Financial Analyst, who provided welcome comments;
• Announcement of promotion of Justin Zagunis to Director of Decarbonization and Grid Innovation Programs, who provided brief comments;
• Announcement of Director of Account Services and Community Relations Don Bray’s transition to a new role focused on special projects in the spring, who provided brief comments;
• Reorganization ideas are in progress with Department Directors.

CEO Balachandran called attention to the department updates included in the Board meeting agenda packet, specifically the Media and Press Releases in the Account Services and Community Relations update.

Director Rennie shared appreciation for Director of Account Services and Community Relations Bray.

3) Appoint 2022 Board Committee Members (Action)
Board Clerk Pizano provided a brief staff report on the item and summarized the interests received for each of SVCE’s remaining committees: Legislative and Regulatory Ad Hoc Committee, Audit Committee, and Finance and Administration Committee.
MOTION: Director Ellahie moved and Director Chua seconded the motion to confirm committee membership as presented by staff:

Legislative and Regulatory Ad Hoc Committee
1. Director Liz Gibbons
2. Director Zach Hilton
3. Director Rob Rennie
4. Director Yvonne Martinez Beltran
5. Director Margaret Abe-Koga
6. Alternate Director Gustav Larsson

Audit Committee
1. Alternate Director Bryan Mekechuk
2. Director Margaret Abe-Koga
3. Alternate Director Sergio Lopez
4. Vickie Rahman, Finance Analyst, City of Gilroy

Finance and Administration Committee
1. Director Liz Gibbons
2. Alternate Director Hung Wei
3. Director Rob Rennie
4. Alternate Director Bryan Mekechuk
5. Director Margaret Abe-Koga
6. Director Larry Klein

The motion carried unanimously by verbal roll call vote.

4) Adopt Resolution to Implement SVCE Generation Rate Changes Effective March 2022 (Action)

Amrit Singh, CFO and Director of Administrative Services, introduced the item and presented a PowerPoint presentation with a request to adopt resolution 2022-06, and transfer money from the operating budget to the programs decarbonization fund for the March 2022 Mid-Year budget update. Staff responded to board member questions.

Director Klein inquired of the communication plans to SVCE customers regarding the anticipated rate change; Director of Account Services and Community Relations Bray responded on the current process of a press release and joint rate mailer. Director Klein commented on the importance of making customers aware of the change in rates and the immediate impacts of their energy usage; Director of Account Services and Community Relations Bray acknowledged Director Klein’s concerns and noted email communication or an energy efficiency message regarding rates could be considered.

Director Willey inquired as clean power supply projects come online, if oil and gas prices will fluctuate less; CEO Balachandran provided background information and noted staff could look at his question from a strategic standpoint and bring it back.

The Board of Directors discussed the customer discount on rates, and the use of the allocated funds for customer relief, similar to what was done in 2020 for CARE/FERA customers and small businesses.

Chair Gibbons opened Public Comment.

Bruce Karney commented on recent high temperatures, which was leading to the melting of permafrost, putting more methane into the atmosphere. Karney commented we should do everything in our power as
fast as we can to lower greenhouse gas emissions, and the board should be paying attention to irreversible climate change, commenting the biggest role SVCE can play is the continuation of leadership focused on the big picture and not the small details.

Chair Gibbons closed Public Comment.

Chair Gibbons summarized board comments in the meeting which included consideration to staff for more communication to the public on rate changes, a discussion on how to advance equity with funds, and coming back to SVCE’s mission statement.

The Board of Directors continued discussion on the discount percentage and allocation of program funds toward equity.

**MOTION:** Director Rennie moved and Director Ellahie seconded the motion to keep the discount rate at 1% below PG&E, put $3 million into a relief program and request staff to come back with recommendations on how to allocate those funds, and the remaining $17 million into decarbonization programs, which staff will come back with recommendations on how to allocate those funds.

Chair Gibbons added the direction to staff to reinforce communication to SVCE’s customers on rate changes; CEO Balachandran the direction was not needed in the motion and the request was received by staff.

Director Ellahie seconded the motion following clarification the motion would go into effect once PG&E’s rates increase.

Director Fligor clarified that within the decarbonization programs allocation being brought back in March, there should be an equity component even though $3 million is being set aside for relief; CEO Balachandran confirmed the emphasis on equity within the decarbonization programs.

Prior to taking a roll call vote, Board Clerk Pizano restated the motion.

**RESTATED MOTION:** Adopt Resolution 2022-06, authorizing SVCE to implement rate changes to maintain 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, and recommend staff transfer $17M from funding from the operating budget to the programs decarbonization fund, and $3M for equity relief which will be brought back to the Board with more details on how funds will be spent in March.

General Counsel Trisha Ortiz clarified the second part of the motion was intended to give staff direction to come back with an action that will be taken in the future on how to spend the $3 million.

Director Rennie confirmed the restated motion matched his intent.

**The motion carried unanimously by verbal roll call vote.**

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)**

Director of Power Resources Monica Padilla introduced the item and presented a PowerPoint presentation with a request for the SVCE Board of Directors to delegate authority to the CEO to execute on behalf of SVCE the necessary Tumbleweed Long Duration Energy Storage Agreements. Director of Power Resources Padilla responded to Board member questions.
Chair Gibbons opened Public Comment.
No speakers.
Chair Gibbons closed Public Comment.

MOTION: Director Abe-Koga moved and Director Walia seconded the motion to authorize the CEO to execute necessary agreements for Tumbleweed long duration energy storage with California Community Power, participating community choice aggregators and LS Tumbleweed LLC.

The motion carried unanimously by verbal roll call vote.

CEO Balachandran recognized Director of Power Resources Padilla for her leadership on the project.

6) Clean Energy Procurement Informational Update (Presentation)
Director of Power Resources Padilla presented a PowerPoint presentation and responded to Board member questions.

Board Member Announcements and Future Agenda Items
None.

Adjourn
Chair Gibbons adjourned the meeting at 9:50 p.m.

ATTEST:

Andrea Pizano, Board Secretary
TREASURER REPORT
Fiscal Year to Date
As of January 31, 2022
(Preliminary & Unaudited)
Issue Date: March 9, 2022

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Financial Highlights for the month of January 2022:

> SVCE operations resulted in a change in net position for the month of negative $6.3 million and fiscal-year-to-date (FYTD) change in net position of negative $11.5 million.

> Retail GWh sales for the month landed 3% below budget.

> FYTD operating margin of negative $5.6 million or negative 8.2% is below to budget expectations of a negative 7.2% operating margin for the fiscal year to date.

> FYTD Power Supply costs are 11.2% below budget.

> SVCE is investing ~94% of available funds generating FYTD investment income of $0.08 million.

### Change in Net Position

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<th>Dec</th>
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### Power Supply Costs

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<tr>
<td>Net Power Costs</td>
<td>14,525</td>
<td>17,908</td>
<td>18,660</td>
<td>23,179</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>74,271</td>
<td>273,561</td>
</tr>
</tbody>
</table>

### Other

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Expenditures</td>
<td>4</td>
<td>13</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>27</td>
<td>150</td>
</tr>
<tr>
<td>Energy Programs</td>
<td>68</td>
<td>123</td>
<td>116</td>
<td>220</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>527</td>
<td>7,334</td>
</tr>
</tbody>
</table>

### Load Statistics - GWh

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Total</th>
<th>Adopted Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Sales Actual</td>
<td>302</td>
<td>288</td>
<td>327</td>
<td>322</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,239</td>
<td></td>
</tr>
<tr>
<td>Retail Sales Budget</td>
<td>310</td>
<td>311</td>
<td>327</td>
<td>333</td>
<td>296</td>
<td>314</td>
<td>301</td>
<td>317</td>
<td>341</td>
<td>354</td>
<td>366</td>
<td>343</td>
<td>3,914</td>
<td>3,914</td>
</tr>
</tbody>
</table>

* 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

<table>
<thead>
<tr>
<th>Metric</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working Capital</td>
<td>$162,265,087</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>5.6</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>-8.2%</td>
</tr>
<tr>
<td>Expense Coverage Days</td>
<td>181</td>
</tr>
<tr>
<td>Long-Term Debt</td>
<td>$0</td>
</tr>
<tr>
<td>Total Accounts</td>
<td>274,893</td>
</tr>
<tr>
<td>Opt-Out Accounts (Month)</td>
<td>38</td>
</tr>
<tr>
<td>Opt-Out Accounts (FYTD)</td>
<td>127</td>
</tr>
<tr>
<td>Opt-Up Accounts (Month)</td>
<td>9</td>
</tr>
<tr>
<td>Opt-Up Accounts (FYTD)</td>
<td>216</td>
</tr>
</tbody>
</table>

#### YTD EXPENSES

- Power Supply 92.0%
- Personnel 2.6%
- Contract Services 3.8%
- Depreciation 0.0%
- G & A 1.0%

#### Retail Sales

- **Month**
  - Actual: 18.6
  - Budget: 28.2
  - FY20/21: 16.9
- **YTD**
  - Actual: 68.7
  - Budget: 78.0
  - FY20/21: 85.4

#### Controllable O&M

- **Month**
  - Actual: 24.9
  - Budget: 25.8
  - FY20/21: 20.0
- **YTD**
  - Actual: 80.2
  - Budget: 91.1
  - FY20/21: 73.8
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION
As of January 31, 2022

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Assets</td>
<td></td>
</tr>
<tr>
<td>Cash &amp; Cash Equivalents</td>
<td>$ 165,591,030</td>
</tr>
<tr>
<td>Accounts Receivable, net of allowance</td>
<td>18,380,842</td>
</tr>
<tr>
<td>Accrued Revenue</td>
<td>10,706,471</td>
</tr>
<tr>
<td>Other Receivables</td>
<td>418,157</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>2,132,264</td>
</tr>
<tr>
<td>Deposits</td>
<td>638,616</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>1,084,282</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>198,951,662</strong></td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>312,907</td>
</tr>
<tr>
<td>Deposits</td>
<td>45,330</td>
</tr>
<tr>
<td><strong>Total Noncurrent Assets</strong></td>
<td><strong>358,237</strong></td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>199,309,899</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Liabilities</td>
<td></td>
</tr>
<tr>
<td>Accounts Payable</td>
<td>1,333,297</td>
</tr>
<tr>
<td>Accrued Cost of Electricity</td>
<td>32,943,332</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>719,335</td>
</tr>
<tr>
<td>User Taxes and Energy Surcharges due to other gov'ts</td>
<td>606,329</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>35,602,293</strong></td>
</tr>
<tr>
<td>Noncurrent Liabilities</td>
<td></td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>9,131,250</td>
</tr>
<tr>
<td><strong>Total noncurrent liabilities</strong></td>
<td><strong>9,131,250</strong></td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>44,733,543</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET POSITION</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net investment in capital assets</td>
<td>312,907</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>1,084,282</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>153,179,167</td>
</tr>
<tr>
<td><strong>Total Net Position</strong></td>
<td><strong>$ 154,576,356</strong></td>
</tr>
</tbody>
</table>

Item 1b
## Statement of Revenues, Expenses, and Changes in Net Position

**October 1, 2021 through January 31, 2022**

### Operating Revenues

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$67,031,097</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>699,798</td>
</tr>
<tr>
<td>Other income</td>
<td>8,000</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>922,250</td>
</tr>
<tr>
<td><strong>Total Operating Revenues</strong></td>
<td><strong>68,661,145</strong></td>
</tr>
</tbody>
</table>

### Operating Expenses

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>74,271,649</td>
</tr>
<tr>
<td>Contract services</td>
<td>3,011,325</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>2,079,676</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>803,201</td>
</tr>
<tr>
<td>Depreciation</td>
<td>30,941</td>
</tr>
<tr>
<td><strong>Total Operating Expenses</strong></td>
<td><strong>80,196,792</strong></td>
</tr>
</tbody>
</table>

**Operating Income/(Loss)**

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(11,535,647)</strong></td>
</tr>
</tbody>
</table>

### Nonoperating Revenues (Expenses)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>75,254</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(45,737)</td>
</tr>
<tr>
<td><strong>Total Nonoperating Revenues (Expenses)</strong></td>
<td><strong>29,517</strong></td>
</tr>
</tbody>
</table>

**Change in Net Position**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>166,082,486</td>
</tr>
<tr>
<td><strong>Net Position at end of period</strong></td>
<td><strong>$154,576,356</strong></td>
</tr>
</tbody>
</table>

**(11,506,130)**
CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers $ 80,442,743
Receipts from liquidated damages $ 922,250
Other operating receipts 4,294,888
Payments to suppliers for electricity (73,714,011)
Payments for other goods and services (4,147,169)
Payments for staff compensation and benefits (2,087,325)
Tax and surcharge payments to other governments (1,847,063)
Net cash provided (used) by operating activities 3,864,313

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Finance costs paid (45,737)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets (27,082)

CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received 75,254

Net change in cash and cash equivalents 3,866,748
Cash and cash equivalents at beginning of year 162,808,564
Cash and cash equivalents at end of period $166,675,312

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted) $165,591,030
Restricted cash 1,084,282
Cash and cash equivalents $166,675,312
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2021 through January 31, 2022

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

Operating Income (loss) $ (11,535,647)

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depreciation expense</td>
<td>30,941</td>
</tr>
<tr>
<td>Revenue adjusted for uncollectible accounts</td>
<td>37,624</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>7,571,718</td>
</tr>
<tr>
<td>(Increase) decrease in energy settlements receivable</td>
<td>269,012</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>(187,672)</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>3,704,149</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>245,972</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>87,468</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>(204,079)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>87,083</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>77,292</td>
</tr>
<tr>
<td>Increase (decrease) in energy settlements payable</td>
<td>2,029,158</td>
</tr>
<tr>
<td>Increase (decrease) in taxes and surcharges due to other governments</td>
<td>(448,706)</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>2,100,000</td>
</tr>
</tbody>
</table>

Net cash provided (used) by operating activities $ 3,864,313
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through January 31, 2022

<table>
<thead>
<tr>
<th>OPERATING REVENUES</th>
<th>FYTD Actual</th>
<th>FYTD Adopted Budget</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21 Adopted Budget</th>
<th>FY 2020-21 Remaining Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Sales</td>
<td>$67,031,097</td>
<td>$77,878,167</td>
<td>-$10,847,070</td>
<td>-14%</td>
<td>$338,603,000</td>
<td>$271,571,903</td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td>699,798</td>
<td>153,810</td>
<td>545,988</td>
<td>355%</td>
<td>470,000</td>
<td>(229,798)</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>922,250</td>
<td>922,250</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL OPERATING REVENUES</td>
<td>68,653,145</td>
<td>78,031,977</td>
<td>(9,378,832)</td>
<td>-12%</td>
<td>339,073,000</td>
<td>271,342,105</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
<td>74,271,649</td>
<td>83,635,211</td>
<td>(9,363,562)</td>
<td>-11.2%</td>
<td>273,561,000</td>
<td>199,289,351</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>(5,618,504)</td>
<td>(5,603,234)</td>
<td>(15,270)</td>
<td>0%</td>
<td>65,512,000</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
<td>1,053,895</td>
<td>1,083,137</td>
<td>(29,242)</td>
<td>-3%</td>
<td>3,249,000</td>
<td>2,195,105</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td>395,416</td>
<td>483,315</td>
<td>(87,899)</td>
<td>-18%</td>
<td>1,450,000</td>
<td>1,054,584</td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td>2,079,676</td>
<td>3,090,374</td>
<td>(1,010,698)</td>
<td>-33%</td>
<td>9,271,000</td>
<td>7,191,324</td>
</tr>
<tr>
<td>Professional Services</td>
<td>1,054,676</td>
<td>1,939,446</td>
<td>(884,770)</td>
<td>-46%</td>
<td>5,648,000</td>
<td>4,593,324</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>163,727</td>
<td>312,295</td>
<td>(148,568)</td>
<td>-48%</td>
<td>919,000</td>
<td>755,273</td>
</tr>
<tr>
<td>Notifications</td>
<td>38,855</td>
<td>43,750</td>
<td>(4,895)</td>
<td>-11%</td>
<td>131,000</td>
<td>92,145</td>
</tr>
<tr>
<td>Lease</td>
<td>164,187</td>
<td>175,000</td>
<td>(10,813)</td>
<td>-6%</td>
<td>525,000</td>
<td>360,813</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>414,086</td>
<td>362,355</td>
<td>51,731</td>
<td>14%</td>
<td>1,213,000</td>
<td>798,914</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSES</td>
<td>5,364,518</td>
<td>7,489,672</td>
<td>(2,125,154)</td>
<td>-28%</td>
<td>22,406,000</td>
<td>17,041,482</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPERATING INCOME/(LOSS)</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income</td>
<td>8,000</td>
<td>16,667</td>
<td>(8,667)</td>
<td>-52%</td>
<td>50,000</td>
<td>42,000</td>
</tr>
<tr>
<td>Investment Income</td>
<td>75,254</td>
<td>100,000</td>
<td>(24,746)</td>
<td>-25%</td>
<td>300,000</td>
<td>224,746</td>
</tr>
<tr>
<td>TOTAL NON-OPERATING REVENUES</td>
<td>83,254</td>
<td>116,667</td>
<td>(33,413)</td>
<td>-29%</td>
<td>350,000</td>
<td>266,746</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL NON-OPERATING EXPENSES</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
<td>45,737</td>
<td>13,333</td>
<td>32,404</td>
<td>243%</td>
<td>40,000</td>
<td>(5,737)</td>
</tr>
</tbody>
</table>

## CAPITAL EXPENDITURES, TRANSFERS, & OTHER

<table>
<thead>
<tr>
<th>Capital Outlay</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>27,174</td>
<td>116,667</td>
<td>(89,493)</td>
<td>-77%</td>
<td>150,000</td>
<td>122,826</td>
</tr>
<tr>
<td>Transfer to Programs Fund</td>
<td>1,560,640</td>
<td>1,560,640</td>
<td>-</td>
<td>0%</td>
<td>6,781,000</td>
<td>5,220,360</td>
</tr>
<tr>
<td>TOTAL OTHER USES</td>
<td>1,587,814</td>
<td>1,677,307</td>
<td>(89,493)</td>
<td>-5%</td>
<td>6,931,000</td>
<td>5,343,186</td>
</tr>
</tbody>
</table>

## NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE

<table>
<thead>
<tr>
<th>Item 1b</th>
<th>FYTD</th>
<th>FYTD</th>
<th>Variance $</th>
<th>Variance %</th>
<th>FY 2020-21</th>
<th>FY 2020-21</th>
</tr>
</thead>
<tbody>
<tr>
<td>-12,533,319</td>
<td>-14,666,879</td>
<td>2,133,560</td>
<td>-15%</td>
<td>36,485,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### SILICON VALLEY CLEAN ENERGY AUTHORITY
#### PROGRAM FUND
#### BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through January 31, 2022

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</th>
<th>ADOPTED BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING BUDGET</th>
<th>ADOPTED ACTUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$6,781,000</td>
<td>$1,560,640</td>
<td>$5,220,360</td>
<td>23%</td>
</tr>
</tbody>
</table>

### EXPENDITURES & OTHER USES:

<table>
<thead>
<tr>
<th></th>
<th>Adopted</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td>7,333,950</td>
<td>526,611</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance

<table>
<thead>
<tr>
<th></th>
<th>Adopted</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund balance at beginning of period</td>
<td>5,837,711</td>
<td></td>
</tr>
<tr>
<td>Fund balance at end of period</td>
<td>$6,871,740</td>
<td></td>
</tr>
</tbody>
</table>

### CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND
#### BUDGETARY COMPARISON SCHEDULE
October 1, 2021 through January 31, 2022

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

### EXPENDITURES & OTHER USES:

<table>
<thead>
<tr>
<th></th>
<th>Adopted</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td>3,000,000</td>
<td>3,073</td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance

<table>
<thead>
<tr>
<th></th>
<th>Adopted</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund balance at beginning of period</td>
<td>7,990,315</td>
<td></td>
</tr>
<tr>
<td>Fund balance at end of period</td>
<td>$7,987,242</td>
<td></td>
</tr>
</tbody>
</table>
SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2021 through January 31, 2022

Net Increase (decrease) in available fund balance per budgetary comparison schedule $ (12,533,319)

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

- Subtract depreciation expense (30,941)
- Subtract program expense not in operating budget (526,611)
- Subtract CRCR expense not in operating budget (3,073)
- Add back transfer to Program fund 1,560,640
- Add back capital asset acquisition 27,174

Change in Net Position (11,506,130)
### SILICON VALLEY CLEAN ENERGY AUTHORITY

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

**October 1, 2021 through January 31, 2022**

<table>
<thead>
<tr>
<th></th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$17,365,080</td>
<td>$14,621,707</td>
<td>$17,815,729</td>
<td>$17,228,581</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$67,031,097</td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>$80,961</td>
<td>$60,556</td>
<td>$95,594</td>
<td>$462,687</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>699,798</td>
</tr>
<tr>
<td>Other Income</td>
<td>$1,000</td>
<td>$2,500</td>
<td>$1,000</td>
<td>$3,500</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8,000</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>922,250</td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td>$17,447,041</td>
<td>$14,684,763</td>
<td>$17,912,323</td>
<td>$18,617,018</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>68,661,145</td>
</tr>
</tbody>
</table>

|                      |         |          |          |         |          |       |       |     |      |      |        |           |      |
| **OPERATING EXPENSES** |         |          |          |         |          |       |       |     |      |      |        |           |      |
| Cost of electricity  | $14,524,607 | $17,907,845 | $18,660,060 | $23,179,137 |         |       |       |     |      |      |        |           | 74,271,649 |
| Staff compensation and benefits  | 448,844 | 465,162 | 593,320 | 572,350 |         |       |       |     |      |      |        |           | 2,079,676 |
| Data manager  | 263,759 | 263,759 | 262,863 | 263,514 |         |       |       |     |      |      |        |           | 1,053,895 |
| Service fees - PG&E  | 97,254 | 96,768 | 104,341 | 97,053 |         |       |       |     |      |      |        |           | 395,416 |
| Consultants and other professional fees  | 370,413 | 341,404 | 376,273 | 473,924 |         |       |       |     |      |      |        |           | 1,562,014 |
| General and administration | 209,985 | 134,289 | 152,437 | 306,490 |         |       |       |     |      |      |        |           | 803,201 |
| Depreciation  | 7,289 | 8,162 | 7,774 | 7,716 |         |       |       |     |      |      |        |           | 30,941 |
| **Total operating expenses** | $15,922,151 | $19,217,389 | $20,157,068 | $24,900,184 | | | | | | | | | 80,196,792 |

|                      |         |          |          |         |          |       |       |     |      |      |        |           |      |
| **Operating income (loss)** | 1,524,890 | (4,532,626) | (2,244,745) | (6,283,166) | | | | | | | | | (11,535,647) |

|                      |         |          |          |         |          |       |       |     |      |      |        |           |      |
| **NONOPERATING REVENUES (EXPENSES)** |         |          |          |         |          |       |       |     |      |      |        |           |      |
| Interest income  | 18,545 | 18,382 | 19,370 | 18,957 |         |       |       |     |      |      |        |           | 75,254 |
| Financing costs  | (11,042) | (11,626) | (12,027) | (11,042) |         |       |       |     |      |      |        |           | (45,737) |
| **Total nonoperating revenues (expenses)** | 7,503 | 6,756 | 7,343 | 7,915 | | | | | | | | | 29,517 |

|                      |         |          |          |         |          |       |       |     |      |      |        |           |      |
| **CHANGE IN NET POSITION** | $1,532,393 | $(4,525,670) | $(2,237,402) | $(6,275,251) | | | | | | | | | $(11,506,130) |

**January 2022 Treasurer Report**

Item 1b
## INVESTMENTS SUMMARY

### October 1, 2021 through January 31, 2022

**Return on Investments**

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$18,545</td>
<td>$18,382</td>
<td>$19,370</td>
<td>$18,957</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$75,254</td>
</tr>
</tbody>
</table>

**Portfolio Invested**

- Average daily portfolio available to invest*:
  - October: 152,976,979
  - November: 155,897,345
  - December: 155,743,105
  - January: 157,270,808

- Average daily portfolio invested:
  - October: 141,994,910
  - November: 145,456,026
  - December: 148,530,962
  - January: 147,297,741

- % of average daily portfolio invested:
  - October: 92.8%
  - November: 93.3%
  - December: 95.4%
  - January: 93.7%

### Detail of Portfolio

<table>
<thead>
<tr>
<th>Portfolio</th>
<th>Opening Rate</th>
<th>December Rate</th>
<th>Carrying Value</th>
<th>Interest Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market - River City Bank</td>
<td>1.26%</td>
<td>0.15%</td>
<td>$153,195,158</td>
<td>$18,766</td>
</tr>
</tbody>
</table>

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

RESIDENTIAL ACCOUNTS

NON-RESIDENTIAL ACCOUNTS
## SILICON VALLEY CLEAN ENERGY AUTHORITY

### ACCOUNTS RECEIVABLE AGING REPORT

<table>
<thead>
<tr>
<th></th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 30 days</td>
<td>74.6%</td>
<td>66.6%</td>
<td>67.7%</td>
<td>70.4%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31 to 60 days</td>
<td>8.3%</td>
<td>11.6%</td>
<td>9.1%</td>
<td>5.4%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>61 to 90 days</td>
<td>3.1%</td>
<td>3.7%</td>
<td>5.1%</td>
<td>3.9%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>91 to 120 days</td>
<td>2.0%</td>
<td>2.9%</td>
<td>3.0%</td>
<td>3.2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 120 days</td>
<td>12.0%</td>
<td>15.1%</td>
<td>15.0%</td>
<td>17.1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### AGE SUMMARY

- **Accounts Receivable Days**: 24 Days
- **Total Due**: $22,624,583
- **Bad Debt % (Budget)**: 1%

[Graph showing age summary with bars for different age categories and total amounts]
### 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: 3/9/2022

---

**RECOMMENDATION**

To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-07 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
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, January 12, 2022, and February 9, 2022 the Board adopted Resolutions 2021-26, 2021-27, 2022-02, and 2022-03 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 2022-07 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. 2022-07

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 AUTHORIZ 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

RESOLUTION 2022-07
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 March 2022, by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City of Cupertino</td>
<td>Director Willey</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>City of Gilroy</td>
<td>Director Hilton</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>City of Los Altos</td>
<td>Director Fligor</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RESOLUTION 2022-07
<table>
<thead>
<tr>
<th>Town of Los Altos Hills</th>
<th>Director Tyson</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
</tr>
<tr>
<td>City of Milpitas</td>
<td>Director Chua</td>
</tr>
<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
</tr>
<tr>
<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
</tr>
<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
</tr>
<tr>
<td>County of Santa Clara</td>
<td>Director Lee</td>
</tr>
<tr>
<td>City of Saratoga</td>
<td>Director Walia</td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>Director Klein</td>
</tr>
</tbody>
</table>

______________________________

Chair

**ATTEST:**

______________________________

Andrea Pizano, Board Clerk
Staff Report – Item 1d

Item 1d: Authorize the Chief Executive Officer Ability to Modify and Extend Scheduling Services Agreement with ZGlobal Inc.

From: Girish Balachandran, Chief Executive Officer

Prepared by: Monica Padilla, Director of Power Resources
Zakary Liske, Manager of Contracts and Settlements

Date: 3/9/2022

RECOMMENDATION
Staff recommends that the SVCE Board authorize the Chief Operating Officer (CEO) to modify as necessary and extend the agreement with ZGlobal Inc. (ZGlobal) for Scheduling Services for up to five (5) years.

BACKGROUND
In 2016, SVCE issued a request for proposals (RFP) for scheduling coordination services, selected ZGlobal as the vendor, and received Board approval for a five (5) year agreement at its November 9, 2016, board meeting: Item 7, November 2016 Board of Directors Meeting. ZGlobal began providing load forecasting, load scheduling, portfolio management and financial settlement services to SVCE in April 2017.

The ZGlobal Scheduling Services Agreement (attached) was approved for five years from the start of services. The agreement automatically renews every year unless terminated by either party with proper notice as required by the agreement. April 2022 marks the five-year anniversary from when services began under the ZGlobal agreement and therefore the CEO’s authority to operate under the agreement also expires unless extended by the Board.

In 2021, SVCE issued a joint-RFP with Central Coast Community Energy (3CE) for scheduling coordination services for the parties’ joint-PPA generation resources. The RFP also requested proposals for load scheduling services. ZGlobal, which was awarded the joint-scheduling RFP, also provided a competitive bid for load scheduling services that is comparable to current service pricing. The SVCEA Board unanimously approved delegating authority to the CEO to negotiate and execute an agreement with ZGlobal: Item 1d, May 2021 Board of Directors Meeting. The agreement for generation resource scheduling runs through December 2024.

ANALYSIS & DISCUSSION
SVCEA is a market participant in the California Independent System Operator (CAISO) balancing authority. As such, SVCEA is obligated to meet certain CAISO requirements including scheduling its load and resources into the CAISO. Services involve interfacing with the CAISO to exchange information regarding projected loads, generation supply schedules, and grid conditions to help the CAISO maintain system balance and grid reliability. Scheduling coordinators must maintain a 24 X 7 operation and specialized information systems in order to deal with grid operations that may arise at any time. SC services also involve processing financial settlements with the CAISO for load and generation schedules.
SVCE has been satisfied with services provided thus far by ZGlobal and would like to continue receiving such services. Given the timing of the automatic renewal in April 2022 as it relates to other changes in the portfolio, including new PPA onboarding, Staff believes it is prudent to let the agreement automatically renew this year and for the CEO to renew the agreement in the future in its substantial form. Annual expenses under the ZGlobal agreement are expected to be approximately $200,000, which exceeds the CEO’s current authority for contracts.

Staff believes scheduling both load and generation with the same service provider can create synergies and is advantageous to doing so with separate providers which could lead to inefficiencies in workload. Further, Staff recommends that a future RFP be developed to combine both load and generation scheduling under a single agreement starting in April 2025, which is at the end of the initial term of the generation scheduling services and coincides with renewal of load scheduling services.

**STRATEGIC PLAN**
Renewing this agreement is aligned with SVCE’s Strategic Plan Goal Number 6: Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives.

**FISCAL IMPACT**
Load Scheduling Services are already considered in the SVCE Annual Budget. The cost is estimated to be approximately $17.5K per month for services between April 2022 and March 2025.

<table>
<thead>
<tr>
<th>SC Services</th>
<th>Forecasting</th>
<th>Total</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2017 - March 2018</td>
<td>$21,250</td>
<td>$15,375</td>
<td>$0</td>
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<tr>
<td>April 2018 - March 2019</td>
<td>$51,255</td>
<td>$61,808</td>
<td>$77,100</td>
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<tr>
<td>April 2019 - March 2020</td>
<td>$52,280</td>
<td>$63,044</td>
<td>$78,000</td>
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<tr>
<td>April 2020 - March 2021</td>
<td>$53,237</td>
<td>$64,198</td>
<td>$79,559</td>
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<td>April 2021 - March 2022</td>
<td>$55,027</td>
<td>$65,591</td>
<td>$80,215</td>
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<tr>
<td>April 2022 - March 2023</td>
<td>$56,586</td>
<td>$66,902</td>
<td>$81,151</td>
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<tr>
<td>April 2023 - March 2024</td>
<td>$58,393</td>
<td>$69,039</td>
<td>$82,774</td>
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<tr>
<td>April 2024 - March 2025</td>
<td>$60,752</td>
<td>$71,829</td>
<td>$84,429</td>
</tr>
</tbody>
</table>

$408,780 $477,785 $563,227 $1,449,792

**ATTACHMENTS**
SCHEDULING SERVICES AGREEMENT

This Scheduling Services Agreement ("Agreement"), dated as of October 21, 2016 ("Effective Date"), is entered into between ZGlobal Inc. ("ZGlobal") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCEA" or "Client"). ZGlobal and Client are referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Client desires to have ZGlobal perform the Services (as defined below);

WHEREAS, ZGlobal is in the business of providing energy scheduling/settlement and related services as an agent, including the Services; and

WHEREAS, except as otherwise defined in the body of this Agreement, terms and expressions used in this Agreement shall have the meanings contained in Exhibit A.

NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ZGlobal and Client, intending to be legally bound, hereby agree as follows:

ARTICLE 1
TERM AND TERMINATION

1.1 Term. The "Primary Term" of this Agreement shall be five (5) years, beginning on the Commencement Date, unless terminated earlier as provided in this Agreement. At the conclusion of the Primary Term, this Agreement shall automatically continue for successive one (1) year terms (each such term an "Additional Term"), unless either Party has given the other Party at least ninety (90) days' written notice prior to the end of the Primary Term or the Additional Term that it does not wish to renew the Agreement or unless terminated earlier as provided in this Agreement (the period during which the Agreement remains in effect, the "Term").

1.2 Termination for Convenience. During the Term, either Party may terminate this Agreement at any time for any reason or no reason upon one hundred eighty (180) days' prior written notice to ZGlobal and ninety (90) days' prior written notice for Client. For the avoidance of doubt, Client may request the cancellation of a Service on prior written notice to ZGlobal without terminating the Agreement.

1.3 Termination for Cause. During the Term, if one of the following events (each, an "Event of Default") occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") shall have the right to terminate this Agreement upon delivery of written notice to the Defaulting Party:

(a) A Party fails to make when due any undisputed payment due under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Party failing to make payment;
(b) A Party breaches a material covenant or agreement in this Agreement (other than a default in a payment obligation), if such breach is not remedied within ten (10) Business Days after written notice is given to the Party in breach of its covenants or agreements under this Agreement;

(c) A Party makes an assignment or any general arrangement for the benefit of creditors; or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it; or otherwise becomes bankrupt or insolvent (however evidenced); or becomes unable to pay its debts as they fall due;

(d) ZGlobal fails to maintain Performance Assurance in accordance with Article VII, and does not remedy such breach within three (3) Business Days after written notice from Client; or

(e) One or more of a Party’s representations or warranties set forth in Section 5.1 or 5.2 (as applicable) are no longer true or correct, and such representation or warranty is not corrected within thirty (30) days after written notice is given to the Party whose representation or warranty is no longer true or correct.

1.4 Effect of Termination. Notwithstanding anything else set forth herein, the terms and conditions of this Agreement shall remain in effect until the Parties have fulfilled all outstanding obligations, including payment in full of amounts due and transfer of information to Client or Client’s designee, and the termination of this Agreement shall not relieve either Party of (i) any unfulfilled obligation or undischarged liability of such Party existing as of the termination date, including without limitation the transition of the Services to Client or its designee (ii) the consequences of any breach or default under this Agreement to the extent not excused by this Agreement, or (iii) any obligations or liabilities arising from provisions of this Agreement that either expressly or by their nature survive the termination of this Agreement. Within 90 days after the termination of this Agreement, any amounts due from either Party shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds made. No termination by ZGlobal shall be effective until the later of (x) the termination date specified in ZGlobal’s written notice of termination or (y) the date upon which ZGlobal has transitioned the Services to Client or its designee in accordance with Section 2.3; provided that such transition period shall not exceed forty-five (45) days. The Client’s cancellation of a Service shall not act as a termination of the Agreement.

1.5 Exclusive Remedy. For the avoidance of doubt, except for and subject to its right to indemnification under Article 8, if Client is not satisfied with ZGlobal’s performance of Services hereunder, Client’s sole and exclusive remedy shall be to terminate this Agreement pursuant to Section 1.2 or Section 1.3 above, as applicable.

1.6 Cooperation. In connection with the termination of this Agreement, ZGlobal shall take such actions as Client may reasonably request and ZGlobal agrees to work cooperatively with Client to facilitate the transition of Services from ZGlobal to Client or Client’s designee.
ARTICLE 2
DESCRIPTION OF CLIENT ASSETS; SERVICES

2.1 Description of Client Assets. As requested by Client, ZGlobal will provide Services for the loads and generation assets set forth in Exhibit B attached hereto ("Client Assets"), as amended in writing by the Parties from time to time.

2.2 Services. ZGlobal, as agent for Client pursuant to this Agreement, shall provide the following Services for the Client Assets, commencing on the date identified for each Service (Client to check all that apply, and provide a start date for any checked Service):

<table>
<thead>
<tr>
<th>Check All that Apply</th>
<th>Services Description</th>
<th>Start Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Generation Scheduling Services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Scheduling and Outage Coordination (Exhibit C)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Financial Settlement Services (Exhibit D)</td>
<td>4/1/2017</td>
</tr>
<tr>
<td>X</td>
<td>Load Scheduling Services</td>
<td>4/1/2017</td>
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<tr>
<td></td>
<td>Scheduling and Outage Coordination (Exhibit C)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Load Forecasting Services</td>
<td>4/1/2017</td>
</tr>
<tr>
<td></td>
<td>Forecasting Services (Exhibit E)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Portfolio Management Services</td>
<td>4/1/2017</td>
</tr>
<tr>
<td></td>
<td>Portfolio Management Services (Exhibit G)</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Risk Management Services</td>
<td>1/1/2017</td>
</tr>
<tr>
<td></td>
<td>Risk Management Program Development and Support Services (Exhibit H)</td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>Information Resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information Resources (Exhibit K)</td>
<td></td>
</tr>
</tbody>
</table>

Each Exhibit checked above is attached hereto and incorporated herein by reference, and collectively comprise the "Services" to be performed by ZGlobal under this Agreement.

2.3 Continuity of Service. In the event Client cancels a Service, this Agreement terminates, or ZGlobal fails, ceases or is unable to provide the Services under this Agreement for any reason, then, to the extent necessary, the Parties shall take all steps necessary to terminate the designation of ZGlobal as agent for Client for the Service or Services, and ZGlobal shall take such actions as Client may reasonably request in order to transition responsibility for the performance of the Service or Services to Client or a replacement provider. Additionally, as part of the transfer of a Service or Services under this Section 2.3, ZGlobal agrees to assign to Client, at Client’s request, any underlying agreements with third-party software or service providers necessary for continued performance of the Service or Services, including the Information Resources (as defined below).
2.4 **Information Access.** ZGlobal shall provide Client and Client's designated representatives and consultants with access to the software, databases, data, and information portal(s) identified in Exhibit K (collectively, the "Information Resources").

2.5 **Designation of ZGlobal as Agent.** Client hereby designates ZGlobal as its agent and representative in connection with and to the extent reasonably required to perform the Services. Client agrees to promptly:

(a) Notify CAISO and any other relevant entities of this arrangement; and

(b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

2.6 **Standard of Performance.** ZGlobal shall perform the Services consistent with Good Industry Practice and Applicable Laws, and in accordance with written direction from Client (if any).

### ARTICLE 3
**COMPENSATION; BILLING AND PAYMENT**

3.1 **Compensation.** As consideration for the Services performed by ZGlobal hereunder, Client shall pay ZGlobal all undisputed applicable Services Fees in accordance with Exhibit I. In the event Client, in good faith, disputes ZGlobal's computation of amounts due and owing, Client will provide ZGlobal with written documentation explaining the disputed amount and describing in detail the factual and legal basis of the dispute. Client must pay all charges which are not in dispute in accordance with the payment terms outlined above. Client will cooperate with ZGlobal to resolve any payment dispute expeditiously.

3.2 **Billing Statements.** ZGlobal shall deliver to Client on or before the tenth (10th) Business Day of the month following that month for which Services were provided a monthly Scheduling Coordinator Services statement (each a "Statement") setting forth the Services Fees applicable to the Services performed during that period. Payments shall be made to ZGlobal on or before thirtieth (30th) Business Day after receipt of each Statement.

3.3 **Failure to Pay.** Client's failure to make timely payments hereunder shall be considered a breach. In the event such breach is not cured within fifteen (15) days following written notice by ZGlobal, then Client shall be in default and ZGlobal may:

(a) Apply any revenues or payments received by ZGlobal for the benefit of Client from Balancing Authorities, Transmission Owners/Operators the CAISO, or any other third party towards the outstanding amount owed to ZGlobal;

(b) Apply any monies from the Services Payment Security posted by Client pursuant to Exhibit C towards the outstanding amount owed to ZGlobal; and/or

(c) Terminate this Agreement and all Services provided for herein pursuant to Section 1.3(a) above.

3.4 **Late Payments.** Any payment that is not received by ZGlobal on or before the date required shall incur a monthly late fee, which shall be the total undisputed outstanding balance due
multiplied by the Interest Rate ("Late Fee").

3.5 Audit Rights. Client (or its designee) shall have the right, with prior written notice, at its sole expense and during normal working hours, to examine the records of ZGlobal to the extent reasonably necessary to verify the accuracy of any Statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any Statement or Late Fee, the necessary adjustments in such Statement or Late Fee and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate.

3.6 Independent Contractor. ZGlobal shall provide the Services to Client as an independent contractor, not as an employee of Client. ZGlobal shall not have or claim any right arising from employee status.

ARTICLE 4
CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Confidentiality.

(a) Each Party shall hold in confidence all information disclosed to it by the other Party or its representatives that pertains to Client's or ZGlobal's business, as the case may be, and that is not publicly available, including this Agreement, proprietary practices, technical information and relevant data ("Confidential Information"). The Parties hereto acknowledge that SVCEA is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 and following). The Parties are expressly authorized to disclose the existence of this Agreement and the Term. Unless otherwise provided by this Agreement or Applicable Laws, all other terms of this Agreement are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties in advance of such disclosure; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree, for the benefit of the other Party, to treat such information confidentially to the same extent required by this Agreement; (iii) to the extent required to be disclosed by Applicable Laws or legal process or other mandatory or voluntary standard, and then only to the extent of such requirement; or (iv) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially to the same extent required by this Agreement. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of five (5) years following the expiration of this Agreement.

(b) Confidential Information shall not include (i) information that is publicly available or that enters the public domain pursuant to Applicable Laws, or (ii) information obtained by a Party from a third party not known to be under an obligation of non-disclosure to Client or ZGlobal, as the case may be.
(c) Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent necessary to perform this Agreement, and to any Governmental Authority, but only to the extent legally required to do so. If a Party is requested or required by any Governmental Authority to disclose any of the other Party’s Confidential Information, such Party shall provide the other Party with prompt notice of such request(s) so that the other Party may seek, at its sole expense, a protective order or other appropriate remedy with respect to such disclosure.

4.2 Proprietary Rights. Client shall retain all rights, title and interest in and to all models, tools, systems or processes owned by and used or developed by ZGlobal in the course of providing Services pursuant to this Agreement including, but not limited to, patent rights, trade secrets, mask works and copyrights; provided, however, that ZGlobal shall have a non-exclusive right to use said models, tools, systems or processes to serve Client or other agencies approved by Client without further consideration.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 ZGlobal’s Representations and Warranties. ZGlobal represents and warrants to Client as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and in each jurisdiction where it is required to be qualified as a foreign corporation;

(b) It has obtained all regulatory approvals and Permits necessary for it to legally perform its obligations under this Agreement;

(c) It possesses the requisite expertise to perform its obligations hereunder, and it is not restricted in any manner, through an agreement not to compete or similar agreement, from performing the Services for Client;

(d) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(e) This Agreement constitutes ZGlobal’s legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(f) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.2 Client’s Representations and Warranties. Client represents and warrants to ZGlobal as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of California;

(b) The execution and delivery of this Agreement and the performance of this
Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(c) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(d) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.3 Annual Updates. Upon the request of the other party on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and Client shall each confirm in writing to the other that their respective representations and warranties set forth above remain true and correct.

ARTICLE 6
RELATIONSHIP OF THE PARTIES; DISCLAIMERS

6.1 Relationship of the Parties. ZGlobal shall act as Client’s agent while performing the Services hereunder. Except when and to the extent that ZGlobal is performing the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement.

6.2 Other Business. Subject to Section 4.1 above, nothing in this Agreement shall preclude ZGlobal from performing Services similar to those hereunder for other clients.

6.3 Warranty Disclaimers. Client acknowledges that it has entered into this Agreement and is contracting to receive the Services based solely upon the expressed representations and warranties in this Agreement. As a result, Client accepts all Services provided under this Agreement “as is” and “with all faults.” The Parties expressly negate and disclaim any other representation or warranty with respect to the Services provided under this Agreement, whether written or oral, expressed or implied, including any representation or warranty with respect to merchantability or fitness for any particular purpose.

ARTICLE 7
PERFORMANCE ASSURANCE

7.1 Performance Assurance. As a condition of Client’s obligations hereunder, ZGlobal shall provide to Client no later than April 1, 2017 and thereafter maintain throughout the Term cash or a letter of credit (the “Performance Assurance”) in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000). The Performance Assurance shall be held by Client as security for ZGlobal’s performance hereunder. If ZGlobal establishes the Performance Assurance by means of a letter of credit, the letter of credit must be provided in a form reasonably acceptable to Client. The Performance Assurance will be returned to ZGlobal at the end of the Term upon the satisfaction of ZGlobal’s obligations under this Agreement (net of any amounts applied to ZGlobal’s obligations).
After April 1, 2018, at ZGlobal’s written request, Client agrees to consider in good faith ZGlobal’s request to reduce the amount of the Performance Assurance; provided, however, that any reduction will be made at Client’s sole discretion and Client is under no obligation to grant such request.

7.2 Security Interest in Performance Assurance. To secure its obligations under this Agreement, and until released as provided herein, ZGlobal hereby grants to Client a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Performance Assurance 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 Client, and ZGlobal agrees to take all action as Client reasonably requires in order to perfect Client’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.

7.3 Event of Default. Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by ZGlobal, Client may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to the Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding letter of credit issued for its benefit; and

(c) Liquidate all Performance Assurance then held by or for the benefit of Client free from any claim or right of any nature whatsoever of ZGlobal, including any equity or right of purchase or redemption by ZGlobal.

Client shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce ZGlobal’s obligations under this Agreement (ZGlobal remains liable for any amounts owing to Client after such application), subject to Client’s obligation to return any surplus proceeds remaining after these obligations are satisfied.
ARTICLE 8
LIMITATION OF LIABILITY; INDEMNITY

8.1 Limitation of Liability.

(a) To the extent permitted by Applicable Laws, ZGlobal hereby agrees to indemnify, defend and hold harmless Client, its partners, officers, directors, representatives and employees (collectively, the “Client Indemnitees”), from and against any and all losses, claims, damages and liabilities (including third-party claims, reasonable attorney, consultant, accounting and other professional fees, and reasonable fees and costs actually incurred in enforcing this Agreement, and any penalties or fines imposed by Governmental Authority) (collectively, “Losses”) relating to ZGlobal’s performance of the Services and any breach by ZGlobal of the provisions of this Agreement, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the Client Indemnitees. The foregoing notwithstanding, to the extent a Loss is due to a communications failure between ZGlobal and the CAISO, ZGlobal’s liability hereunder, unless excused by Force Majeure, shall be limited to reimbursing Client for only those fees or charges imposed by CAISO or any other third party caused by the failure of ZGlobal to communicate the necessary information received from Client in a timely manner.

ZGlobal shall be promptly notified in writing of any such claim or suit brought against any Client Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Client Indemnitee) of such claim or suit through counsel reasonably acceptable to Client. The Client Indemnitees shall provide, at ZGlobal expense, such cooperation as ZGlobal may reasonably request in connection with its defense or settlement of the claim or suit against such Client Indemnitee.

(b) To the extent permitted by Applicable Laws, Client hereby agrees to indemnify, defend and hold harmless ZGlobal, its partners, officers, directors, and employees (collectively, the “ZGlobal Indemnitees”), from and against any and all Losses arising from the breach by Client of the provisions of this Agreement including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the ZGlobal Indemnitees.

Client shall be promptly notified in writing of any such claim or suit brought against a ZGlobal Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such ZGlobal Indemnitee) of such claim or suit through counsel reasonably acceptable to ZGlobal. The ZGlobal Indemnitees shall provide, at Client expense, such cooperation as Client may reasonably request in connection with its defense or settlement of the claim or suit against such ZGlobal Indemnitee.

(c) For the avoidance of doubt, consistent with the provisions set forth in Section 8.1 above, neither Party shall have any responsibility or liability for any third party agreements not incorporated by reference by this Agreement or transactions not contemplated by this Agreement entered into by the other Party, including but not limited to such Party or any third party failing to perform, inadequately performing, and/or incorrectly performing under or breaching any such third
party agreements or transactions.

(d) Except as expressly provided herein, nothing in this Agreement shall be construed to create a duty to, any standard of care with reference to, or any liability in connection with any person not a party to this Agreement.

(e) In no event shall either Party be liable to the other Party for any consequential, incidental or indirect damages for any cause of action, whether in contract or tort or otherwise. Incidental, consequential or indirect damages include, but are not limited to, lost profits or revenues and loss of business opportunity, whether or not the Party was aware or should have been aware of the possibility of such damages.

8.2 Limitation on Damages. FOR BREACH OF ANY PROVISION, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT DAMAGES AND EACH PARTY AGREES TO WAIVE ALL OTHER TYPES OF DAMAGES OR REMEDIES TO WHICH IT MIGHT BE ENTITLED UNDER THIS AGREEMENT, INCLUDING CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITY COSTS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED HEREIN 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.

8.3 Indemnification. Notwithstanding the foregoing Sections 8.1 and 8.2, each Party shall hold the other Party harmless as follows: the indemnitor shall defend, indemnify and hold harmless the indemnitee, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of indemnitor's willful misconduct or gross negligence while engaged in the performance of obligations or exercise of rights created by this Agreement, except to the extent of those matters arising from indemnitee's negligence.

ARTICLE 9
MISCELLANEOUS

9.1 Entire Agreement. This Agreement is the Parties' complete and final expression of agreement on the subject matter of this Agreement and supersedes all prior agreements, representations, understandings, negotiations, offers and communications, whether oral or written, regarding the subject matter of this Agreement.

9.2 No Assignment. Neither Party may assign this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.2 shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
9.3 Modification and Amendment. This Agreement can be modified or amended only by a written agreement executed by an authorized representative of each Party.

9.4 Severability. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall not be affected. With respect to a provision held invalid or unenforceable, the Parties shall amend this Agreement as necessary to effect the Parties' original intent as closely as possible.

9.5 No Waiver. If on any occasion a Party does not insist upon the performance of any term, condition or provision of this Agreement, such forbearance shall not operate or be construed as an acceptance of any variation in any term, condition or provision of this Agreement or relinquishment of any right under this Agreement. No waiver by either Party of any right or of any default by the other Party under this Agreement shall be effective unless the waiver is in writing and signed by the waiving Party, and no waiver shall operate or be construed as a waiver of any other or further right or as a waiver of any future default, whether of like or different character or nature.

9.6 Governing Law. This Agreement is governed by and shall be construed according to the laws of the State of California, without regard to principles of conflicts of law.

9.7 Preparation of Agreement. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

9.8 No Third-Party Rights. This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any person not a party to this Agreement.

9.9 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered or sent by courier, by registered or certified mail, or by facsimile. Initially, the respective Parties' addresses and facsimile numbers are:

If to ZGlobal: ZGlobal Inc.
750 Main St.
El Centro, CA 92243

With a copy to: 604 Sutter Street, Ste. 250
Folsom, CA 95630

If to Client

All notices shall be deemed delivered (a) when delivered in person, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one day after being delivered to a courier for overnight delivery, addressed to the receiving Party at the address specified above (or such other address as the receiving
Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above, or (d) five (5) days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any Party may, by written notice, change the address or facsimile number, or both, to which notices and communications are to be sent.

9.10 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute only one legal instrument. The delivery of an executed counterpart of this Agreement by facsimile shall be deemed to be valid delivery of the counterpart.

9.11 Survival. Notwithstanding any provision herein to the contrary, Articles 3, 4, 6, 7, 8 and 9 shall survive the termination or expiration of this Agreement.

9.12 Publicity. Either Party may issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic or interview) relating to the Services or this Agreement; provided, however, the disclosing Party shall, if reasonably possible, provide advance notice of such disclosure to the other Party.

9.13 Interpretation. In this Agreement:

(a) The headings are for convenience of reference only and shall be ignored in construing this Agreement;

(b) Where the context requires, the singular includes the plural and vice versa;

(c) The words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;

(d) Unless the context otherwise indicates, references in this Agreement to articles, sections or exhibits are references, respectively, to articles, sections or exhibits of or to this Agreement;

(e) All exhibits referenced in this Agreement are incorporated into this Agreement and are an integral part of this Agreement;

(f) If a conflict or inconsistency exists between any exhibit and this Agreement (exclusive of the exhibits), the provisions of this Agreement (exclusive of the exhibits) shall control; and

(g) All references in this Agreement to contracts, agreements and other documents shall be deemed to refer to such contracts, agreements and other documents as amended, modified and supplemented from time to time.

9.14 No Recourse Against Constituent Members of SVCEA.

SVCEA is organized as a joint powers authority in accordance with the Joint Exercise of
assumed liability for any obligations or liabilities of SVCEA. SVCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal will have no rights and will not make any claims, take any actions or assert any remedies against any of SVCEA's constituent members in connection with this Agreement.

To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

ZGlobal Inc.

By: Ziad Blauwan
Name: Ziad Blauwan
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: Tom Haba
Name: Tom Haba
Title: CEO

By: 
Name: 
Title:
Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement effective as of March 31, 2016 (the “Joint Powers Agreement”) and is a public entity separate from its constituent members and under the Joint Powers Agreement such members have not assumed liability for any obligations or liabilities of SVCEA. SVCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal will have no rights and will not make any claims, take any actions or assert any remedies against any of SVCEA’s constituent members in connection with this Agreement.

To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

ZGLOBAL INC.

By: ____________________________
Name: [Signature]
Title: [Position]

By: ____________________________
Name: [Signature]
Title: [Position]

By: ____________________________
Name: [Signature]
Title: [Position]
EXHIBIT A

Definitions

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below.

"Additional Term" has the meaning set forth in Section 1.1.

"Agreement" means this Scheduling Services Agreement, including all exhibits attached to this Agreement, as amended, modified, or supplemented from time to time.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Client Assets, the Services or the terms of this Agreement.

"Balancing Authority" means the entity responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting interconnection frequency in real time.

"Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

"Business Day" means any Day other than a Saturday, a Sunday, the day after Thanksgiving, or a Day on which commercial banks in California are authorized or required to close.


"CAISO Tariff" means the CAISO FERC Electric Tariff, as amended from time to time.

"Client Assets" has the meaning set forth in Exhibit B.

"Client Assets Operating Parameters" means the various operating parameters set forth in Exhibit B.

"Commencement Date" means that date declared by Client by written notice to ZGlobal following the Effective Date upon which ZGlobal commences providing any of the Services under this Agreement.

"Confidential Information" has the meaning set forth in Section 4.1.

"Day" means a calendar day beginning at 12:00 midnight, Prevailing Pacific Time.

"Effective Date" has the meaning set forth in the introductory paragraph of this Agreement.
"Energy" means electricity measured in MWh.

"Event of Default" has the meaning set forth in Section 1.3.

"Financial Settlement Services" has the meaning set forth in Exhibit D.

"Forecasting Services" has the meaning set forth in Exhibit E.

"Force Majeure" means, in respect of a non-performing Party, an event beyond the reasonable control of the non-performing Party that the non-performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the non-performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

"Forced Outage" an Outage for which sufficient notice cannot be given to allow the Outage to be factored into CAISO’s day-ahead market or real time market bidding processes.

"Good Industry Practice" means those practices, methods and acts that would be implemented and followed by prudent operators in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

"Governmental Authority" means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the Client Assets, the Services or this Agreement.

"Interest Rate" means the rate of interest per annum publicly announced from time to time by Bank of America as its ‘Prime Rate’, plus three percent (3%), or the maximum rate permitted by Applicable Laws, whichever is less.

"Late Fee" has the meaning set forth in Section 3.4.

"Losses" has the meaning set forth in Section 8.1(a).

"Month" means a calendar month.

"Parties" means ZGlobal and Client.

"Party" means either ZGlobal or Client.
“Performance Assurance” has the meaning set forth in Section 7.1.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Primary Term” has the meaning set forth in Section 1.1.

“Outage” means disconnection, separation or reduction in capacity, planned or forced, of one or more elements of an electric system.

“Participating Generator Agreement” means an agreement between CAISO and the owner of a generator that participates in the CAISO markets, a pro forma version of which is set forth in Appendix B.2 to the CAISO Tariff.

“Portfolio Management Services” has the meaning set forth in Exhibit G.

“Risk Management Program Development and Support Services” has the meaning set forth in Exhibit H.

“RECs” means renewable energy certificates, which represent the environmental attributes of the power produced from renewable energy projects and which are sold separately from the electricity commodity from such renewable energy projects.

“Scheduling Coordinator” or “SC” means any entity certified by the CAISO for the purposes of undertaking the functions identified in the CAISO Tariff for Scheduling Coordinators.

“Scheduling Coordinator Services” has the meaning set forth in Exhibit C.

“Security Interest” has the meaning in Section 7.2.

“Service” means any of the Services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services” means all of the services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit I.

“Statement” means a billing statement delivered according to Section 3.2.

“Transmission Owner/Operator” means an entity owning or operating transmission facilities or having firm contractual rights to use such transmission facilities.


[End of Exhibit A]
1. **Client Assets.**

   - The following is a list of assets subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions) (collectively, the “Client Assets”).

     o Load
       o
     o Current Supply Contracts
       o
     o Anticipated
       o

2. **Operating Parameters.**

   - The various operating parameters for the Client Assets are set forth in the agreements below, as may be supplemented from time to time by Client upon prior written notice to ZGlobal (“Client Assets Operating Parameters”).

     o Power Purchase Agreements
     o Meter Service Agreements
     o Participating Generator Agreements
     o Transmission Service Agreements
     o Qualified Reporting Entity Agreements

[End of Exhibit B]
Scheduling and Outage Coordination Services

If applicable, this Exhibit C details the scheduling and outage coordinator services ("Scheduling Coordinator Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Scheduling Coordinator Services

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At Client’s written request, ZGlobal shall perform the Scheduling Coordinator Services for the following categories:

- **CAISO**
  - 7-day per week day-ahead pre-scheduling Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

- **WECC (non-CAISO)**
  - Business Day day-ahead Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

2. Description of Scheduling Coordinating Services

Scheduling Coordinator Services may include scheduling and/or bidding of Client’s generation, load, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners/Operators, purchasing/selling entities and others as necessary.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and Client shall provide information and support as described in the following paragraphs.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Scheduling Coordinator Services listed in this Exhibit C that ZGlobal shall provide.

3.2 Designation of ZGlobal as Client’s Scheduling Coordinator. At least ten (10) Business Days before the Commencement Date for ZGlobal to provide Scheduling Coordinator Services on behalf of Client, Client shall have performed all tasks necessary to allow ZGlobal to provide Scheduling Coordinator Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO’s SIBR and CMRI systems, meter data and meteorological data. Prior to the
Commencement Date, ZGlobal will identify all tasks necessary for Client to complete so that ZGlobal can commence the Scheduling Coordinator Services on the Commencement Date.

3.3 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule Client’s resources, load and transactions (“Portfolio”) into the applicable market/Balancing Authority Area. This includes data such as Client’s load information, transactions with counterparties, facilities’ capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities. Prior to the Commencement Date, ZGlobal will identify the information required from Client under this paragraph.

Information required for day-ahead pre-scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council’s (WECC’s) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday. The CAISO pre-schedules one day prior to flow day every day.

Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

3.4 Fees and Costs Imposed as a Result of Scheduling and/or Bidding. Client shall be entitled to and responsible for all costs and revenues charged or paid to ZGlobal and/or Client from Balancing Authorities, Transmission Owners/Operators, and the CAISO, or other third parties as a result of ZGlobal scheduling and/or bidding Client’s Portfolio. This includes items such as the CAISO’s Grid Management Charge (“GMC”), ancillary services and energy imbalance, among others. The intent is that ZGlobal acts as a conduit for dollar flows between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators, and other third parties.

Client payments for all costs and fees shall be remitted to ZGlobal no less than two (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees to ZGlobal could result in Client’s security being drawn upon, as further described in paragraph 3.5 below.

3.5 Client Security. To ensure ZGlobal’s performance of the Services, and to secure Client’s payment obligations hereunder, Client agrees to post the following forms of security:

- **CAISO Registration Security.** ZGlobal is required to post $500,000 with CAISO to demonstrate ZGlobal’s ability to act as a SC on an on-going basis (the “Registration Security Deposit”). ZGlobal shall post and maintain the Registration Security Deposit as required by the CAISO at no cost or expense to Client.

- **Estimated Aggregate Liability Security.** ZGlobal is also required to post with CAISO an amount greater than 111.11% of ZGlobal’s Estimated Aggregate
Liability ("EAL")/9 as SC for Client. ZGlobal’s EAL is determined by the CAISO for SC obligations based on outstanding, estimated and extrapolated financial amounts. Within five (5) Business Days of ZGlobal’s written request, Client agrees to deposit security with ZGlobal in an amount equal to the lesser of (a) $75,000 or (b) the actual EAL obligation (as determined using the CAISO EAL calculation), which will be utilized to satisfy ZGlobal’s EAL security requirements ("EAL Security Deposit"). If ZGlobal’s EAL increases during the Term, ZGlobal shall promptly notify Client and Client shall promptly deposit additional security with ZGlobal such that the EAL Security Deposit is never less than 111.11% of ZGlobal’s EAL (as determined using the CAISO EAL calculation) up to $75,000. If Client ever fails to timely remit any costs and fees to ZGlobal as required under paragraph 3.4 above, then Client understands that CAISO may draw upon the EAL Security Deposit to satisfy any outstanding ZGlobal obligations as SC for Client. If the EAL Security Deposit is ever drawn upon by CAISO, then Client shall promptly replenish the amount that was drawn. ZGlobal shall return the EAL Security Deposit to Client within five (5) Business Days of the termination of this Agreement.

4. ZGlobal’s Responsibilities

4.1 Professional Services. ZGlobal shall perform the following Scheduling Coordinator Services in a professional manner consistent with the requirements of this Agreement and Good Industry Practices and Applicable Laws.

4.2 Scheduling. ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO’s and/or Balancing Authorities’ timelines as prescribed by their tariffs and Client’s CAISO Participating Generator Agreements (if required).

4.2.1 Final Schedules. ZGlobal shall provide Client with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to Client as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

4.2.2 OASIS and Other Pertinent Applications. If Client uses applications such as OASIS, OATI and ICE, and ZGlobal’s access to such applications is necessary for its performance of the Services under this Agreement, upon ZGlobal’s written request Client shall provide reasonable access to such applications to the extent required by ZGlobal to perform the Services under this Agreement.

4.2.3 Outage Reporting and Notification. ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices and updates regarding Client’s generation facilities as required by applicable procedures, requirements and standards. This includes information such as SLIC outage requests, SLIC Forced Outages, CAISO Forced Outage reports, among other requirements.

4.2.4 NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

[End of Exhibit C]
Financial Settlement Services

If applicable, this Exhibit D details financial settlement services ("Financial Settlement Services") to be performed or provided by ZGlobal at Client's written request under this Agreement.

1. Categories of Financial Settlement Services

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to Client (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement verification
- Bilateral transactions verification by counterparty

2. Description of Services

ZGlobal will provide Financial Settlement Services on behalf of Client to allow for settlement of Client's transactions with the appropriate Balancing Authorities, Transmission Owners/Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the CAISO's charges/revenues are accurate. ZGlobal will also provide Client with a summary description of the CAISO charge types and how they are applied to Client's schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar (as defined below), ZGlobal will receive or remit payments on behalf of Client for all CAISO Invoices and Payment Advices related to their CAISO transactions. Pursuant to Exhibit C, paragraph 3.4, all CAISO costs and revenues related to Clients' transactions shall be the responsibility of Client.

In the case of net Payment due to CAISO, Client shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO payment calendar available on its website ("Payment Calendar"). In the case of net payments due to ZGlobal for the Client transactions, ZGlobal will remit funds to Client no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to Client for remittance.
2.2 CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO’s publication of settlement statements to provide Client with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to Client under this Agreement (the “Shadow Settlement”). The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary. ZGlobal shall publish regular exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices and on an annual basis. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month in addition to an annual report summarizing monthly content.

2.3 OATT Statement Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the charges are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client’s schedules and metered volumes.

2.4 PPA Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the charges/revenues are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client’s schedules and metered volumes.

2.5 Bilateral Transactions Verification by Counterparty. ZGlobal shall review settlement statements for accuracy and coordinate with third parties as necessary to resolve discrepancies. Upon confirming accuracy of such statements, ZGlobal will provide a final invoice to Client for remittance to the appropriate parties.

2.6 Dispute Submittal. ZGlobal shall act as Client’s representative with regard to disputes associated with Client’s facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO’s dispute process and providing Client with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist Client by providing information and data as necessary to resolve such disputes.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Financial Settlement Services listed in this Exhibit D that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle Client’s Portfolio into the applicable market/Balancing Authority Area. This includes data such as Client’s load information, transactions with counterparties, facilities’ capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality Meter Data (as that term is defined in the CAISO Tariff), access to relevant meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

3.3 Payments. Payments shall be remitted no less than two (2) Business days prior to the
CAISO, Balancing Authorities and Transmission Owners/Operators timelines required per the appropriate tariff or contract.

4. **ZGlobal's Responsibilities**

4.1 **Professional Services.** ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit D]
Forecasting Services

If applicable, this Exhibit E details forecasting services ("Forecasting Services") to be performed or provided by ZGlobal at Client's written request under this Agreement.

1. **Categories of Forecasting Services**

Forecasting Services functions vary depending upon resource type, number of resources and location of resources. At Client’s written request, ZGlobal shall perform the Forecasting Services for the following categories:

- **Total Load**
  - Annual energy demand (MWh/month)
  - Quarterly energy demand (MWh/month)
  - Monthly energy demand (MWh/month)
  - Day-Ahead preschedule demand by hour (MWh/hour)
  - Intra-day (Hour-Ahead) schedule volumes (MWh/hour)

2. **Description of Services**

ZGlobal proposes to provide Forecasting Services on behalf of Client to allow for scheduling of Client’s demand with the CAISO and other appropriate Balancing Authorities and others as necessary. Such Forecasting Services shall coincide with then Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 **Day-Ahead Forecasting.** ZGlobal will use a computerized algorithm to convert input data to a 24-hour energy forecast of Client’s demand. The forecast will be used for Day-Ahead prescheduling purposes, and will be produced at a time sufficient to meet relevant markets’ and counterparties’ processing timelines. The input data will include, but not be limited to, relevant meteorological data, historical data, and time of day and year.

2.2 **Intra-Day /Hour-Ahead) Forecasting.** ZGlobal will utilize relevant meteorological historical data, and time of day and year to determine an hourly energy forecast for the upcoming hours of the day necessary for Hour-Ahead scheduling purposes.

2.3 **Longer Term (Monthly, Quarterly, Annual) Energy Production Forecast.** ZGlobal will utilize relevant historical data, expected change in customer base and external factors such as economic growth to determine an hourly forecast for the period (up to one year) as directed by Client.

3. **Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Forecasting Services listed in this Exhibit E that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with
all relevant information to allow ZGlobal to effectively forecast Client’s demand to allow for scheduling into the CAISO and as applicable, other market/Balancing Authority Areas. This includes data such as historical energy demand, meteorological data, and expected changes in customer base. Information shall be provided by Client to ZGlobal in time sufficient to perform Forecasting Services, as determined and specified in writing by ZGlobal. Information shall be provided by Client in electronic format to ZGlobal’s Oracle database or other automation-ready format to be specified by ZGlobal, without errors. If ZGlobal is required to subscribe to additional data services, described below in Paragraph 4, Client shall also remain current on pass-through costs of paid data services. As a forecast necessarily requires input data, any failure by Client to provide data will result in the inability of ZGlobal to provide a forecast.

4. **ZGlobal’s Responsibilities**

4.1 **Professional Services.** ZGlobal shall perform the Forecasting Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws. ZGlobal will endeavor to provide Client’s forecast in a timely manner, and in accordance with appropriate trading timeframes. ZGlobal will subscribe to paid data services, if ZGlobal deems necessary for use as input data as noted in above in Paragraph 2, and will invoice Client for the cost of such service(s), including any costs shared among multiple other clients, if applicable.

ZGlobal will endeavor to produce forecasts as accurate as possible. As demand forecasting is an inexact art, ZGlobal makes no warranty of accuracy of its forecasts. Client indemnifies and holds harmless ZGlobal for any direct or indirect financial loss or other damages due to inaccuracy of forecasts or failure to produce forecasts.

5. **Intellectual Property**

The forecast results and its methodologies are the proprietary intellectual property of ZGlobal. ZGlobal grants Client royalty-free use of forecasts for the purposes stated above in Paragraph 2. ZGlobal reserves the right to update, improve, or otherwise alter its forecast methodologies without notice. ZGlobal may use forecasts and related information created on behalf of Client in a non-identifiable manner for purposes unrelated to the client, such as in publication in trade journals, presentation at conferences or industry forums, or in advertising. In such cases, ZGlobal will notify Client of such use.

[End of Exhibit E]
Facilities Management Services

Not Applicable

[End of Exhibit F]
Portfolio Management Services

If applicable, this Exhibit G details specific services ("Portfolio Management Services") to be performed or provided by ZGlobal at Client’s written request under this Agreement.

1. Categories of Portfolio Management Services

Portfolio Management Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (real-time, day-ahead, forward). At Client’s option, Client shall expressly direct ZGlobal in writing to perform Portfolio Management Services for the following categories:

• Assess and manage Client’s net open position by performing analysis to develop strategies for:
  - Short term Energy positions (Operating Month through Real Time)
  - Capacity positions
  - Transmission positions (including CAISO markets)
  - Financial positions
  - Energy Storage and Demand Response bidding

• Utilize applications and data for assessment of Client’s portfolio. Examples of applications and data are shown below:
  - Production forecast for renewable energy resources
  - Production meter data for renewable energy resources
  - Imbalance energy costs for specific resources
  - Other costs that affect resource revenue
  - Execute financial transactions:
    - Forward (including the CAISO’s Congestion Revenue Rights (CRRs))
    - Day-Ahead
    - Hour-Ahead

• Assist Client with developing in-house expertise as directed by Client. This includes training, information, data and analysis.

2. Description of Services

ZGlobal proposes to provide Portfolio Management Services on behalf of Client to allow for managing Client’s net open position.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit G that ZGlobal shall provide.
3.2 Authorization for ZGlobal to Transact on Behalf of Client. To the extent reasonably required by ZGlobal to perform the Portfolio Management Services requested by Client, Client will provide authorization for ZGlobal to transact on Client’s behalf consistent with parameters established by Client and agreed upon by ZGlobal in writing prior to engaging in such transactions. As a condition of performance of the Portfolio Management Services, ZGlobal will identify and Client shall have performed all tasks necessary to allow ZGlobal to provide Portfolio Management Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client.

3.3 Information to Be Provided by Client to ZGlobal. ZGlobal shall identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client’s net open position, effectively bid, schedule and execute transactions in order to close Client’s net open position. This includes data such as Client’s load information, transactions with counterparties, facilities’ and contractual economic data, capabilities and limitations, planned and Forced Outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information.

Parameters required for Day-Ahead and Hour-Ahead Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than 48 hours prior to day that electricity is to be scheduled onto the electrical grid.

Parameters required for forward Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than one calendar week prior to day that electricity is to be scheduled onto the electrical grid.

3.4 Fees and Costs Imposed as a Result of Portfolio Management Services. For transactions that ZGlobal transacts on behalf of Client, Client shall be responsible for all costs and revenues Client incurs as a result of such transactions. Costs and revenues may emanate from Balancing Authorities, Transmission Owners/Operators, the CAISO or third parties. This includes items such as the CAISO’s Grid Management Charge (GMC), ancillary services, among others. The intent is that ZGlobal acts as a conduit for dollar flow between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators and third parties.

4. ZGlobal’s Responsibilities

4.1 Transactions. At Client’s written direction, ZGlobal shall execute transactions on behalf of Client designed to implement Client’s portfolio management strategy. Prior to executing any transactions, ZGlobal and Client shall document portfolio management strategy, roles, responsibilities, allowable transactions (for example, product, term, and counterparty), and process for performing Portfolio Management Services pursuant to this Agreement.

4.2 Strategy Review. Client and ZGlobal shall meet on a regular basis to review Client’s portfolio management strategy, but no less than twice per year.

4.3 Transaction Data. All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.
4.4 **Reports.** ZGlobal shall publish regular Portfolio Management Services reports. Reports shall include exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month. ZGlobal shall provide standardized monthly reports including, but not limited to, the following, upon Client's request: net short and long positions, day ahead energy charges, imbalance charges, portfolio changes, and potential areas for improvement and CRR effectiveness reports. Upon Client's request, ZGlobal shall also provide ad hoc settlement and contract analysis and settlement charge code and billing determinant data.

4.5 **Professional Services.** ZGlobal shall perform Portfolio Management Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit G]
Risk Management Program Development and Support Services

If applicable, this Exhibit H details specific services ("Risk Management Program Development and Support Services") to be performed or provided by ZGlobal at Client's written request under this Agreement.

1. Categories of Risk Management Program Development and Support Services

Risk Management Program Development and Support Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (policies, processes, and procedures). At Client’s written request, ZGlobal shall perform Risk Management Program Development and Support Services for the following categories:

- Initial assessment of Risk Policy Review
- Current Risk Management Documents and Tools
- Confirmation of Organizational Objectives,
- Confirmation of Client’s Risk Management Organizational Structure and Responsibilities,
- Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
- Perform comprehensive review of information and documentation provided by Client
- Assess and document Client’s risk tolerance
- Develop for discussion purposes approaches for monitoring and managing Net Open Position on an intermediate and long-term basis and associated risk
- Compare and contrast existing practices and information with those that are needed to reflect Client’s risk tolerance

Develop Comprehensive Risk Policy Consistent with Client’s Risk Tolerance, includes provisions for the following:

- Measuring and closing Net Open Position in the short-term (less than one year);
- Concepts and approaches for intermediate and long term management
- Procurement to satisfy load obligations
- Submitting load and resource bids and offers into markets
- Executing bilateral physical transactions including exposure to credit risk
- Executing financial transactions
- Submitting offers to markets
- Hedging instruments consistent with Client’s risk tolerance
- Approved products

Develop Operating Procedures for Risk Management Activities

- Measuring and closing Net Open Position in the short term (less than one year)
- Procurement to satisfy load obligations
- Executing bilateral physical transactions including exposure to credit risk
■ Submitting offers into markets
■ Hedging instruments consistent with Client’s risk tolerance
■ Approved products

Develop documented material suitable for presentation to management and/ or Board of Directors and will include:

■ Confirmation of Organizational Objectives,
■ Confirmation of the Risk Management Organizational Structure and Responsibilities,
■ Identification and prioritization of Risks given its portfolio definition,
■ Analysis of current Risk Tolerance including assessment of limit structures and approved products and recommendations for improvement,
■ Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
■ Recommendations for changes to credit procedure and counterparty transaction limits,
■ Updated Risk Management Policy, and
■ Updated reporting and metrics as needed.
■ Develop and present material to Client’s management team for approval
■ Modify material based on feedback from Client as necessary
■ Discussion of intermediate and long term Net Open Position management

On-going Support Services. Once the updated policy and procedures including approved risk tolerances have been adopted, ZGlobal will be available for on-going support upon request to provide the following services as outlined in approved risk procedures:

■ Provide on a monthly basis counterparty credit risk exposure report,
■ Perform annual counterparty credit strength evaluation and provide credit assessment based on the clients approved counterparty credit limits, including evaluating new counterparties on an as needed basis,
■ Assist in establishing the proper security requirements for purchase power agreements based on client’s desired level of risk exposure,
■ Assist in the review of letters of credit and parental guarantees received as security deposits from counterparties,
■ Monitor counterparty business risk and provide reporting on news pertaining to their business and could have impact, including providing updates from credit rating agencies when applicable,
■ Evaluate periodically the energy risk management policy and procedures, and provide recommendations to improve overall effectiveness including comparison with other municipal utilities and best practices for similar entities,
■ Review the hedging strategy and compare with other municipal utilities and best practices for similar entities. Provide recommendations if needed,
■ Assess risks of term transactions and long-term agreements,
Perform evaluation of the current value-at-risk calculation and provide recommendations to improve overall effectiveness. Provide recommendations on risk metrics appropriate for a municipal entity to measure risk exposure, and

ZGlobal will provide on-demand support through the duration of this contract. Lead times to complete requested services will vary depending on the tasks. Based on the availability of team members high-level schedules will be determined by mutual agreement.

2. Description of Services

ZGlobal proposes to provide Risk Management Program Development and Support Services on behalf of Client to create their Risk Management Program and provide support in managing Client’s net open position.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit II that ZGlobal shall provide.

3.2 Information to Be Provided by Client to ZGlobal. ZGlobal will identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client’s risk including:

- Credit assessment for new counterparty is completed upon review of third-party security documents
- Third party review of security documents assumes that documents are readily available.
- Input data is readily available for assessing hedging strategy and estimating Value at Risk calculation
- All necessary information to allow ZGlobal to determine Client’s net open position and other metrics defined by the documented Risk Policy, Process, or Procedure.

4. ZGlobal’s Responsibilities

4.1 Strategy Review, Client and ZGlobal shall meet on a regular basis to review Risk Management documentation and review the risk strategy, but no less than once per year.

4.2 Required Data, All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.3 Reports, ZGlobal shall publish regular reports. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per quarter.
4.4 Professional Services, ZGlobal shall perform these services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

[End of Exhibit H]
EXHIBIT I

Services Fees

This Exhibit I describes the Services Fees ("Services Fees") to be remitted to ZGlobal from Client for all Services performed pursuant to this Agreement. It also lists additional contact information for Client and ZGlobal.

Service Fees

• Note Service Fees Shown Below are Waived for the First Six Months after each service Start Date as listed in Section 2.2.

• Set-up and Scheduling Coordinator Transition Fees = $0

• Scheduling Coordinator Services Fee = $4,250 per month for 12 months then escalated by 2.0% each year thereafter

• Financial Settlement Services Fee = $0

• Forecasting Services Fee = $5,125 per month for 12 months, then escalated by 2.0% each year thereafter

• Facility Management Services Fee = $N/A

• Portfolio Management Services Fee = $6,425 per month for 12 months, then escalated by 2.0% each year thereafter

• Risk Management Program Development and Support Services Fee = $0

[End of Exhibit I]
Real Time:
Tel: 760-483-5000
24hrdesk@zglobal.biz

Additional Contacts: Day Ahead:
Eric Vaa Tel: (916)985-9461 E-mail: eric@zglobal.biz

Monthly/Structured:
Kevin Coffee Tel: (916)985-9461 E-mail: kcoffee@zglobal.biz

Deal Confirmations:
Christine Vangelatos Tel: (916)985-9461 E-mail: christine@zglobal.biz

CLIENT CONTACTS

[End of Exhibit J]
Information Resources

This Exhibit K describes the software, databases, data, and information portal(s) developed or acquired by ZGlobal on Client's behalf that ZGlobal shall provide Client and Client's designated representatives and consultants access to in connection with the Services:

• MCG Integrated Asset Manager (IAM) -

Services provided under this Agreement include storing Client’s energy transactional and settlement data hosted and maintained by MCG via a software services agreement with ZGlobal. Client’s operational, scheduling and settlement data stored in the MCG IAM shall be provided electronically as part of the Generation and Load Scheduling Services via regular data downloads, reporting and/or ad hoc requests, including:

* Email communication
* Shared folders
* Pushed reports

Client shall retain Rights in Data, Confidentiality and Non-Disclosure for all its scheduling, settlement and contractual information. CAISO Shadow Settlements

CAISO shadow settlements that are used to validate CAISO daily and monthly settlement statements, invoices and payment notices will be made available to Client via a mutually agreed method through customized reports and bill determinant files. Shadow settlement data and files are to be calculated or prepared using the relevant CAISO shadow settlement system utilized by ZGlobal during the term of this Agreement between ZGlobal and Client including but not limited to: Power Settlements Settlecore, MCG IAM and/or other customized tools developed by ZGlobal staff. CAISO shadow settlements shall be provided as part of Generation Scheduling Services and Load Scheduling Services, as applicable.

• CRR Analysis

Results of CRR analysis performed for Client including any inputs (e.g. - prices, constraints and outages) used to prepare such results will be made available to Client via a mutually agreed method through customized reports and data files. CRR analyses are to be performed utilizing various database services and tools acquired by ZGlobal to perform such analysis, including but not limited to:

Yes Energy’s PowerSignals, ZGlobal proprietary Oracle databases, CAISO OASIS, Plexos Integrated Energy Model and/or other similar data sources and applications. Direct access by Client staff to one or more of ZGlobal’s database sources or software tools shall be governed by any relevant software license or use agreements ZGlobal has with the relevant third party during the term of this Agreement between ZGlobal and Client. In some cases, this may require Client to have its own agreement and fee structure with said third party and ZGlobal will promptly notify.
Client if a separate agreement is required. Systems related to CRR Analysis shall be provided as part of the Portfolio Management Services.

[End of Exhibit K]
Staff Report – Item 1e

Item 1e: Adopt Resolution Delegating Authority to the Chief Executive Officer to Amend Existing Renewable Resources Power Purchase Agreements (PPAs) and Energy Storage Service Agreements (ESSAs) As Exigent Circumstances Arise Consistent with Policies and Financial Parameters Initially Established in the Approval of the PPAs

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources
Bob Tang, Power Supply Project Manager

Date: 3/9/2022

RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy (SVCE) Board adopt Resolution 2022-08 delegating authority to the Chief Executive Officer (CEO) to execute amendments to the existing renewable resources power purchase agreements (PPAs) and Energy Storage Service Agreements (ESSA) when exigent circumstances arise to the extent amendments are in conformance with the policies and financial parameters initially established in the approvals of the PPAs.

EXECUTIVE COMMITTEE RECOMMENDATION
At the February 25, 2022 Executive Committee meeting, Staff recommended the Committee recommend the SVCE Board delegate the additional authority to the CEO to execute amendments to the PPAs/ESSAs within specific guidelines when exigent circumstances dictate timely approval of the amendments.

The Committee voted unanimously with one member absent to recommend such delegation of authority to the CEO.

BACKGROUND
In the past three years, SVCE has entered into thirteen long term renewable resources PPAs to fulfill SVCE’s obligations toward California’s Renewable Portfolio Standard (RPS) mandate as well as policy directives established by SVCE’s Board. Additionally in February 2022, the SVCE Board authorized the execution of the first ESSA through California Community Power to meet the long duration storage requirements under the California Public Utilities’ Commission Mid-term Reliability Procurement Order. Table 1 is a summary of SVCE Board authorized long-term PPAs and ESSAs (“Agreements”).
In the approval of these Agreements, the Board typically delegates the authority to SVCE’s Chief Executive Officer (CEO) to execute the PPA and the associated ancillary documents for the PPAs. This delegation of authority is envisioned to be ministerial and administrative in nature as the Board would have already approved the terms and conditions of the PPAs in the first instance, e.g. the MW amount to be purchased, the duration of the PPA, the pricing, the not-to-exceed (NTE) budget for the life of the Agreement, credit terms and other terms and conditions specified in the PPA etc.

Many of these Agreements are associated with new projects that require significant lead time toward development, engineering, construction and commissioning with many unknowns and uncertainties. In the implementation of these Agreements, circumstances have arisen that will require some deviations from the terms and conditions of the PPA to be effectively implemented. Some examples of these deviations are:

1. Agreement Start Date

The agreements typically specify the date the project must start delivery of power with a specified allowance for an early start (up to ninety days earlier) or a delayed start (up to 120 days of delay).

In the instance of one agreement, the project is anticipated to finish its construction and commissioning activities and ready to start power delivery well ahead of the 90-day early start limitation. Unless the agreement is formally amended by the Board to waive the early start limitation, the project will be either sitting idle for many months or be selling to other entities to the detriment of SVCE as it is to SVCE’s best interest to accept the early start.

In other instances, several projects are facing uncertain impact in component deliveries caused by supply chain disruptions due to global pandemic that could likely extend beyond the 120-day delay limitations. Unless the PPA is formally amended by the Board to waive the 120-day delay limitation, these projects are likely to fail and the agreements might be terminated by the developer for fear of occurring significant delay damages if they continue development beyond the 120-day delay limitation.

In these instances, it is to SVCE’s interest to promptly provide reasonable accommodation and certainty to the developers to the timing of project commercial operation date so long the duration of the agreement and the pricing do not change.
2. Ancillary Costs

In the implementation of the projects, staff has found that there are a myriad of costs associated with critical services to which the cost responsibility is not clearly delineated to either the seller or the buyer in the PPA.

One example of such costs is the cost associated with the telemetry service to monitor the generating plant status at all times from CAISO power scheduling perspective. This is a critical service to which the cost responsibility is not clearly delineated in the PPA.

Another example would be a change in configuration of a generating plant that provides more value to SVCE. Although there are provisions in the PPA that deal with cost responsibility caused by changes in regulations that seller is responsible for, it is not clear whether it covers the costs of potential changes to the configuration that benefits SVCE.

In these instances, it is to SVCE’s interest to timely negotiate with the PPA counterparties and reach an agreement on cost responsibility, typically at fairly modest costs and carry out the implementation without delay.

3. Pricing for Phased Project

In the agreements, typically pricing for power when the generating plant undergoes testing is at a discount of full PPA price, e.g. 70% of full PPA price.

In some instances, different parts of the project may become available for commercial operation at different times, e.g. the solar PV portion may become fully operational before the battery energy storage system becomes fully operational with a significant time lag. In such instances, it may make sense to pay the full PPA price for the phased project if the product delivered is of full value, i.e. pay full price for PV energy is the PV portion is fully operational and recognized as such by the CAISO.

As more projects get developed, there are likely to be other circumstances that may dictate deviations or amendments to the existing PPAs in a timely manner.

With this in mind, staff recommends that the SVCE Board delegate authority to the CEO to amend the existing Agreements without Board approval that adhere to the following guidelines:

1. Any amendment shall not extend the term of the existing Agreement or ESSA without Board approval;

2. Any amendment shall not change the pricing under the Agreement or ESSA after the delivery term starts without Board approval;

3. An amendment may change the pricing provided that: (i) such change occurs during the project testing period ("Test Energy Pricing"), and (ii) the CEO determines that such change provides the best value to SVCE;

4. Any amendment shall not cause the not-to-exceed budget for the life of the Agreement or ESSA originally approved by the Board to be exceeded without Board approval.

5. The CEO will provide timely updates to the Board when amendments to the Agreements are executed under this delegated authority

STRATEGIC PLAN
The proposed delegation of authority to CEO supports SVCE’s Strategic Plan Goal #6, Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives. The proposed delegation of authority to CEO supports this goal by acting timely to effectively manage SVCE’s renewable resource portfolio consistent with Board's policy and financial directives.

**ALTERNATIVE**
An alternative is to seek Board approval in every instance that PPA amendment is required. However, this alternative is not preferred as it might result in significant administrative burden for modest changes to the PPA that benefit SVCE. In some instances, timely amendment is critical to provide the certainty that a developer might need to carry on the development activities which the formal Board approval process might not be able to accommodate.

**FISCAL IMPACT**
The proposed delegation of authority to CEO might result in some additional costs under the PPAs or ESSA. As explained above, such additional costs are bounded by the recommended guidelines above and are not expected to exceed the original not-to-exceed authority approved by the Board without further Board approval.

PPA and ESSA expected expenditures will be included in the annual operating budget as adopted by the Board.

**ATTACHMENT**
1. Resolution 2022-08 Delegating Authority to the Chief Executive Officer to Amend Existing Renewable Resources Power Purchase Agreements (PPAs) and Energy Storage Service Agreements (ESSAs) as Exigent Circumstances Arise Consistent with Policies and Financial Parameters Initially Established in the Approvals of the PPAs and ESSAs
RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING THE AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO AMEND EXISTING RENEWABLE RESOURCES POWER PURCHASE AGREEMENTS (PPAs) AND ENERGY STORAGE SERVICE AGREEMENTS (ESSAs) AS EXIGENT CIRCUMSTANCES ARISE CONSISTENT WITH POLICIES AND FINANCIAL PARAMETERS INITIALLY ESTABLISHED IN THE APPROVALS OF THE PPAs AND ESSAs

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

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

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

WHEREAS, SVCE has entered into long term power purchase agreements for renewable resources and energy storage service agreements to fulfill SVCE’s obligation toward California’s Renewable Portfolio Standard (RPS), procurement mandate of California Public Utilities Commission and the directives established by the SVCE’s Board;

WHEREAS, in the approvals of PPAs and ESSAs SVCE’s Board has delegated the ministerial and administrative authority to the Chief Executive Officer (CEO) to execute the PPAs/ESSAs and the associated ancillary documents in the PPAs/ESSAs;

WHEREAS, in the implementation of the PPAs/ESSAs exigent circumstances have arisen to address issues and cost responsibilities not initially contemplated in the approvals of PPAs/ESSAs that require deviations from or clarification of the terms and conditions in the existing PPAs/ESSAs;

WHEREAS, timely resolution of these new PAAs/ESSAs issues via amendments to the existing PPAs/ESSAs is essential to provide the certainty project developers require to continue project development activities in an efficient and effective manner;

WHEREAS, the Board wishes to delegate additional authority to the CEO to execute necessary amendments to the existing PPAs/ESSAs in such circumstances within the guidelines established in this Resolution;

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

Section 1. The Board hereby delegates authority to the Chief Executive Officer to execute amendments to the existing PPAs and ESSAs without the Board’s prior approval, provided that such amendments will adhere to the guidelines outlined as follows:
a. Any amendment shall not extend the term of the existing PPA or ESSA without Board approval;

b. Any amendment shall not change the pricing under the PPA or ESSA after the delivery term starts without Board approval;

c. An amendment may change the pricing provided that: (i) such change occurs during the project testing period (“Test Energy Pricing”), and (ii) the CEO determines that such change provides the best value to SVCE;

d. Any amendment shall not cause the not-to-exceed (NTE) budget for the life of the PPA or ESSA originally approved by the Board to be exceeded without Board approval;

e. The CEO will provide timely updates to the Board when amendments to the Agreements are executed under this delegated authority

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

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Chair

ATTEST:

________________________________________
Clerk
Item 1f: Approve Bill Credits to CARE/FERA Customers to Implement Board Direction to Distribute $3 Million in Customer Relief Funding

From: Girish Balachandran, CEO

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

Date: 3/9/2022

RECOMMENDATION
Distribute $3M in equity relief funding approved by the SVCE Board of Directors in February 2022 via bill credits of $12.50, paid monthly to all SVCE CARE/FERA customers during the eight-month period of April – November 2022.

BACKGROUND
Residential electricity rates (in total, including generation, transmission and distribution, and other fees) are increasing by 13-15% effective March 1, 2022. In the community, the financial impacts of COVID persist. The number of low-income CARE/FERA customers has increased by 30% since early 2020, and total customer past-due balances have doubled from pre-pandemic levels.

To help mitigate the impact of electric rate increases on lower-income customers, the SVCE Board voted on February 9, 2022 to allocate $3M in rate relief for disadvantaged customers, and directed staff to return to the Board in March with a recommendation for how to allocate and distribute the relief funding.

Relatedly, in 2020, SVCE provided $3.4M in COVID relief credits to qualifying residential and small business customers. Residential CARE/FERA customers received a total of $100 in bill credits, credited in two $50 installments on successive monthly bills. Small business customers were sent notices via hardcopy mail and email informing them of their credit eligibility, and if they returned a simple claim form, received a one-time $250 bill credit.

ANALYSIS & DISCUSSION
As of February 2022, SVCE has 29,800 income-qualified CARE/FERA customers, approximately 12% of all SVCE residential customers. As of March, the average monthly electric bill for an SVCE CARE/FERA customer will be $90, up from $77 in 2021.

On February 25th, SVCE staff reviewed three options with the Executive Committee for allocation and distribution of the $3M in relief funding:

1) One-time bill credit of $100 to all CARE/FERA customers in April 2022
2) Multiple bill credits – eight monthly $12.50 credits to CARE/FERA customers of record during the months of April-November 2022
3) Establishment of a new (and higher) SVCE discount rate for all CARE/FERA customers, equating to an annual savings of approximately $100 for a typical CARE/FERA customer.

The Executive Committee and staff both recommend Option 2. Option 2 provides a credit over much of the remainder of 2022 that is well-matched with electric rate increases being incurred by a typical CARE/FERA customer.
customer. In addition, as the credit is applied over several months, it offers increased customer visibility, and is more likely applied to SVCE-specific charges. This process of applying monthly credits will result in no additional administrative costs for SVCE.

Option 1 provides funds to customers more rapidly, but as most SVCE CARE/FERA customers owe less than $100 to SVCE monthly, the credit will likely also pay for other charges on the energy bill – including PG&E charges for gas, and electricity transmission/distribution. In addition, the credit appears for just one month, making the benefit less persistent, and potentially less visible.

Option 3, establishing a higher discount rate for CARE/FERA customers, involves creation of new SVCE rates for all residential rate schedules, and special billing processes that will take significant time and resources to implement. SVCE would need to pay Calpine (our billing and data services provider) an incremental fee to create this new rate structure. Customers would need to be formally noticed that they are being moved to a special rate – when they are placed on this new rate, and when they are taken off.

**STRATEGIC PLAN**
SVCE’s decision to allocate additional rate relief credits to lower-income customers is consistent with Strategic Plan Goal 11.7 - maintain and expand relationships with community groups, including in underserved/hard-to-reach communities, and Goal 12.1 - maintain SVCE customer value proposition, participation rate, and retail electric rates.

**FISCAL IMPACT**
During the February 9, 2022 Board of Directors meeting, the Board voted to allocate $3M in rate relief for lower-income customers. Option 2 as described above would result in estimated payments totaling $2.98M in rate relief, based on $100 in total credits (8 months x $12.50) and a CARE/FERA customer count of 29,800 as of February 2022.

If the number of qualifying customers varies between April and November of 2022, the estimated $2.98M in payments would fluctuate accordingly. Staff anticipates that the total number of CARE/FERA customers should remain mostly stable in the coming months, as processes for eligibility renewal are being re-established by PG&E.

**ATTACHMENT**
1. Presentation to Board of Directors, March 9, 2022 – Recommendation for Allocation of $3M in Customer Relief Payments
Recommendation for Allocation of $3M in Customer Relief Payments

Presentation to Board of Directors
March 9, 2022
On Feb 9, the SVCE BOD approved $3M in funding for equity relief, to help mitigate rate increases.

**Background**

- Residential electricity rates (in total) set to increase 13-14% on March 1st

- Financial impacts of COVID remain a major issue
  - Number of CARE/FERA customers up nearly 30% since early 2020

- In 2020, SVCE provided $3.4M in COVID relief credits to qualifying residential and small business customers
  - two $50 bill credits for ~26,000 CARE/FERA residential customers
  - one $250 bill credit to ~3,000 small business customers

- Staff to bring recommendation for new equity relief payments back to the BOD in March
On Feb 25th, the Exec Committee reviewed three relief payment options, and recommended Option 2.

29,800 CARE/FERA customers as of Feb 2022

Average Electric Bill
- $90.31 in 2022
- $76.62 in 2021

1) One-Time Direct Bill Credit
   • $100 to all CARE/FERA customers
   • deliver in April 2022

2) Multiple Direct Bill Credits
   • e.g. eight monthly $12.50 credits
   • deliver April through November 2022

3) Discounted rate for CARE/FERA
   • raise discount above 1% for CARE/FERA customers
   • estimated (annualized) discount in range of ~15%
   • several months to implement
## Option 1: One-Time Bill Credit

### Mechanics
- Credit is announced to customers via direct SVCE communication (mail, email, etc.)
- Calpine receives list of qualified customers from SVCE
- A single $100 credit is applied to customer accounts, with on-bill message
- Customer sees direct reduction in amount owed

### Considerations
- Majority of customers owe less than $100 monthly to SVCE for generation
- Credit dollars above and beyond SVCE gen charges will flow to PG&E side of bill (T&D, gas)
- Credit dollars above and beyond SVCE + PG&E charges will exist on account as credit until used
- No additional admin cost for billing
Option 2: Multiple Bill Credits

**Mechanics**
- Credit is announced to customers via direct SVCE communication (mail, email, etc.)
- Calpine receives list of qualified customers from SVCE
- A smaller credit amount (e.g. $12.50) is applied over multiple months (e.g. 8) to customer accounts, with on-bill message
- Customer sees direct reduction in amount owed

**Considerations**
- Majority of customers owe less than $100 monthly to SVCE for generation
- With smaller monthly credit amounts, dollars are more likely to apply directly offset SVCE gen charges
- Customers will see a credit amount from SVCE over a period of many months, versus one month
- Credit dollars above and beyond SVCE + PG&E charges will exist on account as credit until used
- No additional admin cost for billing
Option 3: Rate Discount to CARE/FERA Customers

Mechanics

- Credit (or Discount) is announced to customers via direct SVCE communication (mail, email, etc.)
- SVCE develops rate product based on participation and revenues, Calpine implements and bills customers
- ~15% reduction in residential rates yields a savings of $3M across ~30k customers for 12 months

Considerations

- Customers must be noticed, moved to special rate, then taken off a special rate
- Rate relief will be proportional to customers’ usage - high users will benefit more
- Considerable add’l admin costs associated with a Calpine ‘special project’ to create new rate product
- CARE/FERA participation must be tracked weekly
- SJCE invested significant staff and financial resources to create a similar product
CARE/FERA Rate Relief

Recommendation

The Executive Committee and Staff recommend **Option 2 – Multiple Bill Credits** as the best approach for implementing rate relief:

- $12.50/month, for 8 mos (April – November 2022), paid for all CARE/FERA customers on record in the preceding calendar month

- Simple and proven process, no incremental data/billing administration costs

- Smaller monthly credit amounts over multiple months will usually offset SVCE charges, versus other portions of the energy bill; SVCE credits visible on bill for multiple months

- Estimated total credit amount of $2.98M, based on February 2022 CARE/FERA customer counts; actual total credit amount will vary based on monthly CARE/FERA enrollment counts
Questions
Staff Report – Item 1g

Item 1g: Approve and Authorize the Chief Executive Officer to Execute Agreement with School of Thought for Marketing And Advertising Services

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations
Pamela Leonard, Communications Manager

Date: 3/9/2022

RECOMMENDATION
Staff recommends the Board of Directors authorize the Chief Executive Officer to execute an agreement with School of Thought for an amount not to exceed $300,000 from March 2022 through February 2024 for marketing and advertising services. These services will help promote customer electrification awareness via the SVCE eHub, and additional electrification programs.

BACKGROUND
As part of the education and outreach programs approved in the Decarbonization Programs Roadmap, SVCE built and launched an online customer resource center known as eHub in summer 2020. The eHub provides SVCE customers with educational information and resources on how clean energy can power their homes, car, and appliances. eHub offers a set of third-party tools that customers can use to browse solar and battery systems with the Solar+Battery Assistant, compare EV models and rebates with the EV Assistant, or learn about and shop electric appliances with the Appliances Assistant.

In December 2019, the SVCE Board of Directors approved a $140,000 contract with School of Thought, an Oakland-based creative agency, to provide strategic messaging, website design, and user experience services to develop eHub. This work included customer research and interviews that informed the overall structure and messaging of eHub, and creative content used to drive interest in eHub and awareness of electrification. School of Thought also provided media buying services for SVCE’s support of the Building Decarbonization Coalition’s Switch Is On electrification awareness campaign. The initial contract with School of Thought was extended in June 2021 and expired in December 2021.

Staff ran a competitive Request for Proposals (RFP) from November 2021 through January 2022 to identify a creative agency for the ongoing need to perform electrification education and outreach to customers. SVCE received 10 proposals from agencies throughout California and the U.S. School of Thought’s proposal was very competitive, and they were selected to interview along with three other bidders.

In the interview, School of Thought differentiated themselves by demonstrating a deep understanding of building and transportation decarbonization, particularly the challenges we face in elevating the importance of such initiatives to the general public. They also presented new ideas about digital engagement, particularly the use of captivating video, as well as in-person opportunities to give customers experiences that connect them to our mission. School of Thought continues to work with the Building Decarbonization Coalition, which allows SVCE to leverage the research and insights of working with this statewide organization. Continuing to work with School of Thought also offers SVCE the advantage of building on the successes and lessons learned from working with the firm in 2020 – 2021.
ANALYSIS & DISCUSSION

A critical part of meeting SVCE’s decarbonization goals is to educate and inform customers about the importance of electrification and provide them with the resources to make the switch from polluting gas to clean electricity. Paid advertising is a valuable tool to supplement the many tactics we deploy annually to help address the significant lift in consumer education, awareness, and inspiration around electrification.

While SVCE has been deploying a successful email marketing campaign with high engagement and open rates, not all customers have an email on file, and for those that do, there is only one email on file per household. We need other tactics to reach those who do not open our messages. The marketing industry commonly refers to the ‘Rule of 7,’ which states that it takes an average of seven interactions with a brand or ad for consumers to take action. With this in mind, our annual communications plan tries to reach customers in various ways and across multiple channels – direct mail, email, member agency communications, earned media, ads, and virtual or in-person events.

In 2020, SVCE worked with School of Thought to deploy ads across multiple channels to drive awareness and education about electrification and direct customers to the SVCE eHub resources. The campaign results showed that the paid media plan successfully drove traffic to the site and associated electrification resources. Throughout the process, staff learned valuable lessons, and School of Thought provided expert analysis to optimize campaigns to inform future efforts.

As the Board of Directors has directed SVCE to ‘double down’ on decarbonization, awareness is identified as a key program approach necessary to achieve our goals. SVCE will utilize School of Thought’s creative abilities for the following advertising and marketing services.

Advertising Services

SVCE expects to run two annual campaigns. The campaigns include ads to promote electrification education with SVCE eHub resources and a second campaign to support recruitment for a specific program, which will be determined later. Example programs that School of Thought can support in 2022 are the launch of the FutureFit Homes and Buildings program or the FutureFit Fundamentals Contractor Training program.

Ad development and production include SVCE and School of Thought working collaboratively to develop campaign goals and messaging. School of Thought will provide creative services such as artwork and video production for the advertising channels identified to achieve the campaign goals. The outlets may include and are not limited to print, digital, social, out-of-home, broadcast, and streaming services.

Media Planning and Buying

School of Thought will provide media strategy and planning to manage the creative asset deployment of electrification campaigns locally. School of Thought may also offer this service to SVCE for any of the agency’s paid advertising needs across programs and departments. Working with School of Thought as a media buyer offers SVCE an opportunity to negotiate ad rates, buy placements in bulk, and coordinate placements to reduce wasted ad dollars and impressions. This task includes monitoring and managing ad placements to ensure ads perform well and optimize customer engagement.

School of Thought may work with the SVCE translation vendor or their subcontractors for in-language ad campaigns in Spanish, Chinese, and Vietnamese. School of Thought may also coordinate multicultural marketing efforts for program deployment.

Marketing Services

As a creative agency, School of Thought specializes in developing impactful content and assisting clients with high-impact experiences to capture consumers’ attention. As consumers are distracted by nonstop news and content across many platforms and knowing that energy is not top of mind, marketing activations can help break through the noise and drive interest in electrification.
School of Thought will support the SVCE communications and marketing team by developing interactive electrification displays and experiences to engage customers as we return to in-person community events. Activations may be related to specific program initiatives or serve broader electrification awareness. These projects may include developing community outreach materials, conference or event booth materials, and displays.

**STRATEGIC PLAN**

There are several goals in the SVCE Board-adopted Strategic Plan that marketing and advertising services for electrification program awareness will touch upon, including:

- Goal 8: Coordinate development of decarbonization and resilience strategy, lead design of local policy and programs, and support program deployment.
- Goal 10: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices
- Goal 12: Enact competitive service offerings and programs that deliver measurable environmental and economic benefits

**ALTERNATIVE**

Do not approve the contract with School of Thought. Staff will pursue a different bidder from the competitive solicitation for these services.

**FISCAL IMPACT**

The contract is not to exceed $300,000 over two years. The existing budget for these services is allocated from the approved marketing and programs budget for Fiscal Year 21-22 and will be included in the proposed budget for Fiscal Year 22-23.

**ATTACHMENT**

1. Draft Agreement with School of Thought
AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND SCHOOL OF THOUGHT FOR MARKETING AND ADVERTISING SERVICES

THIS AGREEMENT, is entered into this 9th day of March 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and School of Thought, a California corporation whose address is 544 60th Street, Oakland, CA, 94609 (hereinafter referred to as "Consultant") (collectively referred to as the “Parties” and individually as a “Party”).

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for marketing and advertising upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

The term of this Agreement shall commence on March 9, 2022, and shall terminate on February 29, 2024, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

3. COMPENSATION TO CONSULTANT

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Three hundred thousand dollars ($300,000.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

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

5. **STANDARD OF CARE**

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

6. **INDEPENDENT PARTIES**

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

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

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

8. **NON-DISCRIMINATION**

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

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

   B. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold
Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party’s IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys’ fees of counsel of Authority’s choice, expert fees and all other costs and fees of litigation.

C. The acceptance of the services by Authority shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

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

10. **INSURANCE**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant’s indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days’ advance written notice to the Authority by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

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

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

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

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

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

11. **CONFLICT OF INTEREST**

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

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers’ compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

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

14. **REPORTS**

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

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

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

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

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

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

15. RECORDS

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

16. PARTY REPRESENTATIVES

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

17. INFORMATION AND DOCUMENTS

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

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

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

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

18. **NOTICES**

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

**TO AUTHORITY:**
333 W. El Camino Real  
Suite 330  
Sunnyvale CA 94087  
Attention: Chief Executive Officer

**TO CONSULTANT:**  
Tom Geary  
School of Thought  
544 60th Street
Oakland, CA, 94609

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100 et seq. Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

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

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.
28. **AUTHORITY’S RIGHTS TO EMPLOY OTHER CONSULTANTS**

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

32. **ATTORNEY FEES**

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

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

   RECOMMENDED FOR APPROVAL

   ____________________________
   Don Bray
   Director of Account Services & Community Relations
RECOMMENDED FOR APPROVAL

__________________________
Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
Tom Geary

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

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: ___________________________
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _________________________

APPROVED AS TO FORM:

__________________________
Counsel for Authority

ATTEST:

__________________________
Authority Clerk
Exhibit A
Scope of Services

Task 1 - Advertising Services for Electrification Campaigns (Tasks 1, A – D)

- **Ad Development and Production**
  - Consultant will provide creative services such as messaging development, artwork, video production and any other needs to help develop compelling ads that furthers electrification awareness and SVCE customer program enrollment.
  - Consultant will collaborate with SVCE staff on messaging and creative strategy sessions to co-create campaigns and identify campaign goals.
  - Consultant will provide translated and accessible materials as appropriate for various advertising platforms. This includes enlisting multicultural marketing expertise or subcontractors, as needed.
  - Annually, consultant will develop two marketing campaigns:
    - A) Promote electrification awareness via the SVCE eHub in 2022
    - B) Promote electrification awareness via the SVCE eHub in 2023
    - C) Promote a specific SVCE electrification program, TBD 2022 (e.g., FutureFit Homes and Buildings, EV programs, FutureFit Fundamentals Contractor Training).
    - D) Promote a specific SVCE electrification program, TBD 2023
  - Ongoing advertising needs will support other customer programs, or general agency business. These campaigns are to-be-determined.

- **Media Planning and Buying**
  - Consultant will assist SVCE in developing advertising strategies that help deliver on pre-defined campaign goals. This includes advising on placements for digital, print, out-of-home, video, streaming services, broadcast, and others.
  - Consultant will negotiate rates on behalf of SVCE and secure placements.
  - Consultant will assist SVCE with ad placements for local efforts as directed by SVCE staff.

Marketing Services (Tasks 2, A – B)

- Separate from the advertising services listed in Task 1, marketing services includes a broader range of activities that the Consultant will perform to support the SVCE communications and marketing goals.
  - These services include experiential market activations that assist with customer outreach and events and may be related to specific program initiatives or may serve broader electrification and agency awareness.
  - Examples of these types of projects range from developing community outreach materials, conference or event booth materials and displays.
Exhibit B
Schedule of Performance

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

<table>
<thead>
<tr>
<th>Task 1 – Advertising Services</th>
<th>Begin</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) Electrification awareness eHub campaign 2022</td>
<td>March 2022</td>
<td>December 2022</td>
</tr>
<tr>
<td>B) Electrification program campaign 2022</td>
<td>June 2022</td>
<td>December 2022</td>
</tr>
<tr>
<td>C) Electrification awareness eHub campaign 2023</td>
<td>March 2023</td>
<td>December 2023</td>
</tr>
<tr>
<td>D) Electrification program campaign 2023</td>
<td>June 2023</td>
<td>February 2024</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Task 2 – Marketing Services</th>
<th>Begin</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>A) General marketing support 2022</td>
<td>March 2022</td>
<td>December 2022</td>
</tr>
<tr>
<td>B) General marketing support 2023</td>
<td>January 2023</td>
<td>February 2024</td>
</tr>
</tbody>
</table>
Exhibit C
Compensation

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of Three-hundred thousand dollars ($300,000), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 A – Electrification awareness eHub campaign 2022</td>
<td>$50,000</td>
</tr>
<tr>
<td>- Quarterly big-picture working sessions to establish goals</td>
<td></td>
</tr>
<tr>
<td>- Study and analyze research</td>
<td></td>
</tr>
<tr>
<td>- Creative Strategy: Identify campaign or activation themes (at least 3 distinct themes)</td>
<td></td>
</tr>
<tr>
<td>Messaging: Create distinctive messaging to be used in different channels</td>
<td></td>
</tr>
<tr>
<td>- Production of at least 3-4 executions for each of the below:</td>
<td></td>
</tr>
<tr>
<td>o Digital display ads</td>
<td></td>
</tr>
<tr>
<td>o Social media ads for Facebook and Instagram</td>
<td></td>
</tr>
<tr>
<td>o Out-of-home ads for buses or bus shelters</td>
<td></td>
</tr>
<tr>
<td>o At least two videos of varying lengths for different platforms, 1 min., 30 sec., and 15 sec. versions</td>
<td></td>
</tr>
<tr>
<td>o 1 radio ad</td>
<td></td>
</tr>
<tr>
<td>- Out of pocket expenses (at cost + 5%): stock imagery, film crews, retouching, HTML banner coding</td>
<td></td>
</tr>
<tr>
<td>Task 1 B – Electrification program campaign 2022</td>
<td>$50,000</td>
</tr>
<tr>
<td>- Quarterly big-picture working sessions to establish goals</td>
<td></td>
</tr>
<tr>
<td>- Study and analyze research</td>
<td></td>
</tr>
<tr>
<td>- Creative Strategy: Identify campaign or activation themes (at least 3 distinct themes)</td>
<td></td>
</tr>
<tr>
<td>- Messaging: Create distinctive messaging to be used in different channels</td>
<td></td>
</tr>
<tr>
<td>- Production of at least 3-4 executions for each of the below:</td>
<td></td>
</tr>
<tr>
<td>o Digital display ads</td>
<td></td>
</tr>
<tr>
<td>o Social media ads for Facebook and Instagram</td>
<td></td>
</tr>
<tr>
<td>o Out-of-home ads for buses or bus shelters</td>
<td></td>
</tr>
</tbody>
</table>
- At least two videos of varying lengths for different platforms, 1 min., 30 sec., and 15 sec. versions
- 1 radio ad
  - Out of pocket expenses (at cost + 5%): stock imagery, film crews, retouching, HTML banner coding

**Task 1 C – Electrification awareness eHub campaign 2023**

- Quarterly big-picture working sessions to establish goals
- Study and analyze research
- Creative Strategy: Identify campaign or activation themes (at least 3 distinct themes)
  - Messaging: Create distinctive messaging to be used in different channels
- Production of at least 3-4 executions for each of the below:
  - Digital display ads
  - Social media ads for Facebook and Instagram
  - Out-of-home ads for buses or bus shelters
  - At least two videos of varying lengths for different platforms, 1 min., 30 sec., and 15 sec. versions
  - 1 radio ad
- Out of pocket expenses (at cost + 5%): stock imagery, film crews, retouching, HTML banner coding

**Task 1 D – Electrification program campaign 2023**

- Quarterly big-picture working sessions to establish goals
- Study and analyze research
- Creative Strategy: Identify campaign or activation themes (at least 3 distinct themes)
  - Messaging: Create distinctive messaging to be used in different channels
- Production of at least 3-4 executions for each of the below:
  - Digital display ads
  - Social media ads for Facebook and Instagram
  - Out-of-home ads for buses or bus shelters
  - At least two videos of varying lengths for different platforms, 1 min., 30 sec., and 15 sec. versions
  - 1 radio ad
- Out of pocket expenses (at cost + 5%): stock imagery, film crews, retouching, HTML banner coding

**Task 2 A (2022)**

- Additional projects will be billed on a time and materials basis.

<table>
<thead>
<tr>
<th>Task 1 C – Electrification awareness eHub campaign 2023</th>
<th>$50,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1 D – Electrification program campaign 2023</td>
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</tr>
<tr>
<td>Task 2 A (2022)</td>
<td>$50,000</td>
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</tbody>
</table>
- Additional concepting ideas and production oversight and management

<table>
<thead>
<tr>
<th>Task 2 B (2023)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Additional projects will be billed on a time and materials basis.</td>
<td>$50,000</td>
</tr>
<tr>
<td>- Additional concepting ideas and production oversight and management</td>
<td></td>
</tr>
</tbody>
</table>

| Total | $300,000 |

Rates

<table>
<thead>
<tr>
<th>Personnel</th>
<th>Title</th>
<th>Hourly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tom Geary</td>
<td>Executive Creative Director</td>
<td>$180</td>
</tr>
<tr>
<td>John Buscaglia</td>
<td>Senior Editor</td>
<td>$180</td>
</tr>
<tr>
<td>Ryan Clifford</td>
<td>Executive Producer</td>
<td>$180</td>
</tr>
<tr>
<td>Ashley Villarreal</td>
<td>Senior Writer &amp; Researcher</td>
<td>$180</td>
</tr>
<tr>
<td>Will Geary</td>
<td>Writer</td>
<td>$180</td>
</tr>
<tr>
<td>Cory Pierce</td>
<td>Strategist</td>
<td>$180</td>
</tr>
<tr>
<td>Maxine Nisse</td>
<td>Media Director</td>
<td>$180</td>
</tr>
</tbody>
</table>

Invoices

**Monthly Invoicing:** In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

**Reimbursable Expenses**
Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority. In no event shall reimbursable expenses collectively exceed the total sum of Fifteen thousand dollars ($15,000). These costs are included at 5% in the task table of Exhibit C.

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

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

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

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

Item 1h: Receive SVCE Rate Schedules Effective March 1, 2022

From: Girish Balachandran, CEO

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

Date: 3/9/2022

RECOMMENDATION
Receive staff report and rate tables for new SVCE rates effective March 1, 2022 at a 1% discount to PG&E, established per the discount approved by the Board on February 9, 2022 by the adoption of Resolution 2022-06, Approving Customer Generation Rates.

BACKGROUND
At the February 9, 2022 Board meeting, the Board directed staff to apply an across-the-board 1% discount to PG&E generation rates when calculating new SVCE rates beginning March 1, 2022.

ANALYSIS & DISCUSSION
PG&E published new generation and PCIA rates on February 18, 2022, which became effective as of March 1, 2022. The load-weighted average decrease in PG&E’s PCIA rate was approximately 59.3%, and load-weighted average increase in PG&E’s generation rates was approximately 31.9%.

SVCE rate schedules and associated billing determinants have been updated as referenced in the Attachments, and reflect a 1% discount to PG&E’s comparable generation rates. The rates are currently loaded into the billing system and became effective on March 1, 2022.

STRATEGIC PLAN
Rate setting is directly supported by SVCE Strategic Plan Goal 12 ‘enact competitive service offerings and programs that deliver measurable environmental and economic benefits’.

FISCAL IMPACT
As noted in the February 9, 2022 Board presentation on rates, the combined decrease in PCIA and increase in PG&E generation rates has created a large upward swing in SVCE generation rates. Coupled with projected supply costs, this movement in SVCE rates creates $46M in operating margin above and beyond the original budget for FY2021-22.

During the February 9, 2022 Board of Directors meeting, the Board voted to allocate $17M to customer-focused electrification programs and $3M to be returned to disadvantaged customers. The mid-year budget update to the SVCE Board in March 2022 reflects these adjustments to revenue projections for the remainder of FY2021-22.

ATTACHMENT
1. SVCE Residential Rate Schedule effective March 1, 2022
2. SVCE Non-Residential Rate Schedule effective March 1, 2022
## Silicon Valley Clean Energy

**Residential Generation Rates and Generation Service Cost Comparison**

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>E-1</strong></td>
<td>Year-round</td>
<td>$ 0.12871</td>
<td>$ 0.14935</td>
<td>$ 0.15086</td>
<td>Rates applicable to all usage throughout the year</td>
</tr>
<tr>
<td><strong>E-6</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUMMER PEAK</td>
<td></td>
<td>$ 0.25676</td>
<td>$ 0.27740</td>
<td>$ 0.28020</td>
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<tr>
<td>SUMMER PART-PEAK</td>
<td></td>
<td>$ 0.17466</td>
<td>$ 0.19530</td>
<td>$ 0.19727</td>
<td>12:00 p.m. to 3:00 p.m. AND 8:00 p.m. to 10:00 p.m. Monday through Friday, 5:00 p.m. to 8:00 p.m. Saturday and Sunday</td>
</tr>
<tr>
<td>SUMMER OFF-PEAK</td>
<td></td>
<td>$ 0.10518</td>
<td>$ 0.12582</td>
<td>$ 0.12709</td>
<td>All other times including Holidays</td>
</tr>
<tr>
<td><strong>Winter</strong> (Oct-May)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WINTER PART-PEAK</td>
<td></td>
<td>$ 0.14227</td>
<td>$ 0.16291</td>
<td>$ 0.16456</td>
<td>5:00 p.m. to 8:00 p.m. Monday through Friday</td>
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<tr>
<td>WINTER OFF-PEAK</td>
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<td>$ 0.1081</td>
<td>$ 0.12945</td>
<td>$ 0.13076</td>
<td>All other times including Holidays</td>
</tr>
<tr>
<td><strong>EV-A, EV-B</strong></td>
<td><strong>Summer</strong> (May-Oct)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUMMER PEAK</td>
<td></td>
<td>$ 0.28836</td>
<td>$ 0.30900</td>
<td>$ 0.31212</td>
<td>2:00 p.m. to 9:00 p.m. Monday through Friday, 3:00 p.m. to 7:00 p.m. Saturday, Sunday and Holidays</td>
</tr>
<tr>
<td>SUMMER PART-PEAK</td>
<td></td>
<td>$ 0.14632</td>
<td>$ 0.16696</td>
<td>$ 0.16865</td>
<td>7:00 a.m. to 2:00 p.m. and 9:00 p.m. to 11:00 p.m. Monday through Friday, except holidays</td>
</tr>
<tr>
<td>SUMMER OFF-PEAK</td>
<td></td>
<td>$ 0.10041</td>
<td>$ 0.12105</td>
<td>$ 0.12227</td>
<td>All other hours</td>
</tr>
<tr>
<td><strong>Winter</strong> (Nov-Apr)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WINTER PEAK</td>
<td></td>
<td>$ 0.09637</td>
<td>$ 0.11701</td>
<td>$ 0.11819</td>
<td>2:00 p.m. to 9:00 p.m. Monday through Friday, 3:00 p.m. to 7:00 p.m. Saturday, Sunday and Holidays</td>
</tr>
<tr>
<td>WINTER PART-PEAK</td>
<td></td>
<td>$ 0.07177</td>
<td>$ 0.09241</td>
<td>$ 0.09334</td>
<td>7:00 a.m. to 2:00 p.m. and 9:00 p.m. to 11:00 p.m. Monday through Friday, except holidays</td>
</tr>
<tr>
<td>WINTER OFF-PEAK</td>
<td></td>
<td>$ 0.07177</td>
<td>$ 0.09241</td>
<td>$ 0.09334</td>
<td>All other hours</td>
</tr>
<tr>
<td>SVCE Rate Schedule</td>
<td>Time of Use Period</td>
<td>SVCE Generation Rates</td>
<td>SVCE Generation Service</td>
<td>PG&amp;E Generation Service</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------</td>
<td>-----------------------</td>
<td>-------------------------</td>
<td>------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>EV-2A</td>
<td>Summer (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUMMER PEAK</td>
<td></td>
<td>$0.19536</td>
<td>$0.21600</td>
<td>$0.21818</td>
<td>4:00 p.m. to 9:00 p.m. every day including weekends and holidays</td>
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<tr>
<td>SUMMER PART-PEAK</td>
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<td>$0.15110</td>
<td>$0.17174</td>
<td>$0.17347</td>
<td>3:00 p.m. to 4:00 p.m. and 9:00 p.m. to 12:00 a.m. every day including weekends and holidays</td>
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<tr>
<td>SUMMER OFF-PEAK</td>
<td></td>
<td>$0.11037</td>
<td>$0.13101</td>
<td>$0.13233</td>
<td>All other hours</td>
</tr>
<tr>
<td>Winter (Oct-May)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>WINTER PEAK</td>
<td></td>
<td>$0.13905</td>
<td>$0.15969</td>
<td>$0.16130</td>
<td>4:00 p.m. to 9:00 p.m. every day including weekends and holidays</td>
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<tr>
<td>WINTER PART-PEAK</td>
<td></td>
<td>$0.12669</td>
<td>$0.14733</td>
<td>$0.14882</td>
<td>3:00 p.m. to 4:00 p.m. and 9:00 p.m. to 12:00 a.m. every day including weekends and holidays</td>
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<tr>
<td>WINTER OFF-PEAK</td>
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<td>$0.10345</td>
<td>$0.12409</td>
<td>$0.12534</td>
<td>All other hours</td>
</tr>
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<td>E-TOU-B</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUMMER PEAK</td>
<td></td>
<td>$0.24758</td>
<td>$0.26822</td>
<td>$0.27093</td>
<td>4:00 p.m. to 9:00 p.m. Monday through Friday</td>
</tr>
<tr>
<td>SUMMER OFF-PEAK</td>
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<td>$0.12575</td>
<td>$0.14639</td>
<td>$0.14787</td>
<td>All other times including Holidays</td>
</tr>
<tr>
<td>Winter (Oct-May)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WINTER PEAK</td>
<td></td>
<td>$0.14265</td>
<td>$0.16329</td>
<td>$0.16494</td>
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<td>WINTER OFF-PEAK</td>
<td></td>
<td>$0.10424</td>
<td>$0.12488</td>
<td>$0.12614</td>
<td>All other times including Holidays</td>
</tr>
</tbody>
</table>
# Silicon Valley Clean Energy

Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service²</th>
<th>Notes</th>
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<tbody>
<tr>
<td>E-TOU-C</td>
<td>Summer (Jun-Sep)</td>
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<td></td>
<td></td>
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</tr>
<tr>
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<td>$ 0.20066</td>
<td>4:00 p.m. to 9:00 p.m. everyday</td>
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<td>$ 0.12511</td>
<td>$ 0.14575</td>
<td>$ 0.14722</td>
<td>All other times</td>
<td></td>
</tr>
<tr>
<td>Winter (Oct-May)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WINTER PEAK</td>
<td>$ 0.12973</td>
<td>$ 0.15037</td>
<td>$ 0.15189</td>
<td>4:00 p.m. to 9:00 p.m. everyday</td>
<td></td>
</tr>
<tr>
<td>WINTER OFF-PEAK</td>
<td>$ 0.11486</td>
<td>$ 0.13550</td>
<td>$ 0.13687</td>
<td>All other times</td>
<td></td>
</tr>
<tr>
<td>E-TOU-D</td>
<td>Summer (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUMMER PEAK</td>
<td>$ 0.20716</td>
<td>$ 0.22780</td>
<td>$ 0.23010</td>
<td>5:00 p.m. to 8:00 p.m. Monday - Friday</td>
<td></td>
</tr>
<tr>
<td>SUMMER OFF-PEAK</td>
<td>$ 0.10325</td>
<td>$ 0.12389</td>
<td>$ 0.12514</td>
<td>All other times including Holidays</td>
<td></td>
</tr>
<tr>
<td>Winter (Oct-May)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WINTER PEAK</td>
<td>$ 0.16670</td>
<td>$ 0.18734</td>
<td>$ 0.18923</td>
<td>5:00 p.m. to 8:00 p.m. Monday - Friday</td>
<td></td>
</tr>
<tr>
<td>WINTER OFF-PEAK</td>
<td>$ 0.13197</td>
<td>$ 0.15261</td>
<td>$ 0.15415</td>
<td>All other times including Holidays</td>
<td></td>
</tr>
<tr>
<td>GreenPrime</td>
<td></td>
<td></td>
<td>$ 0.00800</td>
<td>Same as applicable rate, with $0.008/kWh adder for 100% Renewable energy</td>
<td></td>
</tr>
</tbody>
</table>

1 SVCE Generation Rates, without added PG&E fees, effective 3/1/2022
2 SVCE Generation Service reflects our price for Generation, with added PG&E fees (PCIA and Franchise Fees), effective 3/1/2022
3 PG&E Generation service rate effective 3/1/2022
## Silicon Valley Clean Energy
Non-Residential Generation Rates and Generation Service Cost Comparison

### SVCE Rate Schedule

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A-1-A</strong> Summer (May-Oct)</td>
<td>$0.14212</td>
<td><strong>$0.16199</strong></td>
<td>$0.16363</td>
<td>Rates applicable to all usage throughout the season</td>
</tr>
<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
<td>$0.10240</td>
<td><strong>$0.12227</strong></td>
<td>$0.12350</td>
<td>Rates applicable to all usage throughout the season</td>
</tr>
</tbody>
</table>

### A-1-B Summer (May-Oct)

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEAK</td>
<td>$0.14539</td>
<td><strong>$0.16526</strong></td>
<td>$0.16693</td>
<td>12 Noon to 6 P.M. Monday through Friday (except holidays)</td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$0.14539</td>
<td><strong>$0.16526</strong></td>
<td>$0.16693</td>
<td>8:30 A.M. to 12 Noon and 6 P.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.12092</td>
<td><strong>$0.14079</strong></td>
<td>$0.14221</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
</tr>
</tbody>
</table>

**Winter (Nov-Apr)**

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART-PEAK</td>
<td>$0.11494</td>
<td><strong>$0.13481</strong></td>
<td>$0.13617</td>
<td>8:30 A.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.11437</td>
<td><strong>$0.13424</strong></td>
<td>$0.13560</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
</tr>
</tbody>
</table>

### B-1 Summer (Jun-Sep)

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEAK</td>
<td>$0.18585</td>
<td><strong>$0.20572</strong></td>
<td>$0.20780</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$0.13711</td>
<td><strong>$0.15698</strong></td>
<td>$0.15857</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.11651</td>
<td><strong>$0.13638</strong></td>
<td>$0.13776</td>
<td>All other hours</td>
</tr>
</tbody>
</table>

**Winter (Oct-May)**

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>PEAK</td>
<td>$0.13115</td>
<td><strong>$0.15102</strong></td>
<td>$0.15255</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.11520</td>
<td><strong>$0.13507</strong></td>
<td>$0.13643</td>
<td>All other hours</td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
<td>$0.09894</td>
<td><strong>$0.11881</strong></td>
<td>$0.12001</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
</tr>
</tbody>
</table>

---

**Quick Access to Rates**

- Small Commercial
- Medium Commercial
- Commercial EV
- Large Commercial
- Agriculture
- Stand By
- Lighting

---

**Commercial Generation Rates**

- Small Commercial
- Medium Commercial
- Commercial EV
- Large Commercial
- Agriculture
- Stand By
- Lighting

---

**Silicon Valley Clean Energy**

Small Commercial

Non-Residential Generation Rates and Generation Service Cost Comparison

---

**Item 1h Attachment 2**

**Silicon Valley Clean Energy**
### Silicon Valley Clean Energy

**Small Commercial**

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service $</th>
<th>PG&amp;E Generation Service $</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A-6</strong></td>
<td>Summer (May-Oct)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$0.20754</td>
<td>$0.22741</td>
<td>$0.22971</td>
<td>12 Noon to 6 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$0.15868</td>
<td>$0.17855</td>
<td>$0.18035</td>
<td>8:30 A.M. to 12 Noon and 6 P.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.12686</td>
<td>$0.14673</td>
<td>$0.14821</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
<td></td>
</tr>
<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$0.11757</td>
<td>$0.13744</td>
<td>$0.13883</td>
<td>8:30 A.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
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</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.11687</td>
<td>$0.13674</td>
<td>$0.13812</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday, holidays</td>
<td></td>
</tr>
<tr>
<td><strong>B-6</strong></td>
<td>Summer (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$0.18800</td>
<td>$0.20787</td>
<td>$0.20997</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
<td></td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.11755</td>
<td>$0.13742</td>
<td>$0.13881</td>
<td>All other hours</td>
<td></td>
</tr>
<tr>
<td><strong>Winter (Oct-May)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$0.12512</td>
<td>$0.14499</td>
<td>$0.14645</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.10823</td>
<td>$0.12810</td>
<td>$0.12939</td>
<td>All other hours</td>
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</tr>
<tr>
<td>SUPER OFF-PEAK</td>
<td>$0.09198</td>
<td>$0.11185</td>
<td>$0.11298</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
<td></td>
</tr>
<tr>
<td>SVCE Rate Schedule</td>
<td>Time of Use Period</td>
<td>SVCE Generation Rates¹</td>
<td>SVCE Generation Service²</td>
<td>PG&amp;E Generation Service³</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------</td>
<td>-------------------------</td>
<td>--------------------------</td>
<td>--------------------------</td>
<td>-------</td>
</tr>
<tr>
<td><strong>A-10-A</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer (May-Oct)</td>
<td>$ 0.14353</td>
<td>$ 0.16490</td>
<td>$ 0.16657</td>
<td>Rates applicable to all usage throughout the season</td>
<td></td>
</tr>
<tr>
<td>SUMMER MAX (kW)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winter (Nov-Apr)</td>
<td>$ 0.12199</td>
<td>$ 0.14336</td>
<td>$ 0.14481</td>
<td>Rates applicable to all usage throughout the season</td>
<td></td>
</tr>
<tr>
<td><strong>A-10-B</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer (May-Oct)</td>
<td>$ 0.15687</td>
<td>$ 0.17824</td>
<td>$ 0.18004</td>
<td>12 Noon to 6 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$ 0.15687</td>
<td>$ 0.17824</td>
<td>$ 0.18004</td>
<td>8:30 A.M. to 12 Noon and 6 P.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$ 0.10306</td>
<td>$ 0.15173</td>
<td>$ 0.15326</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
<td></td>
</tr>
<tr>
<td>SUMMER MAX (kW)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winter (Nov-Apr)</td>
<td>$ 0.12260</td>
<td>$ 0.14397</td>
<td>$ 0.14542</td>
<td>8:30 A.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$ 0.12189</td>
<td>$ 0.14326</td>
<td>$ 0.14471</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
<td></td>
</tr>
<tr>
<td><strong>A-10-B-P</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer (May-Oct)</td>
<td>$ 0.14108</td>
<td>$ 0.16245</td>
<td>$ 0.16409</td>
<td>12 Noon to 6 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$ 0.14108</td>
<td>$ 0.16245</td>
<td>$ 0.16409</td>
<td>8:30 A.M. to 12 Noon and 6 P.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
<tr>
<td>PART-PEAK</td>
<td>$ 0.11601</td>
<td>$ 0.13738</td>
<td>$ 0.13877</td>
<td>9:30 P.M. to 8:30 A.M. Monday through Friday, all day Saturday and Sunday, holidays</td>
<td></td>
</tr>
<tr>
<td>SUMMER MAX (kW)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winter (Nov-Apr)</td>
<td>$ 0.10801</td>
<td>$ 0.12938</td>
<td>$ 0.13069</td>
<td>8:30 A.M. to 9:30 P.M. Monday through Friday (except holidays)</td>
<td></td>
</tr>
</tbody>
</table>

Commercial Generation Rates
# Silicon Valley Clean Energy

## Medium Commercial

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A-10-B-T Summer</strong> (May-Oct)</td>
<td>PEAK</td>
<td>$0.12243</td>
<td>$0.14380</td>
<td>$0.14525</td>
</tr>
<tr>
<td></td>
<td>PART-PEAK</td>
<td>$0.12243</td>
<td>$0.14380</td>
<td>$0.14525</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.09802</td>
<td>$0.11939</td>
<td>$0.12060</td>
</tr>
<tr>
<td></td>
<td>SUMMER MAX (kW)</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
</tr>
<tr>
<td><strong>A-10-B-T Winter</strong> (Nov-Apr)</td>
<td>PART-PEAK</td>
<td>$0.09087</td>
<td>$0.11224</td>
<td>$0.11337</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.09021</td>
<td>$0.11158</td>
<td>$0.11271</td>
</tr>
<tr>
<td><strong>B-10-S Summer</strong> (Jun-Sep)</td>
<td>PEAK</td>
<td>$0.21270</td>
<td>$0.23407</td>
<td>$0.23643</td>
</tr>
<tr>
<td></td>
<td>PART-PEAK</td>
<td>$0.15162</td>
<td>$0.17299</td>
<td>$0.17474</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.11938</td>
<td>$0.14075</td>
<td>$0.14217</td>
</tr>
<tr>
<td><strong>B-10-S Winter</strong> (Oct-May)</td>
<td>PEAK</td>
<td>$0.15523</td>
<td>$0.17660</td>
<td>$0.17838</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.12010</td>
<td>$0.14147</td>
<td>$0.14290</td>
</tr>
<tr>
<td></td>
<td>SUPER OFF-PEAK</td>
<td>$0.08412</td>
<td>$0.10549</td>
<td>$0.10656</td>
</tr>
</tbody>
</table>
# Silicon Valley Clean Energy
## Medium Commercial
### Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates $</th>
<th>SVCE Generation Service $</th>
<th>PG&amp;E Generation Service $</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B-10-P</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td></td>
<td>$0.19545</td>
<td>$0.21682</td>
<td>$0.21901</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>PART-PEAK</td>
<td></td>
<td>$0.13773</td>
<td>$0.15910</td>
<td>$0.16071</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td></td>
<td>$0.10720</td>
<td>$0.12857</td>
<td>$0.12987</td>
<td>All other hours</td>
</tr>
<tr>
<td><strong>Winter (Oct-May)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td></td>
<td>$0.14136</td>
<td>$0.16273</td>
<td>$0.16437</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td></td>
<td>$0.10806</td>
<td>$0.12943</td>
<td>$0.13074</td>
<td>All other hours</td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
<td></td>
<td>$0.07209</td>
<td>$0.09346</td>
<td>$0.09440</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
</tr>
</tbody>
</table>

| **B-10-T**         | **Summer (Jun-Sep)** |                         |                          |                          |       |
| PEAK               |                    | $0.17148                | $0.19285                 | $0.19480                 | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| PART-PEAK          |                    | $0.11531                | $0.13668                 | $0.13806                 | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK           |                    | $0.08554                | $0.10691                 | $0.10799                 | All other hours |

| **Winter (Oct-May)** |                    |                         |                          |                          |       |
| PEAK               |                    | $0.11896                | $0.14033                 | $0.14175                 | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK           |                    | $0.08645                | $0.10782                 | $0.10891                 | All other hours |
| SUPER OFF-PEAK     |                    | $0.05047                | $0.07184                 | $0.07257                 | 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only |
## Non-Residential Generation Rates and Generation Service Cost Comparison

### SVCE Rate Schedule

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BEV1</strong> Summer/Winter</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$0.27295</td>
<td>$0.29049</td>
<td>$0.29342</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>OFF-PEAK</td>
<td>$0.09221</td>
<td>$0.10975</td>
<td>$0.11086</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 9:00 a.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
<td>$0.06708</td>
<td>$0.08462</td>
<td>$0.08547</td>
<td>All other hours; Every day, including weekends and holidays</td>
</tr>
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</table>

| **BEV2S** Summer/Winter |                       |                         |                         |       |
| PEAK                 | $0.28982              | $0.30956                | $0.31269                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK             | $0.08850              | $0.10824                | $0.10933                | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 9:00 a.m.; Every day, including weekends and holidays |
| SUPER OFF-PEAK       | $0.06335              | $0.08309                | $0.08393                | All other hours; Every day, including weekends and holidays |

<p>| <strong>BEV2P</strong> Summer/Winter |                       |                         |                         |       |
| PEAK                 | $0.27955              | $0.29929                | $0.30231                | 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays |
| OFF-PEAK             | $0.08553              | $0.10527                | $0.10633                | 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 9:00 a.m.; Every day, including weekends and holidays |
| SUPER OFF-PEAK       | $0.06157              | $0.08131                | $0.08213                | All other hours; Every day, including weekends and holidays |</p>
<table>
<thead>
<tr>
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<th>Notes</th>
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<tbody>
<tr>
<td><strong>E-19-S</strong></td>
<td>Summer (May-Oct)</td>
<td></td>
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<tr>
<td>PEAK</td>
<td></td>
<td>$ 0.09767</td>
<td>$ 0.11765</td>
<td>$ 0.11884</td>
<td>12:00 noon to 6:00 p.m. Monday through Friday (except holidays)</td>
</tr>
<tr>
<td>PART-PEAK</td>
<td></td>
<td>$ 0.09767</td>
<td>$ 0.11765</td>
<td>$ 0.11884</td>
<td>8:30 a.m. to 12:00 noon Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>$ 0.09175</td>
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<td>$ 0.11286</td>
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<tr>
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<td>$ 12.31</td>
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<tr>
<td>PART-PEAK (kW)</td>
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<td>$ 12.19</td>
<td>$ 12.19</td>
<td>$ 12.31</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
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<tr>
<td>PEAK</td>
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<td>$ 0.08579</td>
<td>$ 0.10577</td>
<td>$ 0.10684</td>
<td>12:00 noon to 6:00 p.m. Monday through Friday (except holidays)</td>
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<td>PART-PEAK</td>
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<td>$ 0.08579</td>
<td>$ 0.10577</td>
<td>$ 0.10684</td>
<td>8:30 a.m. to 12:00 noon Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>OFF-PEAK</td>
<td></td>
<td>$ 0.08013</td>
<td>$ 0.10011</td>
<td>$ 0.10112</td>
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<td>$ 10.57</td>
<td>$ 10.57</td>
<td>$ 10.68</td>
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<td>PART-PEAK (kW)</td>
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<td>$ 10.57</td>
<td>$ 10.57</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
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<td>$ 0.07768</td>
<td>$ 0.09766</td>
<td>$ 0.09865</td>
<td>8:30 a.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<tr>
<td>OFF-PEAK</td>
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<td>$ 0.07702</td>
<td>$ 0.09700</td>
<td>$ 0.09798</td>
<td>9:30 p.m. to 8:30 a.m. Monday through Friday, All day Saturday, Sunday, and holidays</td>
</tr>
</tbody>
</table>
**Silicon Valley Clean Energy**

**Large Commercial**

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
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<tbody>
<tr>
<td><strong>E-19-T</strong> Summer (May-Oct)</td>
<td></td>
<td></td>
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<tr>
<td>PEAK</td>
<td>$ 0.07652</td>
<td>$ 0.09650</td>
<td>$ 0.09747</td>
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<td>PART-PEAK</td>
<td>$ 0.07652</td>
<td>$ 0.09650</td>
<td>$ 0.09747</td>
<td>8:30 a.m. to 12:00 noon Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>OFF-PEAK</td>
<td>$ 0.07091</td>
<td>$ 0.09089</td>
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<td>$ 11.68</td>
<td>$ 11.80</td>
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<td>PART-PEAK (kW)</td>
<td>$ 11.68</td>
<td>$ 11.68</td>
<td>$ 11.80</td>
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<td></td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
<td>$ 0.06851</td>
<td>$ 0.08849</td>
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<td>OFF-PEAK</td>
<td>$ 0.06785</td>
<td>$ 0.08783</td>
<td>$ 0.08872</td>
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<td><strong>E-19-R-S</strong> Summer (May-Oct)</td>
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<tr>
<td>PEAK</td>
<td>$ 0.16562</td>
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<tr>
<td>PART-PEAK</td>
<td>$ 0.14842</td>
<td>$ 0.16840</td>
<td>$ 0.17010</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.11940</td>
<td>$ 0.13938</td>
<td>$ 0.14079</td>
<td>9:30 p.m. to 8:30 a.m. Monday through Friday, and All day Saturday, Sunday, and holidays</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
<td>$ 0.11684</td>
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<td>OFF-PEAK</td>
<td>$ 0.11614</td>
<td>$ 0.13612</td>
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<td>9:30 p.m. to 8:30 a.m. Monday through Friday, All day Saturday, Sunday, and holidays</td>
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<tr>
<td>SVCE Rate Schedule</td>
<td>Time of Use Period</td>
<td>SVCE Generation Rates¹</td>
<td>SVCE Generation Service²</td>
<td>PG&amp;E Generation Service³</td>
<td>Notes</td>
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<tr>
<td><strong>E-19-R-P</strong></td>
<td><strong>Summer</strong> (May-Oct)</td>
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<tr>
<td>PEAK</td>
<td></td>
<td>$ 0.14926</td>
<td>$ 0.16924</td>
<td>$ 0.17095</td>
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<td>PART-PEAK</td>
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<td>$ 0.13397</td>
<td>$ 0.15395</td>
<td>$ 0.15551</td>
<td>8:30 a.m. to 12:00 noon Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>OFF-PEAK</td>
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<td>$ 0.10827</td>
<td>$ 0.12825</td>
<td>$ 0.12955</td>
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<td><strong>Winter</strong> (Nov-Apr)</td>
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<tr>
<td>PART-PEAK</td>
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<td>$ 0.10583</td>
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<td>OFF-PEAK</td>
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<td>$ 0.10517</td>
<td>$ 0.12515</td>
<td>$ 0.12641</td>
<td>9:30 p.m. to 8:30 a.m. Monday through Friday, All day Saturday, Sunday, and holidays</td>
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<td><strong>E-19-R-T</strong></td>
<td><strong>Summer</strong> (May-Oct)</td>
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<tr>
<td>PEAK</td>
<td></td>
<td>$ 0.14451</td>
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<td>$ 0.13104</td>
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<td>$ 0.10857</td>
<td>$ 0.12855</td>
<td>$ 0.12985</td>
<td>9:30 p.m. to 8:30 a.m. Monday through Friday, and All day Saturday, Sunday, and holidays</td>
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<td><strong>Winter</strong> (Nov-Apr)</td>
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<tr>
<td>PART-PEAK</td>
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<td>$ 0.10617</td>
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<td>$ 0.12742</td>
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<tr>
<td>SVCE Rate Schedule</td>
<td>Time of Use Period</td>
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<td>SVCE Generation Service²</td>
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</tr>
<tr>
<td><strong>B-19-S</strong></td>
<td>Summer (Jun-Sep)</td>
<td>PEAK $ 0.15355 $ 0.17353 $ 0.17528 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td></td>
<td></td>
<td>PART-PEAK $ 0.11629 $ 0.13627 $ 0.13765 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td></td>
<td></td>
<td>OFF-PEAK $ 0.08996 $ 0.10994 $ 0.11105 All other hours</td>
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<td>PEAK $ 18.66 $ 18.66 $ 18.85</td>
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<td>PART-PEAK (kW) $ 2.71 $ 2.71 $ 2.74</td>
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<td>Winter (Oct-May)</td>
<td>PART-PEAK $ 0.12989 $ 0.14987 $ 0.15138 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>OFF-PEAK $ 0.08985 $ 0.10983 $ 0.11094 All other hours</td>
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<td>SUPER OFF-PEAK $ 0.03613 $ 0.05611 $ 0.05668 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<td>PEAK (kW) $ 2.22 $ 2.22 $ 2.24</td>
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<tr>
<td><strong>B-19-P</strong></td>
<td>Summer (Jun-Sep)</td>
<td>PEAK $ 0.13415 $ 0.15413 $ 0.15569 4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>PART-PEAK $ 0.10580 $ 0.12578 $ 0.12705 2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<td></td>
<td></td>
<td>OFF-PEAK $ 0.08115 $ 0.10113 $ 0.10215 All other hours</td>
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<td>PEAK (kW) $ 15.99 $ 15.99 $ 16.15</td>
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<td>Winter (Oct-May)</td>
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<td>OFF-PEAK $ 0.08132 $ 0.10130 $ 0.10232 All other hours</td>
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<td>SUPER OFF-PEAK $ 0.02800 $ 0.04798 $ 0.04846 9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<td></td>
<td>PEAK (kW) $ 1.63 $ 1.63 $ 1.65</td>
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</tr>
</tbody>
</table>
## Silicon Valley Clean Energy

### Large Commercial

Non-Residential Generation Rates and Generation Service Cost Comparison

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<tr>
<td><strong>B-19-T</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
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<td>PEAK</td>
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<td>$ 0.13116</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<td>$ 0.08448</td>
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<td><strong>Winter (Oct-May)</strong></td>
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<td>$ 0.04856</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<td>PEAK (kW)</td>
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<td>$ 1.22</td>
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<td><strong>B-19-R-S / B-19-ST-S</strong></td>
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<tr>
<td><strong>Summer (Jun-Sep)</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>PEAK</td>
<td>$ 0.27738</td>
<td>$ 0.29736</td>
<td>$ 0.30036</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>PART-PEAK</td>
<td>$ 0.14316</td>
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<td>$ 0.16479</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.10504</td>
<td>$ 0.12502</td>
<td>$ 0.12628</td>
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<td><strong>Winter (Oct-May)</strong></td>
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<td>$ 0.14686</td>
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<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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</tr>
</tbody>
</table>

¹ Generation Rates
² Generation Service
³ PG&E Generation Service

Commercial Generation Rates
## Large Commercial

### Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>B-19-R-P / B-19-ST-P</strong></td>
<td><strong>Summer (Jun-Sep)</strong></td>
<td>$0.25397</td>
<td>$0.27395</td>
<td>$0.27672</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td></td>
<td>PEAK</td>
<td>$0.25397</td>
<td>$0.27395</td>
<td>$0.27672</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>$0.13167</td>
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<td>$0.13401</td>
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<td>$0.15555</td>
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<td>$0.24340</td>
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<td>$0.13213</td>
<td>$0.15211</td>
<td>$0.15365</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<td>PEAK</td>
<td>$0.13213</td>
<td>$0.15211</td>
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## Silicon Valley Clean Energy
### Large Commercial
#### Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>E-20-S</strong></td>
<td><strong>Summer (May-Oct)</strong></td>
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<td>PEAK</td>
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<td>PART-PEAK</td>
<td>$0.09299</td>
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<td>8:30 a.m. to 12:00 noon Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>OFF-PEAK</td>
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<tr>
<td>PEAK (kW)</td>
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<td>$11.80</td>
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<td><strong>Winter (Nov-Apr)</strong></td>
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<td><strong>Winter (Nov-Apr)</strong></td>
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<td>9:30 p.m. to 8:30 a.m. Monday through Friday, All day Saturday, Sunday, and holidays</td>
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</table>
## Silicon Valley Clean Energy

### Large Commercial

Non-Residential Generation Rates and Generation Service Cost Comparison

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<tr>
<td>E-20-T</td>
<td>Summer (May-Oct)</td>
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<td>PEAK</td>
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# Silicon Valley Clean Energy
Non-Residential Generation Rates and Generation Service Cost Comparison

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<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
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<tbody>
<tr>
<td><strong>E-20-R-P</strong></td>
<td><strong>Summer</strong> (May-Oct)**</td>
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<tr>
<td>PEAK</td>
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<td>$0.15114 $0.16919 $0.17090</td>
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<td><strong>Winter</strong> (Nov-Apr)</td>
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<td><strong>E-20-R-T</strong></td>
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<td>SVCE Generation Service²</td>
<td>PG&amp;E Generation Service³</td>
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<tr>
<td>B-20-S</td>
<td>Summer (Jun-Sep)</td>
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<td>Winter (Oct-May)</td>
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<td>$ 0.05105</td>
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<td>PEAK</td>
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## Large Commercial

<table>
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<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>B-20-T</strong></td>
<td>Summer (Jun-Sep)</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>PEAK</td>
<td>$ 0.11950</td>
<td>$ 0.13677</td>
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<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td>PART-PEAK</td>
<td>$ 0.09761</td>
<td>$ 0.11488</td>
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<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.07317</td>
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<tr>
<td>PEAK (kW)</td>
<td>$ 22.62</td>
<td>$ 22.62</td>
<td>$ 22.85</td>
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<tr>
<td>PART-PEAK (kW)</td>
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<td>$ 5.39</td>
<td>$ 5.44</td>
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<td><strong>B-20-R-S / B-20-ST-S</strong></td>
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<td>PEAK</td>
<td>$ 0.26482</td>
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<td>PART-PEAK</td>
<td>$ 0.13340</td>
<td>$ 0.15188</td>
<td>$ 0.15341</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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<tr>
<td>PEAK</td>
<td>$ 0.11844</td>
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<td>SUPER OFF-PEAK</td>
<td>$ 0.01910</td>
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<td>PEAK (kW)</td>
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<td>$ 3.05</td>
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<td><strong>Winter (Oct-May)</strong></td>
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<td>PEAK</td>
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</table>
### Commercial Generation Rates

#### Silicon Valley Clean Energy

**Large Commercial**

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
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<tbody>
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<td><strong>B-20-R-P / B-20-ST-P</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
<td>PEAK</td>
<td>$0.25594</td>
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<td><strong>B-20-R-T / B-20-ST-T</strong></td>
<td><strong>Summer</strong> (Jun-Sep)</td>
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<td>$0.25493</td>
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<td>SUPER OFF-PEAK</td>
<td>$0.05238</td>
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### Non-Residential Generation Rates and Generation Service Cost Comparison

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<th>SVCE Rate Schedule</th>
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<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
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<tbody>
<tr>
<td>AG-1-A</td>
<td>Summer (May-Oct)</td>
<td>$0.09968</td>
<td>$0.11813</td>
<td>$0.11932</td>
<td>Rates applicable to all usage throughout the season</td>
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<td>SUMMER MAX</td>
<td>$2.51</td>
<td>$2.51</td>
<td>$2.54</td>
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<td></td>
<td>Winter (Nov-Apr)</td>
<td>$0.08650</td>
<td>$0.10495</td>
<td>$0.10601</td>
<td>Rates applicable to all usage throughout the season</td>
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<td>AG-1-B</td>
<td>Summer (May-Oct)</td>
<td>$0.11151</td>
<td>$0.12996</td>
<td>$0.13127</td>
<td>Rates applicable to all usage throughout the season</td>
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<tr>
<td></td>
<td>SUMMER MAX</td>
<td>$3.93</td>
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<td>$3.97</td>
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<td></td>
<td>Winter (Nov-Apr)</td>
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<td>$0.09779</td>
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<td>Rates applicable to all usage throughout the season</td>
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<td>AG-A1</td>
<td>Summer (Jun-Sep)</td>
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<tr>
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<td>PEAK</td>
<td>$0.23414</td>
<td>$0.25259</td>
<td>$0.25514</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.11566</td>
<td>$0.13411</td>
<td>$0.13546</td>
<td>All other hours</td>
</tr>
<tr>
<td></td>
<td>Winter (Oct-May)</td>
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<tr>
<td></td>
<td>PEAK</td>
<td>$0.11237</td>
<td>$0.13082</td>
<td>$0.13214</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
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<td>OFF-PEAK</td>
<td>$0.08618</td>
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<td>All other hours</td>
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<td>AG-A2</td>
<td>Summer (Jun-Sep)</td>
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</tr>
<tr>
<td></td>
<td>PEAK</td>
<td>$0.23414</td>
<td>$0.25259</td>
<td>$0.25514</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.11566</td>
<td>$0.13411</td>
<td>$0.13546</td>
<td>All other hours</td>
</tr>
<tr>
<td></td>
<td>Winter (Oct-May)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>PEAK</td>
<td>$0.11237</td>
<td>$0.13082</td>
<td>$0.13214</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
</tr>
<tr>
<td></td>
<td>OFF-PEAK</td>
<td>$0.08618</td>
<td>$0.10463</td>
<td>$0.10569</td>
<td>All other hours</td>
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</table>
## Silicon Valley Clean Energy

**Non-Residential Generation Rates and Generation Service Cost Comparison**

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates&lt;sup&gt;1&lt;/sup&gt;</th>
<th>SVCE Generation Service&lt;sup&gt;2&lt;/sup&gt;</th>
<th>PG&amp;E Generation Service&lt;sup&gt;3&lt;/sup&gt;</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>AG-RA</strong></td>
<td>Summer (May-Oct)</td>
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<td>PEAK</td>
<td>$ 0.14521</td>
<td>$ 0.16366</td>
<td>$ 0.16531</td>
<td>Group I 12:00 noon to 6:00 p.m. Monday, Tuesday, Wednesday Group II 12:00 noon to 6:00 p.m. Wednesday, Thursday, Friday</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.09571</td>
<td>$ 0.11416</td>
<td>$ 0.11531</td>
<td>All other hours Monday through Friday All day Saturday, Sunday, holidays</td>
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<td>SUMMER</td>
<td>$ 1.97</td>
<td>$ 1.97</td>
<td>$ 1.99</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
<td>$ 0.08210</td>
<td>$ 0.10555</td>
<td>$ 0.10157</td>
<td>8:30 a.m. to 9:30 p.m. Monday through Friday</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.08210</td>
<td>$ 0.10555</td>
<td>$ 0.10157</td>
<td>All other hours Monday through Friday All day Saturday, Sunday, holidays</td>
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<tr>
<td><strong>AG-RB</strong></td>
<td>Summer (May-Oct)</td>
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<tr>
<td>PEAK</td>
<td>$ 0.13347</td>
<td>$ 0.15192</td>
<td>$ 0.15345</td>
<td>Group I 12:00 noon to 6:00 p.m. Monday, Tuesday, Wednesday Group II 12:00 noon to 6:00 p.m. Wednesday, Thursday, Friday</td>
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<td>OFF-PEAK</td>
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<td>$ 2.83</td>
<td>$ 2.86</td>
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<td>$ 0.80</td>
<td>$ 0.81</td>
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<td><strong>Winter (Nov-Apr)</strong></td>
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<td>PART-PEAK</td>
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<td>$ 0.10174</td>
<td>8:30 a.m. to 9:30 p.m. Monday through Friday</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.08157</td>
<td>$ 0.10002</td>
<td>$ 0.10103</td>
<td>All other hours Monday through Friday All day Saturday, Sunday, holidays</td>
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<tr>
<td><strong>AG-FA</strong></td>
<td>Summer (Jun-Sep)</td>
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<tr>
<td>PEAK</td>
<td>$ 0.20004</td>
<td>$ 0.21849</td>
<td>$ 0.22070</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.12367</td>
<td>$ 0.14212</td>
<td>$ 0.14356</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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</tr>
<tr>
<td>PEAK</td>
<td>$ 0.11358</td>
<td>$ 0.13203</td>
<td>$ 0.13336</td>
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<tr>
<td>OFF-PEAK</td>
<td>$ 0.08739</td>
<td>$ 0.10584</td>
<td>$ 0.10691</td>
<td>All other hours and all day for the days indicated by these options: Option 1) Wednesday and Thursday; Option 2) Saturday and Sunday; Option 3) Monday and Friday</td>
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</tbody>
</table>

**Commercial Generation Rates**
## Silicon Valley Clean Energy

### Agriculture

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
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<td>Winter (Oct-May)</td>
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<td>PEAK</td>
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<td>$ 0.12686</td>
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<td>Summer (Jun-Sep)</td>
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<tr>
<td>PEAK</td>
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<td>$ 0.13627</td>
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<td>$ 15.23</td>
<td>$ 15.38</td>
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<td>Winter (Oct-May)</td>
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<td><strong>AG-VA</strong></td>
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<td></td>
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<tr>
<td>PEAK</td>
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<td>$ 0.13443</td>
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<td>$ 0.15442</td>
<td>Group I 12:00 noon to 4:00 p.m. Monday through Friday Group II 1:00 p.m. to 5:00 p.m. Monday through Friday Group III 2:00 p.m. to 6:00 p.m. Monday through Friday</td>
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<td>$ 2.00</td>
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<td>Winter (Nov-Apr)</td>
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<td>$ 0.09879</td>
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<td>All other hours Monday through Friday All day Saturday, Sunday, holidays</td>
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## Silicon Valley Clean Energy
### Agriculture
Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
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<th>PG&amp;E Generation Service</th>
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<tr>
<td><strong>AG-VB</strong></td>
<td>Summer (May-Oct)</td>
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<td><strong>Winter (Nov-Apr)</strong></td>
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## Silicon Valley Clean Energy

### Non-Residential Generation Rates and Generation Service Cost Comparison

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<th>SVCE Generation Service²</th>
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<td>PEAK</td>
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<td>$ 0.11686</td>
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<td>$ 0.97</td>
<td>$ 0.97</td>
<td>$ 0.98</td>
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| **Winter (Nov-Apr)** |                       |                          |                          |                         |       |
| PART-PEAK           |                     | $ 0.09533               | $ 0.11378                | $ 0.11493               | 8:30 a.m. to 9:30 p.m. Monday through Friday |
| OFF-PEAK            |                     | $ 0.09465               | $ 0.11310                | $ 0.11424               | All other hours Monday through Friday     |
|                     |                       |                         |                          |                         | All day Saturday, Sunday, holidays         |

| **AG-4-C**         | Summer (May-Oct)   |                         |                          |                         |       |
| PEAK               |                    | $ 0.09396               | $ 0.11241                | $ 0.11355               | 12:00 noon to 6:00 p.m. Monday through Friday |
| PART-PEAK          |                    | $ 0.07901               | $ 0.09746                | $ 0.09844               | 8:30 a.m. to 12:00 p.m. Monday through Friday AND 6:00 p.m. to 9:30 p.m. Monday through Friday |
| OFF-PEAK           |                    | $ 0.07356               | $ 0.09201                | $ 0.09294               | 9:30 p.m. to 8:30 a.m. Monday through Friday All day Saturday, Sunday, holidays |
| PEAK               |                    | $ 4.78                  | $ 4.78                   | $ 4.83                  |                                               |
| PART-PEAK          |                    | $ 3.58                  | $ 3.58                   | $ 3.62                  |                                               |

| **Winter (Nov-Apr)** |                       |                          |                          |                         |       |
| PART-PEAK           |                     | $ 0.07368               | $ 0.09213                | $ 0.09306               | 8:30 a.m. to 9:30 p.m. Monday through Friday |
| OFF-PEAK            |                     | $ 0.07298               | $ 0.09143                | $ 0.09235               | All other hours Monday through Friday All day Saturday, Sunday, holidays |

### Commercial Generation Rates
## Non-Residential Generation Rates and Generation Service Cost Comparison

### SVCE Rate Schedule

<table>
<thead>
<tr>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>AG-B</strong> Summer (Jun-Sep)</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>PEAK</td>
<td>$0.25165</td>
<td>$0.27010</td>
<td>$0.27283</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
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<td>OFF-PEAK</td>
<td>$0.12981</td>
<td>$0.14826</td>
<td>$0.14976</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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<tr>
<td>PEAK</td>
<td>$0.12453</td>
<td>$0.14298</td>
<td>$0.14442</td>
<td>5:00 p.m. to 8:00 p.m.; Every day, including weekends and holidays</td>
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<td>OFF-PEAK</td>
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<td><strong>AG-5-A</strong> Summer (May-Oct)</td>
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<td>PEAK</td>
<td>$0.11951</td>
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<td>$0.13935</td>
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<td>OFF-PEAK</td>
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<td>$0.12055</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<tr>
<td>PART-PEAK</td>
<td>$0.09201</td>
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<td>8:30 a.m. to 9:30 p.m. Monday through Friday</td>
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<td>OFF-PEAK</td>
<td>$0.09131</td>
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<td>$0.11087</td>
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Commercial Generation Rates
### Silicon Valley Clean Energy

#### Agriculture

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
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<tbody>
<tr>
<td><strong>AG-5-B</strong></td>
<td><strong>Summer (May-Oct)</strong></td>
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<td>PEAK</td>
<td>$ 0.11333</td>
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<td>OFF-PEAK</td>
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<td>MAX</td>
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<td>$ 2.18</td>
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<td><strong>Winter (Nov-Apr)</strong></td>
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<td>All day Saturday, Sunday, holidays</td>
</tr>
<tr>
<td><strong>AG-5-C</strong></td>
<td><strong>Summer (May-Oct)</strong></td>
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<td>All day Saturday, Sunday, holidays</td>
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<td>All day Saturday, Sunday, holidays</td>
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**Commercial Generation Rates**
## Silicon Valley Clean Energy
Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates ¹</th>
<th>SVCE Generation Service ²</th>
<th>PG&amp;E Generation Service ³</th>
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<tbody>
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<td>AG-C</td>
<td>Summer (Jun-Sep)</td>
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<td>SVCE Generation Service²</td>
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<tr>
<td><strong>STOUS</strong></td>
<td>Summer (May-Oct)</td>
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<td>PEAK</td>
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<td>$0.60</td>
<td>$0.61</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<td>PART-PEAK</td>
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<td><strong>STOUP</strong></td>
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<tr>
<td>PEAK</td>
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<td>$0.10001</td>
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<tr>
<td><strong>Winter (Nov-Apr)</strong></td>
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<td>PART-PEAK</td>
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<td>8:30 a.m. to 9:30 p.m. Monday through Friday (except holidays)</td>
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<td>OFF-PEAK</td>
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<td>$0.09541</td>
<td>$0.11027</td>
<td>$0.11138</td>
<td>9:30 p.m. to 8:30 a.m. Monday through Friday All Day Saturday, Sunday and holidays</td>
</tr>
<tr>
<td>Reservation (kW)</td>
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<td>$0.60</td>
<td>$0.60</td>
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Notes:
- **SVCE**: Silicon Valley Clean Energy
- **PG&E**: Pacific Gas and Electric
## Silicon Valley Clean Energy

### Standby

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
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<tbody>
<tr>
<td><strong>STOUT Summer (May-Oct)</strong></td>
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<td>PEAK</td>
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<td>$ 0.10727</td>
<td>$ 0.10835</td>
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<td>OFF-PEAK</td>
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</tr>
<tr>
<td>Reservation (kW)</td>
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<td>$ 0.49</td>
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<tr>
<td><strong>S-B-S Summer (Jun-Sep)</strong></td>
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<tr>
<td>PEAK</td>
<td>$ 0.13386</td>
<td>$ 0.14872</td>
<td>$ 0.15022</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
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</tr>
<tr>
<td>PART-PEAK</td>
<td>$ 0.11829</td>
<td>$ 0.13315</td>
<td>$ 0.13449</td>
<td>2:00 p.m. to 4:00 p.m. and 9:00 p.m. to 11:00 p.m.; Every day, including weekends and holidays</td>
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<tr>
<td>OFF-PEAK</td>
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<tr>
<td>Reservation (kW)</td>
<td>$ 0.40</td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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<tr>
<td>PEAK</td>
<td>$ 0.12763</td>
<td>$ 0.14249</td>
<td>$ 0.14393</td>
<td>4:00 p.m. to 9:00 p.m.; Every day, including weekends and holidays</td>
<td></td>
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<tr>
<td>OFF-PEAK</td>
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<td>$ 0.11728</td>
<td>$ 0.11846</td>
<td>All other hours</td>
<td></td>
</tr>
<tr>
<td>SUPER OFF-PEAK</td>
<td>$ 0.04645</td>
<td>$ 0.06131</td>
<td>$ 0.06193</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
<td></td>
</tr>
<tr>
<td>Reservation (kW)</td>
<td>$ 0.40</td>
<td>$ 0.40</td>
<td>$ 0.40</td>
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</table>

Commercial Generation Rates
### Silicon Valley Clean Energy

#### Standby

Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates</th>
<th>SVCE Generation Service</th>
<th>PG&amp;E Generation Service</th>
<th>Notes</th>
</tr>
</thead>
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<tr>
<td><strong>S-B-P</strong></td>
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<tr>
<td><strong>Summer (Jun-Sep)</strong></td>
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<tr>
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<tr>
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<td>$ 0.11581</td>
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<tr>
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<tr>
<td>PEAK</td>
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<tr>
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<tr>
<td>SUPER OFF-PEAK</td>
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<td>$ 0.06193</td>
<td>9:00 a.m. to 2:00 p.m.; Every day in March, April, and May only</td>
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<tr>
<td>Reservation (kW)</td>
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<tr>
<td><strong>S-B-T</strong></td>
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<td><strong>Summer (Jun-Sep)</strong></td>
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<tr>
<td><strong>Winter (Oct-May)</strong></td>
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<tr>
<td>Reservation (kW)</td>
<td>$ 0.23</td>
<td>$ 0.23</td>
<td>$ 0.23</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Commercial Generation Rates
## Non-Residential Generation Rates and Generation Service Cost Comparison

<table>
<thead>
<tr>
<th>SVCE Rate Schedule</th>
<th>Time of Use Period</th>
<th>SVCE Generation Rates¹</th>
<th>SVCE Generation Service²</th>
<th>PG&amp;E Generation Service³</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>LS-1, LS-2, LS-3, OL-1</td>
<td>Year-round</td>
<td>$0.10241</td>
<td>$0.11885</td>
<td>$0.12005</td>
<td>Rates applicable to all usage throughout the year</td>
</tr>
<tr>
<td>TC-1</td>
<td>Year-round</td>
<td>$0.11280</td>
<td>$0.13267</td>
<td>$0.13401</td>
<td>Rates applicable to all usage throughout the year</td>
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<tr>
<td>GreenPrime</td>
<td></td>
<td></td>
<td>+ $0.00800</td>
<td></td>
<td>Same as applicable rate, with $0.008/kWh adder for 100% Renewable energy</td>
</tr>
</tbody>
</table>

**DAYLIGHT SAVING TIME ADJUSTMENT:** The time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.

**HOLIDAYS:** Holidays, for the purpose of this rate schedule, are New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day. The dates will be those on which holidays are legally observed.

¹ SVCE Generation Rates, without added PG&E fees, effective 3/1/2022

² SVCE Generation Service reflects our price for Generation, with added PG&E fees (PCIA and Franchise Fees), effective 3/1/2022

³ PG&E Generation service rate effective 3/1/2022
RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy Authority Board ("Board") accept the Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee’s ("Ad Hoc Committee") report and support legislation that promotes more flexibility in the Brown Act for remote meetings, including AB 1944 (Lee and C. Garcia) and SB 1100 (Cortese).

AD HOC COMMITTEE REPORT
At its March 3, 2022 meeting, the Ad Hoc Committee discussed the need for remote participation flexibility at SVCE Board meetings. As a result of the discussion, the Ad Hoc Committee is recommending the Board support AB 1944 (Lee and C. Garcia) and SB 1100 (Cortese) and provide direction to staff to support legislation that promotes more flexibility for remote meetings.

BACKGROUND
Last year, Governor Newsom signed AB 361 (Rivas) into law. AB 361 (Rivas) allows local agencies to continue meeting remotely without following the Brown Act’s standard teleconferencing positions 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. AB 361 (Rivas) sunsets on January 1, 2024.

AB 1944 (Lee and C. Garcia) would allow a legislative body’s members who are teleconferencing into a meeting from a private location to not disclose the address on the notice and agenda of the meeting. If the legislative body uses teleconferencing, it must provide to the public a video stream of the meeting and an option for members of the public to address the body remotely. The provisions in AB 1944 would be a permanent change to the Brown Act, and not subject to the provisions of AB 361 which include a sunset and a requirement to have a statewide emergency proclamation.

SB 1100 (Cortese) would allow a legislative body to remove an individual for willfully interrupting the meeting. The bill defines "willfully interrupting" to mean intentionally engaging in a behavior during a meeting that "substantially impairs or renders infeasible the orderly conduct of the meeting." The bill requires that before removing the individual, the presiding officer of the legislative body or a law enforcement officer issue a warning to the individual that they are disrupting the proceedings and a request that the individual curtail their disruptive behavior or be subject to removal.

ANALYSIS & DISCUSSION
During the pandemic, remote participation in SVCE Board and standing committees has given Board members and the public additional flexibility and access to meetings. AB 1944 (Lee and C. Garcia) modernizes the Brown Act requirement to post addresses of all teleconference locations so only public places would be listed.
on the meeting notice and agenda. This will help maintain privacy for any Board members who may be joining the meeting from their home. Additionally, AB 1944 ensures the public’s access to remote meetings by requiring a video stream and an option for the public to provide remote comment. On SB 1100, additional clarity on the definition of a person who is willfully interrupting a meeting and the process to remove that person can help keep meetings moving in an orderly way.

**STRATEGIC PLAN**
SVCE’s Board-adopted Strategic Plan identifies engaging the public as a goal of SVCE. Remote meetings and the civil flow of remote meetings will provide more access and better public engagement.

**ALTERNATIVE**
The SVCE Board could choose to not engage on AB 1944 and SB 1100 or to take a position to oppose the bills.

**FISCAL IMPACT**
Continuing to conduct remote Board of Directors and Standing Committee meetings will not increase the cost of meetings.
Staff Report – Item 1j

Item 1j: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: George Tyson, Chair of the Executive Committee
Neysa Fligor, Vice Chair of the Executive Committee

Date: 3/9/2022

The Executive Committee met February 25, 2022 and received presentations from staff on “doubling down” on decarbonization programs, reach codes, details on how to allocate the $3 million for customer relief as directed by the Board of Directors at the February Board of Directors meeting, and a request to recommend the SVCE Board of Directors delegate authority to the CEO to amend existing renewable resources power purchase agreements (PPAs) and energy storage service agreements (ESSAs).

Director of Decarbonization and Grid Innovation Programs Justin Zagunis presented potential options for the allocation of the approved additional program funds in the amount of $17 million; the Committee provided input on the presentation being brought to the Board of Directors for their consideration to approve these funding allocations.

Manager of Energy Services Zoe Elizabeth presented on the ongoing reach code support effort which included new construction reach codes and existing building electrification policies; she will be providing a presentation at the March 9, 2022 Board of Directors meeting.

At last month’s Board of Directors meeting, the Board of Directors approved $3 million for customer relief and requested staff bring back how those funds would be spent. Staff presented three options to the Executive Committee for their consideration of a recommendation to the full Board of Directors. Of those three options, the Executive Committee voted to approve staff’s recommendation of multiple direct bill credits in the amount of $12.50 for eight months. This item is on the Consent Calendar for the Board’s consideration.

Lastly, the Executive Committee received a presentation from Director of Power Resources Monica Padilla with a request to recommend that the SVCE Board of Directors approve to delegate additional authority to the CEO to amend existing PPAs or ESSAs within a set of guidelines. The Executive Committee voted to approve staff’s recommendation, and the item is on the Consent Calendar for the SVCE Board of Directors consideration.

Materials from the February 25, 2022 meeting can be found here: SVCE Executive Committee Meeting Materials, 2/25/22

The next meeting of the Executive Committee will be March 25, 2022 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.
Item 1k: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 3/9/2022

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.
The Audit Committee met Thursday, March 3, 2022, and selected me to serve as Chair and Director Abe-Koga to serve as Vice Chair of the 2022 Audit Committee.

Three of the four members of the Audit Committee changed from 2021 to 2022. Hung Wei (Cupertino), Evelyn Chua (Milpitas), and Yvonne Martinez Beltran (Morgan Hill) were members of the Audit Committee in 2021; in 2022, Director Margaret Abe-Koga (Mountain View), Alternate Director Sergio Lopez (Campbell), and Vickie Rahman, City of Gilroy Finance Analyst (Gilroy) joined the Audit Committee. Alternate Director Bryan Mekechuk (Monte Sereno) remained on the Audit Committee in 2022.

Amrit Singh, CFO and Director of Administrative Services, gave an overview of the Audit Committee’s role and the annual audit of the financial statements. Mr. Singh explained that it is SVCE’s policy to solicit proposals for financial audit services at least every five years; since this is Pisenti & Brinker LLP’s fifth audit, Staff will issue an RFP for financial audit services in Spring/Summer 2022.

Next, SVCE Administrative Services Manager Kevin Armstrong and Sr. Management Analyst Nik Zanotto gave a presentation to the Audit Committee on SVCE’s Information Technology Audit, which was completed in September 2021, and Automated Meter Infrastructure (AMI) audit, which started in January 2022. The AMI audit is mandated by the CPUC and occurs every three years; this audit covers 2019 to 2021.

The independent auditors from Pisenti & Brinker LLP, Brett Bradford and Jenna Blanchard, presented results of the Fiscal Year 2020-21 financial audit. Mr. Bradford explained that they expect to report an unmodified (or “clean”) audit opinion and they did not find any significant deficiencies in internal control. The date of the audit opinion will be March 4, 2022.

Following the presentation, the Committee voted unanimously to recommend the SVCE Board of Directors accept the audit report and findings, pending discussion with the auditors and myself to discuss the audit. Subsequently, I spoke with the auditors in private and, after our conversation, confirmed the recommendation from the Audit Committee stands. This recommendation will be presented to the Board for consideration at the March 9, 2022, Board of Directors meeting.

Materials from this meeting can be found at the following link: SVCE Audit Committee Meeting, 3/3/22.

The next meeting of the Audit Committee is anticipated for early August and will be determined by Audit Committee member availability; materials will be posted no later than 72 hours in advance of the meeting.
Staff Report – Item 1m

Item 1m: Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Rob Rennie, Committee Chair

Date: 3/9/2022

The Legislative and Regulatory Ad Hoc Committee held its first meeting Thursday, March 3, 2022. I was selected as Chair, and Director Martinez Beltran was selected as Vice Chair of the Committee.

Staff reviewed SVCE’s mission and the policy focus areas which were identified when approving the formation of the committee in January 2022. The group discussed several pieces of legislation, including the CalCCA sponsored bill, AB 1814 (Grayson), and bills related to the Brown Act. As part of the discussion of the Brown Act bills, the Committee recommended the SVCE Board support AB 1944 and SB 1100, and support bills that will allow additional flexibility for elected bodies to meet remotely. This item is on consent for the SVCE Board of Director’s consideration.

The next meeting of the Legislative and Regulatory Ad Hoc Committee is to be determined based on member availability and legislative needs.
| **Item 1n:** California Community Power Report |
| --- | --- |
| **To:** | Silicon Valley Clean Energy Board of Directors |
| **From:** | Girish Balachandran, CEO |
| **Date:** | 3/9/2022 |

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 a special meeting on Friday, February 25, 2022.

This special meeting of the CC Power Board was held to approve the Goal Line Long Duration Storage (LDS) Project and associated agreements; the Board voted unanimously to approve the project. Materials from the special board meeting can be found here on the CC Power website: [CC Power Meeting, 2/25/22](https://cacommunitypower.org/meetings/)

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://cacommunitypower.org/meetings/](https://cacommunitypower.org/meetings/)
Staff Report – Item 2

Item 2: Receive Audit Results and Accept the Findings from Independent Auditor

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
             Kevin Armstrong, Administrative Services Manager

Date: 3/9/2022

RECOMMENDATION

AUDIT COMMITTEE RECOMMENDATION
At the March 3, 2022 meeting of the Audit Committee, committee members received a presentation by the Independent Auditor discussing the status of the audit and the preliminary auditor’s opinion. The Audit Committee also receive a draft of the financial report.

BACKGROUND
In accordance with Financial Policy #1 (FP1), Accounting Policy, the annual audit of the financial statements has been completed and the report prepared by Pisenti & Brinker, LLP has been issued to the Agency. The auditors have rendered a clean opinion and found “the financial statements referred to above present fairly, in all material respects, the financial position of SVCE as of September 30, 2021 and 2020 and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.”

Basic Financial Statements
The Statement of Net Position presents information about assets and liabilities with the difference between the two reported as net position. The change in net position over time is an indicator of whether the financial position of the Agency is improving or deteriorating.

The Statement of Revenues, Expenses and Changes in Net Position reports how net position changed during the year and present a comparison between operating and non-operating revenues and operating and non-operating expenses. Operating revenues and expenses are related to the Agency’s principal business of providing carbon-free electricity.

The Statement of Cash Flows reports the cash provided and used by operating activities, as well as other sources and uses, such as financing and investing activities.

Notes to the Financial Statements
Various notes provide additional information that is essential to a full understanding of the information provided in the basic financial statements. These are found immediately following the financial statements to which they refer.
ANALYSIS & DISCUSSION
The following represents highlights as of September 30, 2021:

- As of September 30, 2021, total assets were $207.2 million, with $206.8 million of current assets. Current assets are mostly comprised of $158.8 million of cash and cash equivalents, $26.0 million in accounts receivable, $14.4 million in accrued revenue, $726 thousand in deposits, and $4.0 million in restricted cash. The total of current assets decreased during the fiscal year as a result of SVCE’s operating deficit.

- As of September 30, 2021, total liabilities were $41.1 million. Current liabilities consist mostly of the cost of electricity delivered to customers that is not yet due to be paid by SVCE. Other components include taxes and surcharges due to other governments and various other accrued liabilities. Noncurrent liabilities of $7.0 million consist of supplier security deposits provided as cash, rather than letters of credit.

- As of September 30, 2021, total revenues were $242.6 million primarily from the sale of carbon-free electricity. Operating revenues exceeded the cost of electricity by $4.0 million resulting in an operating margin of 1.7%.

- As of September 30, 2021, total expenses were $257.8 million. The decrease in operating expenses from fiscal year 2020 to 2021 is largely the result of a decline in energy costs. Expenses for staff compensation, consulting, and other general and administrative expenses increased in 2021 as the organization grew to support its operations and meet the challenges of a changing business landscape. Given the COVID pandemic, SVCE chose to maintain its rate discount, and as a result required withdrawals from reserves to fund operations.

STRATEGIC PLAN
This report supports the fiscal management goals of the strategic plan.

ALTERNATIVE
There is no alternative to this recommendation as the financial audit is a requirement of Board Policy FP1.

FISCAL IMPACT
During Fiscal Year 2020-21, SVCE’s total expenses exceeded total revenues, resulting in a decrease to Net Position of $15.1 million.

SVCE’s Auditors, Pisenti & Brinker, LLP, issued an unqualified (“clean”) opinion on the Agency’s financials for the fiscal year ended September 30, 2021.

ATTACHMENTS
1. Audited Financials for the fiscal year ended September 30, 2021
2. SVCE Representation Letter
3. Letter of Significant Deficiencies or Material Weaknesses
Silicon Valley Clean Energy Authority

Financial Statements
Years Ended:

September 30, 2021
September 30, 2020

With Report of Independent Auditors
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Independent Auditor’s Report

To the Board of Directors
Silicon Valley Clean Energy Authority
Sunnyvale, California

Report on the Financial Statements

We have audited the accompanying financial statements of Silicon Valley Clean Energy Authority (SVCE), as of and for the years ended September 30, 2021 and 2020, and the related notes to the financial statements, which collectively comprise SVCE’s basic financial statements as listed in the table of contents.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor’s judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of SVCE as of September 30, 2021 and 2020 and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.
Independent Auditor’s Report (continued)

Other Matters

Accounting principles generally accepted in the United States of America require that the management’s discussion and analysis as listed in the table of contents be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Santa Rosa, California
March 4, 2022
The Management’s Discussion and Analysis provides an overview of Silicon Valley Clean Energy Authority’s (SVCE) financial activities as of and for the years ended September 30, 2021 and 2020. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of SVCE was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

SVCE was created as a California Joint Powers Authority (JPA) on March 31, 2016. SVCE was established to provide electric power at competitive costs as well as to provide other benefits within Santa Clara County, including reducing energy related greenhouse gas emissions, securing energy supply and price stability, and providing energy efficiencies and local economic benefits. Governed by a board of directors (Board) consisting of elected representatives from each jurisdiction, SVCE has the rights and powers to set rates for the electricity it furnishes, incur indebtedness, and issue bonds or other obligations. SVCE is responsible for the acquisition of electric power for its service area. SVCE serves the unincorporated areas of Santa Clara County and the cities and towns of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, and Sunnyvale.
Financial Reporting

SVCE presents its financial statements as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with generally accepted accounting principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

Contents of this report

This report is divided into the following sections:

- Management’s discussion and analysis.

- The basic financial statements:
  - The Statements of Net Position include all of SVCE’s assets, liabilities, and net position and provide information about the nature and amount of resources and obligations at a specific point in time.
  - The Statements of Revenues, Expenses, and Changes in Net Position report all of SVCE’s revenue and expenses for the years shown.
  - The Statements of Cash Flows report the cash provided and used by operating activities, as well as other sources and uses, such as financing and investing activities.
  - Notes to the Basic Financial Statements provide additional details and information related to the basic financial statements.
FINANCIAL HIGHLIGHTS

The following table is a summary of SVCE’s assets, liabilities, and net position, and a discussion of significant changes for the years ended September 30:

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td>$ 206,813,185</td>
<td>$ 220,538,554</td>
<td>$ 177,676,248</td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net</td>
<td>316,766</td>
<td>119,175</td>
<td>148,038</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>45,330</td>
<td>145,130</td>
<td>129,060</td>
</tr>
<tr>
<td>Total noncurrent assets</td>
<td>362,096</td>
<td>264,305</td>
<td>277,098</td>
</tr>
<tr>
<td>Total assets</td>
<td>207,175,281</td>
<td>220,802,859</td>
<td>177,953,346</td>
</tr>
<tr>
<td>Current liabilities</td>
<td>34,061,545</td>
<td>39,659,471</td>
<td>34,958,389</td>
</tr>
<tr>
<td>Noncurrent liabilities</td>
<td>7,031,250</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>41,092,795</td>
<td>39,659,471</td>
<td>34,958,389</td>
</tr>
<tr>
<td>Net position</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in capital assets</td>
<td>316,766</td>
<td>119,175</td>
<td>148,038</td>
</tr>
<tr>
<td>Restricted for security collateral</td>
<td>4,000,216</td>
<td>4,500,000</td>
<td>5,000,000</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>161,765,504</td>
<td>176,524,213</td>
<td>137,846,919</td>
</tr>
<tr>
<td>Total net position</td>
<td>$ 166,082,486</td>
<td>$ 181,143,388</td>
<td>$ 142,994,957</td>
</tr>
</tbody>
</table>

**Current Assets**

Current assets were approximately $206,813,000 at the end of 2021 and are mostly comprised of cash and cash equivalents, accounts receivable, and accrued revenue. Accrued revenue differs from accounts receivable in that it is the result of electricity use by SVCE customers before invoicing to those customers has occurred. Total current assets decreased in 2021 primarily because of a drop in the rates SVCE charges its customers.
Capital Assets

Capital assets were approximately $317,000 at the end of 2021, net of accumulated depreciation, primarily consisting of furniture and electronic equipment for use in SVCE’s administrative office. SVCE does not own assets used for electric generation or distribution. The increase from 2020 relates to the acquisition of furniture and leasehold improvements.

Other Noncurrent Assets

Other noncurrent assets consist of various deposits for energy supply, regulatory and other operating purposes. The deposits have remained relatively stable over the last three years.

Current Liabilities

This category consists mostly of the cost of electricity delivered to customers that is not yet due to be paid by SVCE. Other components include taxes and surcharges due to other governments and various other accrued liabilities. Current liabilities had minor fluctuations from 2019 to 2021 as purchasing requirements were relatively stable.

Noncurrent Liabilities

Noncurrent liabilities increased in 2021 as a result of collateral deposits from energy suppliers held by SVCE that are not due to be returned within a year.
The following table is a summary of SVCE’s results of operations and a discussion of significant changes for the years ended September 30:

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues</td>
<td>$ 242,600,167</td>
<td>$ 297,043,720</td>
<td>$ 292,473,135</td>
</tr>
<tr>
<td>Nonoperating revenues</td>
<td>273,985</td>
<td>1,729,841</td>
<td>1,230,787</td>
</tr>
<tr>
<td>Total income</td>
<td>242,874,152</td>
<td>298,773,561</td>
<td>293,703,922</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>257,748,103</td>
<td>260,274,619</td>
<td>228,999,528</td>
</tr>
<tr>
<td>Nonoperating expenses</td>
<td>186,951</td>
<td>350,511</td>
<td>144,157</td>
</tr>
<tr>
<td>Total expenses</td>
<td>257,935,054</td>
<td>260,625,130</td>
<td>229,143,685</td>
</tr>
<tr>
<td>Change in net position</td>
<td>$ (15,060,902)</td>
<td>$ 38,148,431</td>
<td>$ 64,560,237</td>
</tr>
</tbody>
</table>

**Operating Revenues**

SVCE’s operating revenues are derived from the sale of electricity to commercial and residential customers throughout its territory. SVCE’s customer base was fairly stable each year, with approximately 280,000 customers enrolled. SVCE decreased the rates it charges to customers during 2021, resulting in a planned drop in operating revenues. SVCE has sufficient cash reserves to absorb the impact of the resulting decrease in net position. SVCE reports its revenue net of an allowance for uncollectible accounts.

From 2019 to 2020, the increase in revenue is directly related to changes in billing rates and customer usage patterns. In 2020, SVCE received $6,600,000 in revenue from damages as the result of the termination of one of its long-term energy supply contracts that failed to meet certain development milestones.

Nonoperating revenues, which primarily consists of investment income, decreased in 2021 because of lower interest rates and increased in 2020 due to higher interest rates.

**Operating Expenses**

SVCE’s largest operating expense is the purchase of electricity for retail customer use. SVCE procures energy from a variety of sources and focuses on purchasing at competitive costs and maintaining a balanced renewable power portfolio. Expenses for staff compensation, consulting, data management and other general and administrative expenses increased each year as the organization continued to grow to support its business demands.
ECONOMIC OUTLOOK

Silicon Valley Clean Energy serves approximately 96% of all eligible customers in the service area, and that rate of participation is expected to remain stable in 2021.

SVCE’s mission is to reduce dependence on fossil fuels by providing carbon-free, affordable, and reliable electricity and innovative programs for the SVCE community. Since its launch, SVCE has:

- Committed about $1.6 billion in renewable energy contracts
- Secured over 720 MW in renewable energy projects, including 173 MW of energy storage
- Provided $77 million in on-bill savings
- Reduced 35% regional energy-related emissions (since 2017)
- Avoided 575 million pounds of greenhouse gas emissions
- Provided $21 million in customer offers and services
- Processed more than 200 customer rebates for heat pump water heaters
- Helped lead the formation of California Community Power and California Community Choice Financing Authority
- Achieved annual savings of $1.9M from securing California’s first ever Clean Energy Project Revenue Bonds
- Achieved ‘A’ credit rating from S&P Global with a stable outlook and a Moody’s Baa2, stable rating.

SVCE procures energy consistent with its Board-approved Energy Risk Management Policy that aligns customer demand for clean energy with short and long-term purchases of clean energy resources. SVCE complies with state laws and its own targets for renewable and greenhouse gas (GHG) free energy. California’s Renewable Portfolio Standard ("RPS") requires load-serving entities such as SVCE to supply their retail sales with minimum quantities of eligible renewable energy both on an annual basis and through long-term commitments of greater than ten years. The state has also directed load serving entities (LSEs) for new clean energy and capacity resources by 2026 to meet grid reliability goals. Senate Bill 100 directs all LSEs to procure 60% of their portfolios from RPS-eligible resources by 2030, and 100% of their retail sales from GHG-free resources (or eligible renewable resources) by 2045. SVCE’s current policy is to procure 100% of retail sales from GHG-free resources. To date SVCE has executed 13 RPS contracts of ten years or more in duration and has met its RPS requirements for long-term procurement. SVCE intends to solicit additional long-term renewable resources to meet Board-directed goals and as ordered by the CPUC under the Mid-term Reliability Procurement decision (R.20-05-003).
ECONOMIC OUTLOOK (continued)

SVCE uses a portfolio risk-management approach in its power purchasing program, seeking low-cost supply as well as diversity among technologies, production profiles, project sizes and locations, counterparties, length of contract, and timing of market purchases. SVCE’s procurement strategy through 2030 includes regularly procuring new and existing California renewables by 2030, via contracts with terms of 10 years or more. The strategy also includes investing in storage paired with solar, stand-alone storage, long-duration storage, and large hydroelectric resources. SVCE continually manages its forward load obligations and supply commitments with the objective of balancing cost stability and cost minimization. SVCE closely monitors its open positions for Portfolio Content Category 1 (“PCC 1”) renewable energy and carbon-free, non-RPS eligible, based on calendar-year targets. SVCE maintains its clean portfolio coverage targets of up to 100% in the near-term and leaves a greater portion open in the medium- to long-term, consistent with generally accepted industry practice.

SVCE also procures electric capacity or Resource Adequacy (“RA”), a California program jointly administered by the CPUC, the CEC, and CAISO. The RA resources ensure there will be enough supply in the right locations and with sufficient ramping capability to meet load in the CAISO market.

In fiscal year ending September 30, 2021, SVCE’s retail load dropped by about 3% from the prior fiscal year to 3.75 Terrawatt-hours (TWhrs). SVCE expects retail load to return to pre-Covid levels at 3.95 TWhrs for Fiscal Year ending September 30, 2022. Over the next ten years, SVCE expects load to grow at about 0.5% per year. SVCE’s long-term load forecast is driven primarily by the number and types of customers that SVCE expects to serve. The forecast also incorporates load-modifying effects of increasing electric vehicle adoption and charging, behind the meter solar and/or storage (via net energy metering), and energy efficiency.

Senate Bill 237 was passed in 2018 and increased the cap for direct access participation for large commercial and industrial customer load. In June 2021, the CPUC submitted a recommendation to the Legislature which opposed further expansion of direct access. The CPUC stated that, when compared to maintaining the current cap, expanding direct access risks increases in greenhouse gas emissions and could significantly complicate the State’s efforts to maintain grid reliability. A reduction in statewide commercial and industrial electric load due to COVID in 2020 and 2021 has created additional capacity under the statewide direct access (DA) cap. The impact is expected to be minimal to SVCE, with less than 2% of current load at risk. SVCE is being proactive in anticipation of potential future direct access expansion. In 2019, the Board of Directors approved a Commercial Pricing Policy that allows SVCE to be innovative in customized contract offerings to customers that supports long-term customer retention.
ECONOMIC OUTLOOK (continued)

SVCE expects to continue to provide competitive electric rates. The unpredictable PG&E customer exit fee has been a barrier to providing stable rates, yet the exit fee will be significantly lower in 2022 than in recent years. SVCE has prioritized regulatory and legislative work with respect to the exit fee process and has implemented a proactive approach on other regulatory and legislative issues, such as integrated resource planning and grid reliability. Additionally, SVCE’s commitment to building up healthy cash reserves has placed SVCE in a stable position to manage future regulatory and legislative risk including changes to the customer exit fees.

SVCE has a strong focus on continuing to build credit capacity through increased cash reserves, complying with the energy risk management policy and credit guidelines, and entering in favorable energy purchase commitments. SVCE received an investment grade credit rating in Summer 2020 from Moody’s and an ‘A’ credit rating from S&P Global in January 2021.

REQUEST FOR INFORMATION

This financial report is designed to provide SVCE’s customers and creditors with a general overview of SVCE’s finances and to demonstrate SVCE’s accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 333 W. El Camino Real, Suite 330, Sunnyvale, CA 94087.

Respectfully submitted,

Girish Balachandran, Chief Executive Officer
BASIC FINANCIAL STATEMENTS
# SILICON VALLEY CLEAN ENERGY AUTHORITY

## STATEMENTS OF NET POSITION

### SEPTEMBER 30, 2021 AND 2020

The accompanying notes are an integral part of these financial statements.

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 158,808,348</td>
<td>$ 159,924,735</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>25,990,183</td>
<td>31,458,312</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>14,410,621</td>
<td>17,517,224</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>269,012</td>
<td>107,318</td>
</tr>
<tr>
<td>Other receivables</td>
<td>230,485</td>
<td>208,000</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>2,378,236</td>
<td>2,590,546</td>
</tr>
<tr>
<td>Deposits</td>
<td>726,084</td>
<td>4,232,419</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,000,216</td>
<td>4,500,000</td>
</tr>
<tr>
<td>Total current assets</td>
<td>206,813,185</td>
<td>220,538,554</td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>316,766</td>
<td>119,175</td>
</tr>
<tr>
<td>Deposits</td>
<td>45,330</td>
<td>145,130</td>
</tr>
<tr>
<td>Total noncurrent assets</td>
<td>362,096</td>
<td>264,305</td>
</tr>
<tr>
<td>Total assets</td>
<td>207,175,281</td>
<td>220,802,859</td>
</tr>
</tbody>
</table>

| LIABILITIES         |                       |                       |
| Current liabilities |                       |                       |
| Accrued cost of electricity | 30,827,091       | 36,744,837           |
| Accounts payable    | 1,537,376             | 1,333,121            |
| Other accrued liabilities | 642,043             | 425,732              |
| User taxes and energy surcharges due to other governments | 1,055,035         | 1,155,781            |
| Total current liabilities | 34,061,545       | 39,659,471           |

| Noncurrent liabilities |                       |                       |
| Supplier security deposits | 7,031,250        | -                     |
| Total liabilities      | 41,092,795           | 39,659,471           |

| **NET POSITION**     |                       |                       |
| Investment in capital assets | 316,766             | 119,175              |
| Restricted for security collateral | 4,000,216        | 4,500,000            |
| Unrestricted          | 161,765,504          | 176,524,213          |
| Total net position    | $ 166,082,486        | $ 181,143,388        |
### Silicon Valley Clean Energy Authority

#### Statements of Revenues, Expenses, and Changes in Net Position

Years Ended September 30, 2021 and 2020

The accompanying notes are an integral part of these financial statements.

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$241,484,417</td>
<td>$295,515,259</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>1,014,531</td>
<td>1,315,254</td>
</tr>
<tr>
<td>Other income</td>
<td>101,219</td>
<td>213,207</td>
</tr>
<tr>
<td><strong>Total operating revenues</strong></td>
<td>242,600,167</td>
<td>297,043,720</td>
</tr>
</tbody>
</table>

| **Operating Expenses**         |                 |                 |
| Cost of electricity            | 238,586,555     | 244,925,916     |
| Contract services              | 9,490,474       | 8,970,429       |
| Staff compensation and benefits| 5,474,124       | 4,603,241       |
| General and administration     | 4,109,299       | 1,722,054       |
| Depreciation                   | 87,651          | 52,979          |
| **Total operating expenses**   | 257,748,103     | 260,274,619     |
| Operating income (loss)        | (15,147,936)    | 36,769,101      |

| **Nonoperating Revenues (Expenses)** |                 |                 |
| Interest income                 | 273,985         | 1,729,841       |
| Financing costs                  | (186,951)       | (350,511)       |
| Nonoperating revenues, net       | 87,034          | 1,379,330       |

| **Change in Net Position**      |                 |                 |
| Net position at beginning of year| 181,143,388     | 142,994,957     |
| Net position at end of year     | $166,082,486    | $181,143,388    |
## SILICON VALLEY CLEAN ENERGY AUTHORITY
### STATEMENTS OF CASH FLOWS
#### YEARS ENDED SEPTEMBER 30, 2021 AND 2020

The accompanying notes are an integral part of these financial statements.

### CASH FLOWS FROM OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipts from customers</td>
<td>$ 255,739,767</td>
<td>$ 303,275,935</td>
</tr>
<tr>
<td>Other operating receipts</td>
<td>13,609,316</td>
<td>3,433,790</td>
</tr>
<tr>
<td>Payments to suppliers for electricity</td>
<td>(247,219,228)</td>
<td>(247,069,273)</td>
</tr>
<tr>
<td>Payments for other goods and services</td>
<td>(13,523,208)</td>
<td>(10,511,456)</td>
</tr>
<tr>
<td>Payments for staff compensation and benefits</td>
<td>(5,247,813)</td>
<td>(4,542,701)</td>
</tr>
<tr>
<td>Payments of taxes and surcharges to other governments</td>
<td>(4,766,832)</td>
<td>(5,640,255)</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td>(1,407,998)</td>
<td>38,946,040</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finance costs paid</td>
<td>(186,951)</td>
<td>(285,301)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments to acquire capital assets</td>
<td>(295,207)</td>
<td>(14,151)</td>
</tr>
</tbody>
</table>

### CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>273,985</td>
<td>1,729,841</td>
</tr>
<tr>
<td><strong>Net change in cash and cash equivalents</strong></td>
<td>(1,616,171)</td>
<td>40,376,429</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of year</td>
<td>164,424,735</td>
<td>124,048,306</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of year</strong></td>
<td>$ 162,808,564</td>
<td>$ 164,424,735</td>
</tr>
</tbody>
</table>

### Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents (unrestricted)</td>
<td>$ 158,808,348</td>
<td>$ 159,924,735</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,000,216</td>
<td>4,500,000</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents</strong></td>
<td>$ 162,808,564</td>
<td>$ 164,424,735</td>
</tr>
</tbody>
</table>
## RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income (loss)</td>
<td>$(15,147,936)</td>
<td>$36,769,101</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>87,651</td>
<td>52,979</td>
</tr>
<tr>
<td>Revenue adjusted for uncollectible accounts</td>
<td>1,100,000</td>
<td>-</td>
</tr>
<tr>
<td>(Increase) decrease in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>4,368,129</td>
<td>(1,181,498)</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>3,106,604</td>
<td>2,054,876</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>(161,694)</td>
<td>59,339</td>
</tr>
<tr>
<td>Other receivables</td>
<td>(22,485)</td>
<td>(190,100)</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>212,310</td>
<td>(1,321,841)</td>
</tr>
<tr>
<td>Current deposits</td>
<td>3,606,134</td>
<td>(1,987,933)</td>
</tr>
<tr>
<td>Increase (decrease) in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>(5,917,746)</td>
<td>4,612,528</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>214,220</td>
<td>377,109</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>216,311</td>
<td>(186,990)</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>(100,746)</td>
<td>(83,210)</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>7,031,250</td>
<td>(28,320)</td>
</tr>
<tr>
<td>Net cash provided (used) by operating activities</td>
<td>$(1,407,998)</td>
<td>$38,946,040</td>
</tr>
</tbody>
</table>
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

Silicon Valley Clean Energy Authority (SVCE) is a Joint Powers Authority created on March 31, 2016. As of September 30, 2021, parties to its Joint Powers Agreement consist of the following local governments:

- Unincorporated areas of Santa Clara County
- Campbell
- Cupertino
- Gilroy
- Los Altos
- Los Altos Hills
- Los Gatos
- Milpitas
- Monte Sereno
- Morgan Hill
- Mountain View
- Saratoga
- Sunnyvale

SVCE is separate from and derives no financial support from its members. SVCE is governed by a Board of Directors whose membership is composed of elected officials representing the member governments.

SVCE was formed to study, promote, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing these objectives. A core function of SVCE is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

SVCE began its energy delivery operations in April 2017. Electricity is acquired from commercial and municipal suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company (PG&E).
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Basis of Accounting

SVCE’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

SVCE’s operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted and unrestricted.

When both restricted and unrestricted resources are available for use, it is SVCE’s policy to use restricted resources first, then unrestricted resources as they are needed.

Cash and Cash Equivalents

For purpose of the Statements of Cash Flows, SVCE defines cash and cash equivalents to include cash on hand and demand deposits. SVCE has cash that is restricted under various security agreements. This is reported as restricted cash on the Statements of Net Position and the Statements of Cash Flows.

Deposits

Various energy contracts entered into by SVCE require SVCE to provide a supplier with a security deposit. These deposits are generally held for the term of the contract. Deposits are classified as current or noncurrent assets depending on the length of time the deposits will be held. While these energy contract related deposits make up the majority of this item, other components of deposits include those for regulatory and other operating purposes.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CAPITAL ASSETS AND DEPRECIATION

SVCE’s policy is to capitalize furniture and equipment valued over $1,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, five years for automobiles and seven years for furniture and leasehold improvements. SVCE does not own any electric generation assets.

NET POSITION

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. SVCE did not have any outstanding borrowings as of September 30, 2021 or 2020.

Restricted: This component of net position consists of constraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted: This component of net position consists of net position that does not meet the definition of “investment in capital assets” or “restricted”.

OPERATING AND NON-OPERATING REVENUE

Revenue from the sale of electricity to customers is considered operating revenue. Interest income is considered non-operating revenue.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

**REVENUE RECOGNITION**

SVCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the period and electricity estimated to have been delivered, but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded. Revenue is presented net of estimated uncollectible charges.

**OPERATING AND NONOPERATING EXPENSES**

Operating expenses include the costs of electricity and services, administrative expenses, and depreciation on capital assets. Expenses not meeting this definition are reported as nonoperating expenses.

**ELECTRICAL POWER PURCHASED**

During the normal course of business SVCE purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from SVCE’s participation in the California Independent System Operator’s (CAISO) centralized market. The cost of electricity and capacity is recognized as “Cost of Electricity” in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California’s Renewable Portfolio Standards (RPS) and self-imposed benchmarks, SVCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). SVCE obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. An expense is recognized at the point that the cost of the Certificate is due and payable to the supplier.

SVCE purchases capacity commitments from qualifying generators to comply with the California Energy Commission’s Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to CAISO to ensure the safe and reliable operation of the grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

STAFFING COSTS

SVCE pays employees bi-weekly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan as they come due. SVCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. SVCE provides compensated time off, and the related liability is recorded in these financial statements.

INCOME TAXES

SVCE is a Joint Powers Authority under the provision of the California Government Code. As such it is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements. These reclassifications did not result in any change in previously reported net position or change in net position.
2. CASH AND CASH EQUIVALENTS

SVCE maintains its cash in interest and non-interest-bearing accounts. SVCE’s deposits are subject to California Government Code Section 16521 which requires banks to collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of $250,000 by 110%. SVCE monitors its risk exposure on an ongoing basis. SVCE’s investment policy permits the investment of funds in depository accounts, certificates of deposit, and the California Local Agency Investment Funds (LAIF). As of September 30, 2021, all of SVCE’s cash and cash equivalents were held in depository accounts.

At the end of each year, SVCE had restricted cash that was held as collateral for its bank line of credit, as well as collateral held in accordance with certain security agreements with suppliers.

3. ACCOUNTS RECEIVABLE AND ACCRUED REVENUE

Accounts receivable were as follows as of September 30:

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable</td>
<td>$28,590,183</td>
<td>$32,958,312</td>
</tr>
<tr>
<td>from customers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowance for</td>
<td>(2,600,000)</td>
<td>(1,500,000)</td>
</tr>
<tr>
<td>uncollectible</td>
<td></td>
<td></td>
</tr>
<tr>
<td>accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net accounts</td>
<td>$25,990,183</td>
<td>$31,458,312</td>
</tr>
<tr>
<td>receivable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The majority of account collections will occur within the first few months following customer invoicing. SVCE estimates that a portion of the billed accounts will not be collected. SVCE continues collection efforts on accounts in excess of de minimis balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, SVCE continues to be successful in collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years and is adjusted for write-offs.
4. MARKET SETTLEMENTS RECEIVABLE

SVCE receives generation scheduling and other services from a scheduling coordinator registered with CAISO. Energy settlements due from the scheduling coordinator were approximately $269,000 and $107,000 as of September 30, 2021 and 2020, respectively.

5. CAPITAL ASSETS

Capital asset activity for the years ended September 30, 2021 and 2020 was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Furniture &amp; Equipment</th>
<th>Leasehold Improvements</th>
<th>Accumulated Depreciation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balances at Sept</td>
<td>$245,351</td>
<td>$5,263</td>
<td>($102,576)</td>
<td>$148,038</td>
</tr>
<tr>
<td>30, 2019</td>
<td>24,116</td>
<td>-</td>
<td>(52,979)</td>
<td>(28,863)</td>
</tr>
<tr>
<td>Additions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balances at Sept</td>
<td>$269,467</td>
<td>5,263</td>
<td>($155,555)</td>
<td>$119,175</td>
</tr>
<tr>
<td>30, 2020</td>
<td>212,629</td>
<td>72,613</td>
<td>(87,651)</td>
<td>197,591</td>
</tr>
<tr>
<td>Additions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balances at Sept</td>
<td>$482,096</td>
<td>$77,876</td>
<td>($243,206)</td>
<td>$316,766</td>
</tr>
<tr>
<td>30, 2021</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. DEBT

As of September 30, 2021 and 2020, SVCE had a bank line of credit in the amount of $35,000,000 to provide additional liquidity for operations as needed. The line of credit matures in October 2022.

As of September 30, 2021, SVCE had not drawn any cash proceeds on the line of credit. However, the line of credit was used to issue Letters of Credit to energy suppliers which totaled approximately $2,682,000. These Letters of Credit reduce the available balance on the revolving line of credit.
7. DEFINED CONTRIBUTION RETIREMENT PLAN

SVCE provides retirement benefits through the Silicon Valley Clean Energy Authority Public Agency Retirement System Defined Contribution Plan (Plan). The Plan is a defined contribution 401(a) Retirement Plan established to provide benefits at retirement to employees of certain qualified employers admitted by the Plan. The Plan is administered by the Public Agency Retirement System (PARS). At September 30, 2021 and 2020, SVCE had 27 and 25 plan participants, respectively. SVCE is required to contribute up to 10% of covered payroll as a match to required employee contributions. SVCE contributed approximately $414,000 and $413,000 during the years ended September 30, 2021 and 2020, respectively. Plan provisions and contribution requirements as they apply to SVCE are established and may be amended by the Board of Directors.

8. RISK MANAGEMENT

SVCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, SVCE purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. SVCE has general liability coverage of $2,000,000 with a deductible of $500.

SVCE maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market.

Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties’ financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, SVCE enters into netting arrangements whenever possible and, where appropriate, obtains collateral and other performance assurances from counterparties.
9. PURCHASE COMMITMENTS

POWER AND ELECTRIC CAPACITY

In the ordinary course of business, SVCE enters into various power purchase agreements to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind and hydro-electric facilities.

SVCE enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products and to ensure stable and competitive electric rates for its customers.

The following table represents the expected, undiscounted, contractual obligations outstanding as of September 30, 2021:

<table>
<thead>
<tr>
<th>Years ending September 30,</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>235,000,000</td>
</tr>
<tr>
<td>2023</td>
<td>165,000,000</td>
</tr>
<tr>
<td>2024</td>
<td>134,000,000</td>
</tr>
<tr>
<td>2025</td>
<td>109,000,000</td>
</tr>
<tr>
<td>2026</td>
<td>103,000,000</td>
</tr>
<tr>
<td>2027-2043</td>
<td>1,077,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 1,823,000,000</strong></td>
</tr>
</tbody>
</table>

As of September 30, 2021, SVCE had non-cancelable contractual commitments to professional service providers through December 2024 for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be $10.3 million.
10. OPERATING LEASE

In December 2019 SVCE amended its non-cancelable lease for its office premises, extending the lease through June 30, 2025.

Rental expense for SVCE’s office space was $453,000 and $395,000 for the years ended September 30, 2021 and 2020, respectively.

As of September 30, 2021, future minimum lease payments under the lease are as follows:

<table>
<thead>
<tr>
<th>Years ending September 30,</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>$492,693</td>
</tr>
<tr>
<td>2023</td>
<td>507,480</td>
</tr>
<tr>
<td>2024</td>
<td>522,705</td>
</tr>
<tr>
<td>2025</td>
<td>400,770</td>
</tr>
<tr>
<td>Total</td>
<td>$1,923,648</td>
</tr>
</tbody>
</table>

11. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for future fiscal years ending after September 30, 2021:

GASB has approved GASB Statement No. 87, Leases, GASB Statement No. 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements, GASB Statement No. 96, Subscription-Based Information Technology Arrangements; and GASB Statement No. 97, Certain Component Unit Criteria and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans. Management is analyzing its activity to determine the effect of the new guidance on its operating results and financial condition.
March 4, 2022

Pisenti & Brinker LLP
3562 Round Barn Circle, Suite 200
Santa Rosa, CA 95403

This representation letter is provided in connection with your audits of the basic financial statements of Silicon Valley Clean Energy Authority (SVCE) as of and for the years ended September 30, 2021 and 2020 for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, that as of March 4, 2022:

Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit arrangement letter dated May 14, 2020, for the preparation and fair presentation of the financial statements referred to above in accordance with U.S. GAAP.
2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.
4. We have complied with all aspects of laws, regulations and provisions of contracts and agreements that would have a material effect on the financial statements in the event of noncompliance. In connection therewith, we specifically represent that we are responsible for determining that we are not subject to the
requires of the Single Audit Act because we have not received, expended or otherwise been the beneficiary of the required amount of federal awards during the period of this audit.

5. We have reviewed, approved, and taken responsibility for the financial statements and related notes.

6. We have a process to track the status of audit findings and recommendations.

7. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable and reflect our judgment based on our knowledge and experience about past and current events, and our assumptions about conditions we expect to exist and courses of action we expect to take.

8. Related-party transactions have been recorded in accordance with the economic substance of the transaction and appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.

9. All events subsequent to the date of the financial statements, and for which U.S. GAAP requires adjustment or disclosure, have been adjusted or disclosed.

10. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.

11. We have no direct or indirect legal or moral obligation for any debt of any organization, public or private, that is not disclosed in the financial statements.

12. Deposit and investment risks have been properly and fully disclosed.

13. Capital assets are properly capitalized and depreciated.

14. We have complied with all aspects of laws, regulations and provisions of contracts and agreements that would have a material effect on the financial statements in the event of noncompliance. In connection therewith, we specifically represent that we are responsible for determining that we are not subject to the requires of the Single Audit Act because we have not received, expended or otherwise been the beneficiary of the required amount of federal awards during the period of this audit. We have no knowledge of any uncorrected misstatements in the financial statements.

15. We have no knowledge of any uncorrected misstatements in the financial statements.

Information Provided

16. We have provided you with:
   a. Access to all information of which we are aware that is relevant to the preparation and fair presentation of the basic financial statements such as records, documentation and other matters.
   b. Additional information that you have requested from us for the purpose of the audits.
   c. Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
   d. Minutes of the meetings of the governing boards and committees, or summaries of actions of recent meetings for which minutes have not yet been prepared.

17. All transactions have been recorded in the accounting records and are reflected in the basic financial statements.

18. We have disclosed to you the results of our assessment of risk that the basic financial statements may be materially misstated as a result of fraud.

19. It is our responsibility to establish and maintain internal control over financial reporting. One of the components of internal control is risk assessment. We hereby represent that our risk assessment process includes identification and assessment of risks of material misstatement due to fraud. We have shared with you our fraud risk assessment, including a description of the risks, our assessment of the magnitude and likelihood of misstatements arising from those risks, and the controls that we have designed and implemented in response to those risks.
20. We have no knowledge of allegations of fraud or suspected fraud affecting the entity’s basic financial statements involving:
   a. Management.
   b. Employees who have significant roles in internal control.
   c. Others where the fraud could have a material effect on the basic financial statements.
21. We have no knowledge of any allegations of fraud or suspected fraud affecting SVCE’s basic financial statements received in communications from employees, former employees, analysts, regulators, short sellers or others.
22. We have no knowledge of noncompliance or suspected noncompliance with laws and regulations.
23. We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements.
24. We have disclosed to you the identity of the entity’s related parties and all the related-party relationships and transactions of which we are aware.
25. We are aware of no significant deficiencies, including material weaknesses, in the design or operation of internal controls that could adversely affect SVCE’s ability to record, process, summarize and report financial data.
26. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
27. We have disclosed to you all guarantees, whether written or oral, under which SVCE is contingently liable. We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB Statement No. 62 (GASB-62), Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
28. We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
29. During the course of your audits, you may have accumulated records containing data that should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.
30. There are no:
   a. Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
   b. Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.
   c. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62.
31. SVCE has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.

Supplementary Information

32. With respect to the required supplementary information accompanying the financial statements:
   a. We acknowledge our responsibility for the presentation of such information.
b. We believe such information, including its form and content, is fairly presented in accordance with U.S. GAAP.
c. The methods of measurement and presentation have not changed from those used in the prior period.

33. With respect to the Management’s Discussion and Analysis presented as required by the Government Accounting Standards Board to supplement the financial statements:
   a. We acknowledge our responsibility for the presentation of such required supplementary information.
   b. We believe such required supplementary information is measured and presented in accordance with guidelines prescribed by U.S. GAAP.
   c. The methods of measurement or presentation have not changed from those used in the prior period.

Amrit Singh, CFO and Director of Administrative Services

Michael I Maher

Mike Maher, Maher Accountancy, Accountant
March 4, 2022

To Management and the Board of Directors
Silicon Valley Clean Energy Authority
333 W. El Camino Real, #330
Sunnyvale, California

In planning and performing our audits of the financial statements of Silicon Valley Clean Energy Authority (SVCE) as of and for the years ended September 30, 2021 and 2020, in accordance with auditing standards generally accepted in the United States of America, we considered SVCE’s internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of SVCE’s internal control. Accordingly, we do not express an opinion on the effectiveness of SVCE’s internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A deficiency in design exists when (a) a control necessary to meet the control objective is missing, or (b) an existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met. A deficiency in operation exists when a properly designed control does not operate as designed or when the person performing the control does not possess the necessary authority or competence to perform the control effectively.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity’s financial statements will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, we did not identify any deficiencies in internal control during our audits that we consider to be material weaknesses or significant deficiencies. However, material weaknesses or significant deficiencies may exist that were not identified.

This communication is intended solely for the information and use of management and the Board of Directors and is not intended to be, and should not be, used by anyone other than these specified parties.

PISENTI & BRINKER LLP

Brett Bradford
Partner
Staff Report – Item 3

Item 3: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 3/9/2022

REPORT

SVCE Staff Update
Tony Eulo joined the SVCE team on February 14, 2022 as Senior Manager of Public Sector Services. Tony will be working directly with SVCE member jurisdictions and others on advancing decarbonization programs, projects, and policies. Prior to joining SVCE, Tony worked for decades at the City of Morgan Hill on a wide variety of environmental programs, administrative issues, and utility services. Tony graduated from UC Davis with a B.S. degree in Environmental Policy Analysis and Planning.

Personnel Officer Update
Under the Personnel Authority granted to the CEO, SVCE has conducted interviews for two positions: a Manager position within the DGI group, and a coordinator position within the policy group.

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

1) CC Power, Amendment: Website design and marketing services, additional $7,500 added, new not to exceed $27,300, extends time to 12/31/22
2) Make Media Studios, Amendment: Photography and Videography Services, additional $18,000 added, new not to exceed $98,000
3) Keyes & Fox, Amendment: Legislative Support & Legal Representation, money redistributed amongst tasks
4) ADM, Amendment: Evaluation, Measurement and Verification Services, no changes to agreement cost or duration (new agreement signed)
5) Shute Mihaly & Weinberger, Agreement: Outside Counsel for Supplier Diversity, $30,000 split with four CCAs (SVCE portion $7,500).
6) Management Partners, Inc., Amendment: Management consulting services, time extended to 6/30/22
7) SMUD, Task Order: L1/L2 Multifamily Incentive Program Support, not to exceed $57,750.
8) Utility API, Amendment: Energy Data Exchange Platform Pilot, not to exceed $397,500, extends date to April 15, 2022.
**CEO Power Supply Agreements Executed**

<table>
<thead>
<tr>
<th>Counterparty Name</th>
<th>Execution/Effective Date</th>
<th>Transaction Type</th>
<th>Product</th>
<th>Start Date</th>
<th>End Date</th>
<th>Notional Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Coast Community Energy</td>
<td>2/15/2022</td>
<td>Sale</td>
<td>Resource Adequacy</td>
<td>4/1/2022</td>
<td>4/30/2022</td>
<td>$142,687.50</td>
</tr>
<tr>
<td>Central Coast Community Energy</td>
<td>12/12/2021</td>
<td>Purchase</td>
<td>Carbon Free Energy</td>
<td>1/1/2022</td>
<td>12/31/2022</td>
<td>$1,164,000</td>
</tr>
<tr>
<td>PG&amp;E</td>
<td>2/14/2022</td>
<td>Purchase</td>
<td>PCC-1 Renewable Energy</td>
<td>1/1/2022</td>
<td>12/31/2022</td>
<td>$2,800,590</td>
</tr>
</tbody>
</table>

These agreements are included in the Board packet as Appendix A.
Presentations & Relevant Meetings Attended by CEO
- Participated in CalCCA Monthly board, executive, and legislative meetings;
- Long-Duration Storage Super-JPA and RFO: Updates to various CCAs, CPUC, CAISO and legislative staff
- CC Power Board Special Meeting, February 25th, report included on the Consent Calendar

ATTACHMENTS
1. Decarb & Grid Innovation Programs Update, March 2022
2. Account Services & Community Relations Update, March 2022
3. Legislative and Regulatory Update, March 2022
4. Agenda Look Ahead, March – July 2022
5. Board Action Requested, March 2022 Update
Heat Pump Water Heater

Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters

Funding: $1.15M
Goal: 220 HPWH by 2022

Lights On Silicon Valley

Provide incentives for enrolling solar and battery systems in the SVCE grid services program

Funding: ≤ $7.4M
Goal: 750 Single-Family + 5 Multi-Family Projects Completed by 2023
**CALeVIP**

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

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

**FutureFit Fundamentals**

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

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

*Note: $1.5M of the reserved funding is undergoing a final review and validation.*
## PROGRAMS AT A GLANCE

**MARCH 2022**

**Click for More Information**

<table>
<thead>
<tr>
<th>Active</th>
<th>In Development</th>
<th>Complete</th>
</tr>
</thead>
</table>

### POWER SUPPLY
- C&I Clean Power Offerings
- Reach Codes
- All-Electric Showcase Grants
- FutureFit Heat Pump Water Heater
- Streamlining Community-Wide Electrification
- Building Decarb Joint Action Plan
- Resilience at Community Facilities
- FutureFit Fundamentals
- CRCR Bill Relief
- FutureFit Homes & Buildings
- Regional Coordination
- Accessible Financing
- Local Policy to Decarbonize Existing Buildings
- Feasibility Assessment - Natural Gas Phase Out By 2045

### BUILT ENVIRONMENT
- EV Infrastructure Strategy & Plan
- CA Electric Vehicle Infrastructure Project (CALeVIP)
- Priority Zone DCFC
- MUD Technical Assistance
- Fleet Electrification Grants
- SV Transportation Electrification Clearinghouse (SVTEC)
- Regional Recognition

### MOBILITY
- Virtual Power Plant

### GRID INTEGRATION
- Customer Resource Center (eHub)
- Community Engagement Grants

### INNOVATION
- Innovation Partners
- Innovation Onramp
  - UtilityAPI
  - EVmatch
  - Ecology Action
  - Extensible Energy / Community Energy Labs
  - ev.energy
  - Span.IO
  - Electron
  - Stanford
  - Outthink
  - NeoCharge
  - XeroHome
Spring 2022 is turning out to be the much-anticipated return of outdoor festivals. SVCE is excited to get back to connecting with customers in person to share our electrification resources.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 8</td>
<td>1 – 2 PM</td>
<td>Cupertino High School Environmental Club – <em>presentation</em></td>
<td>Cupertino High School</td>
</tr>
<tr>
<td>March 13</td>
<td>4 PM</td>
<td>Congregation Beth Am – <em>presentation</em></td>
<td>Los Altos Hills</td>
</tr>
<tr>
<td>March 28</td>
<td>6 – 7:30 PM</td>
<td>Climate Reality Silicon Valley Chapter – <em>presentation</em></td>
<td>Virtual</td>
</tr>
<tr>
<td>April 9</td>
<td>10 – 4 PM</td>
<td>Saratoga Blossom Festival – <em>sponsorship and tabling</em></td>
<td>Saratoga Civic Center</td>
</tr>
<tr>
<td>April 23</td>
<td>11 AM – 3 PM</td>
<td>Cupertino Earth &amp; Arbor Day &amp; SVCE 5-Year Anniversary – <em>sponsoring, tabling &amp; presenting</em></td>
<td>Cupertino Library</td>
</tr>
</tbody>
</table>
# 1. Outreach Events & Sponsorships Continued

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 23</td>
<td>11 AM – 3 PM</td>
<td>Mountain View Earth Day – <strong>sponsoring and tabling</strong></td>
<td>Mountain View Senior Center</td>
</tr>
<tr>
<td>April 23</td>
<td>11 AM – 3 PM</td>
<td>Milpitas Resilience Project Ribbon Cutting – <strong>presenting and tabling</strong></td>
<td>Milpitas Senior and Community Center</td>
</tr>
<tr>
<td>April 24</td>
<td>10 AM – 3 PM</td>
<td>Los Gatos Earth Day – <strong>tabling</strong></td>
<td>Los Gatos</td>
</tr>
<tr>
<td>April 24</td>
<td>10 AM – 3 PM</td>
<td>AAUW Morgan Hill Community Earth Day Festival - <strong>tabling</strong></td>
<td>Morgan Hill Community Outdoor Lawn and Amphitheater</td>
</tr>
</tbody>
</table>
## 2. Customer Participation

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>96.37%</td>
<td>96.38%</td>
</tr>
<tr>
<td>Commercial</td>
<td>96.44%</td>
<td></td>
</tr>
</tbody>
</table>
The following agenda items were presented and discussed:

- SVCE New Staff Introductions
- ‘Doubling Down’ on Decarb Programs
- Reach Codes 2.0
- Rate Update – Board action and bill relief for CARE/FERA customers
4. Latest SVCE News

- $20,000 in Scholarships Available Through the EmPower Silicon Valley Youth Short-Film Competition

- Controlled EV-Charging Pilot Sees Successes, Emissions Challenges

- Students Invited To Apply For Local $20K Scholarship

- Santa Clara EV Charging Deal Sets Trend for Multi-Unit Residential Deployment

- EmPowering Event, Los Gatos Community Briefs

- ev.energy extends its Series A to $12.8m with ArcTern Ventures
SVCE Legislative and Regulatory Update
Policy Updates

Regulatory Update:
1. Electricity Planning and Procurement
   1. Integrated Resource Planning (IRP)

Legislative Update:
1. Early Bill Positions
   1. AB 1814 (Grayson) - Support
   2. SB 833 (Dodd) - Support
   3. SB 1112 (Becker) - Pending Support

2. Reviewing Legislation
   1. SB 881 (Min)
   2. SB 1158 (Becker)

3. Legislative Timeline
Integrated 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 while maintaining a reliable system.

- CPUC adopted new “preferred system plan” and establishes 38 MMT target for 2022 IRP cycle

- 35 million metric ton CO2/yr target by 2032 (previously 48 MMT by 2030)

- Builds N40GW of new capacity by 2032 - an N35% increase in total CAISO capacity in just a decade

- Adoption of plan does not require any additional procurement by LSEs at this time

- Plan will be used as basis for inputs and assumptions for next IRP cycle

- CPUC expected to kick off discussions on how to improve procurement process, including more equitable allocation of procurement orders which may be for specific resources or GHG-free purposes in the future

Next steps:
- CPUC will release full set of IRP materials by June 15th, LSEs will file individual IRPs by November 1st, 2022.
Resource Adequacy (RA) is a program developed to ensure that there will be sufficient resources available to serve electric demand under most conditions.

RA Program: Reform of the RA Program is underway

Leg/Reg Update, March 2022

©
Provider of Last Resort (POLR)

CPUC proceeding to pro-actively develop rules and regulations for a POLR should a CCA or ESP fail.

Second workshop on POLR occurred Monday, 3/7. Proceeding intended to insure cost recovery and continuity of service and reliability while ensuring LSEs stay on track for meeting CA’s clean energy goals should an LSE fail.

IOUs - the current default POLR - would like significant changes to Financial Security Requirements (FSR) which would increase CCA costs.

Simultaneously, legislation (SB 1287) is under consideration which may increase FSR.

Next steps:

Initial comments will be filed March 28th.

Leg/Reg Update, March 2022
SVCE Legislative Positions

SVCE is taking early action on the following bills:

<table>
<thead>
<tr>
<th>Bill</th>
<th>Bill Summary</th>
<th>SVCE Position (Legislative Program Policy)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB 1814 (Grayson)</td>
<td>Adds CCAs as eligible program administrators for CPUC’s Transportation Electrification Program</td>
<td>Support</td>
<td>Assembly Utilities and Energy Committee</td>
</tr>
<tr>
<td>SB 833 (Dodd)</td>
<td>Creates grant program for local government community resiliency plans and to expedite permitting for distributed energy resources.</td>
<td>Support</td>
<td>Senate Energy, Utilities, and Communications Committee</td>
</tr>
<tr>
<td>SB 1112 (Becker)</td>
<td>Creates statewide tariff on bill financing structure for decarbonization investments.</td>
<td>Pending Support (Fuel Switching and Mitigation/Clean Energy Funding)</td>
<td>Senate Energy, Communications Committee</td>
</tr>
</tbody>
</table>
SVCE is actively reviewing the following bills:

<table>
<thead>
<tr>
<th>Bill</th>
<th>SVCE Position (Legislative Program)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 881 (Min)</td>
<td></td>
<td>Senate Energy, Utilities, and Communications Committee</td>
</tr>
<tr>
<td>Allows the CPUC to require LSE procurement to “achieve a diverse, balanced, and reliable statewide portfolio.” Allows the CPUC to assess penalties and additional procurement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SB 1158 (Becker)</td>
<td></td>
<td>Senate, pending committee referral</td>
</tr>
<tr>
<td>Changes the Power Source Disclosure to require LSEs to report hourly electricity purchases. Requires the CPUC to assess whether each LSE's annual GHG reporting demonstrates &quot;adequate progress&quot; towards GHG</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Key State Legislative Milestones

- Legislature reconvenes
- Governor submits budget
- Deadline to move 2 year bills out of first house
- Bill introduction deadline
- Deadline for policy committees to move fiscal bills to fiscal committees
- Deadline for nonfiscal bills to move to the floor
- Deadline for fiscal committees to move bills to floor
- Last day for bills to pass out of first house
- Budget deadline
- Fiscal Committees to move bills to floor
- Last day for each house to pass bills
- Governor deadline to sign bills
<table>
<thead>
<tr>
<th></th>
<th><strong>MARCH 2022</strong></th>
<th><strong>APRIL 2022</strong></th>
<th><strong>MAY 2022</strong></th>
<th><strong>JUNE 2022</strong></th>
<th><strong>JULY 2022</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board of Directors, March 9:</strong></td>
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<tr>
<td>Consent: January 2022 Treasurer Report</td>
<td></td>
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<tr>
<td>Minutes: January 2022 Treasurer Report</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Regular Calendar: SVCE 5 year anniversary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Board of Directors, April 13:</strong></td>
<td></td>
<td>Board of Directors, May 11:</td>
<td></td>
<td>Board of Directors, June 8:</td>
<td>No meeting</td>
</tr>
<tr>
<td>Regular Calendar: eHub Year 1 Recap &amp; Survey Results</td>
<td></td>
<td>Regular Calendar: TBD</td>
<td></td>
<td>Regular Calendar: TBD</td>
<td></td>
</tr>
<tr>
<td><strong>Executive Committee, March 25:</strong></td>
<td></td>
<td>Executive Committee, April 22:</td>
<td></td>
<td>Executive Committee, June 24:</td>
<td>No meeting</td>
</tr>
<tr>
<td>Discussion re: return to in-person meetings</td>
<td></td>
<td>eHub Year 1 Recap &amp; Survey Results</td>
<td></td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td>Policy updates</td>
<td></td>
<td>TBD</td>
<td></td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td><strong>Finance &amp; Administration Committee (Mar/Apr TBD)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Meeting Where Requested</td>
<td>Request/Comment</td>
<td>Comments</td>
<td>Department</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------</td>
<td></td>
</tr>
<tr>
<td>2/9/2022</td>
<td>Board Meeting</td>
<td>Reinforce communication to customers regarding rate changes</td>
<td>Staff added an on-bill message that goes on the generation page of PG&amp;E bills, customers will see this when they get their March statement. Banners have been posted to our rates webpages to alert customers to changes in rates as of March 1. There will also be a mention in our March newsletter.</td>
<td>Account Services &amp; Comm. Relations</td>
<td></td>
</tr>
<tr>
<td>2/9/2022</td>
<td>Board Meeting</td>
<td>As clean power supply projects come online, will oil and gas prices fluctuate less (Dir. Willey)</td>
<td>Staff will consider this question from a strategic standpoint and get back to Dir. Willey</td>
<td>All</td>
<td></td>
</tr>
<tr>
<td>8/11/2021</td>
<td>Board Meeting</td>
<td>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.</td>
<td>Staff is keeping this in mind as we plan for future agenda items for the Finance and Administration Committee</td>
<td>Finance &amp; Admin</td>
<td></td>
</tr>
<tr>
<td>5/12/2021</td>
<td>Board Meeting</td>
<td>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</td>
<td>Staff will keep this in mind as a policy is developed</td>
<td>Executive</td>
<td></td>
</tr>
<tr>
<td>3/3/2021</td>
<td>Audit Committee</td>
<td>SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)</td>
<td>Staff will consider this when looking at overall risk mitigation</td>
<td>Finance &amp; Admin</td>
<td></td>
</tr>
<tr>
<td>8/28/2020</td>
<td>Executive Committee</td>
<td>Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)</td>
<td>Purchasing Policy does not currently have a formal duration limit; will update Purchasing policy pending discussion with CFO</td>
<td>Finance &amp; Admin</td>
<td></td>
</tr>
</tbody>
</table>
Staff Report – Item 4

Item 4: Approve the Mid-Year 2021-22 Adjusted Operating Budget

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO and Director of Administrative Services
Kevin Armstrong, Administrative Services Manager

Date: 3/9/2022

RECOMMENDATION
Staff recommends that the Board approve resolution 2022-09, approving the mid-year (FY) 2021-22\(^1\) Adjusted Operating Budget that contributes $61.61 million to the reserves.

BACKGROUND
The SVCE FY21-22 (FY22) budget was adopted in September 2021. Since the adoption of the budget, and as discussed at the February 2022 Board meeting, PG&E generation rates were forecast to increase significantly along with a significant drop in PCIA. Based on the new PG&E generation and PCIA rates taking effect March 1, 2022, the overall SVCE revenue is forecast to increase from $339.1 million to $385.5 million. Relative to the FY22 budget assumptions, PG&E generation rates increased by about 21% and PCIA decreased by about 23%.

The Board-adopted Strategic Plan, Goal 13 ("Commit to maintaining a strong financial position") has two measures:

- Measure 1: Balanced budget that achieves cash reserve targets and maintains customer value
- Measure 2: Set balanced rates that maintain customer value and support SVCE’s financial stability

At the February 2022 meeting, the Board engaged in robust discussions on balancing the strategic plan objectives. With the improved financial outlook, the Board evaluated allocating funds among the goals of providing customer discounts, 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. In balancing these objectives, the Board decided to:

1. Build reserves to withstand future adverse events
2. Set aside $17 million for decarbonization ‘double down’ programs
3. Provide $3 million in bill credit to lower-income customers
4. Maintain customer discount at 1% to PG&E generation rates

The mid-year adjusted operating budget adopts the above direction from the Board.

ANALYSIS & DISCUSSION
The Table below provides a high-level summary of the recommended FY22 Adjusted Budget and compares it with the budget the Board adopted in September 2021. At the time the budget was adopted, we were expecting revenues to cover all expenses and to contribute $36.5 million to the reserves and now with the

---

\(^1\) The fiscal year 2021-22 started on October 1, 2021 and ends on September 30, 2022.
improved margins due to a lower PCIA and higher PG&E generation rates, the contribution to reserves is expected to increase to $61.6 million.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FY 2021-22 BUDGET</th>
<th>FY 2021-22 ADJUSTED BUDGET</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Revenues</td>
<td>339,073</td>
<td>385,502</td>
<td>46,430</td>
</tr>
<tr>
<td>Energy Expenses</td>
<td>273,561</td>
<td>274,979</td>
<td>1,418</td>
</tr>
<tr>
<td>Operating Margin</td>
<td>65,511</td>
<td>110,523</td>
<td>45,012</td>
</tr>
<tr>
<td>Operating Expenses</td>
<td>22,407</td>
<td>21,693</td>
<td>(714)</td>
</tr>
<tr>
<td>Non-Operating Revenue (Expense)</td>
<td>310</td>
<td>310</td>
<td>0</td>
</tr>
<tr>
<td>Balance Available for Reserves (before Transfers)</td>
<td>43,415</td>
<td>89,141</td>
<td>45,726</td>
</tr>
<tr>
<td>Annual Transfers and Other Expenses</td>
<td>6,931</td>
<td>7,531</td>
<td>600</td>
</tr>
<tr>
<td>Double Down Program Allocation</td>
<td>0</td>
<td>17,000</td>
<td>17,000</td>
</tr>
<tr>
<td>Customer Bill Relief</td>
<td>0</td>
<td>3,000</td>
<td>3,000</td>
</tr>
<tr>
<td>Final Reserve Contribution Balance</td>
<td>$36,483</td>
<td>$61,609</td>
<td>$25,126</td>
</tr>
</tbody>
</table>

As shown in the chart below, the projected reserves of $238.7 million at the end of the current FY will provide for 294 days of cash on hand to fund operating expenses, above the target level of 230 days of cash on hand.

The projected reserve balance in the above chart includes the remaining balances in the Programs and the Customer Relief and Community Resiliency (CRCR) funds. The table below shows the remaining balances in these funds:
The reserve calculation includes the remaining balance in the Programs and CRCR funds because the expense is only recorded when incurred. If the remaining balance were to be spent, then the projected reserve balance would drop from $238.7 million to $209.7 million, providing 258 days of cash on hand.

The following is a discussion of the key drivers that contribute to the $25.1 million increase in the projected balance available for the reserves from the adopted budget to the mid-year update.

Energy Revenues
The Adjusted budget shows an increase in revenues of $46.4 million compared to the adopted budget. The biggest contributor to this growth in revenues – while maintaining the 1% customer rate discount to PG&E – is the March 2022 increase in PG&E’s (and subsequently SVCE’s) generation rates and the reduction in the PCIA.

The adopted budget anticipated a decrease in PCIA to occur (from 4.59 to 2.43 cents/kWh) based on PG&E’s ERRA forecast, and a 1.08 cents/kwh increase in PG&E’s generation rates for the fiscal year. This would have allowed SVCE to maintain rates competitive with PG&E, at a 1% discount, while contributing a much higher margin.

Since last September, the timing and magnitude of those changes to PG&E’s PCIA and generation rate have shifted significantly. The PCIA is now expected to decrease to 1.88 cents/kWh in March. With the 2.16 cents/kwh decrease already assumed in the budget, these two changes to the PCIA represent a 59% annualized decrease in PCIA for the year, versus the 47% decrease assumed in the budget.

In addition to the favorable decrease in PCIA, PG&E’s generation rates continued to show increases. The Adopted Budget projected a 12.03 cents/kwh generation rate, while the rates in effect March 1, 2022, increased to 14.53 cents/kwh rate.

This decrease in the PCIA and increase in PG&E generation rates relieves pressure on SVCE’s competitive position from both directions, allowing for both significant revenue growth, while maintaining a competitive 1% discount relative to PG&E.

The Adjusted budget continues to incorporate a reduction in revenues for potential customer write-offs, at a rate of 0.75% that amounts to about $2.9 million dollars, which is high by historical levels of about $0.4 million. SVCE could face large potential write-offs because of the large increases in the accounts receivable balances resulting from our customers facing COVID-19 related economic hardships. Blunting this impact are the $1.3 million in state funds being received through the California Arrearage Payment Program. This funding is expected to be received in mid- to late March.

Power Supply Expenses
Power supply expenses are expected to increase slightly by $1.42 million from the adopted budget due to higher market prices. The expected reduction in load by about 1% along with savings from PG&E allocation of carbon free attributes and savings from the Prepay transaction largely offsets the higher market prices. The Power Supply portfolio’s hedged position has increased from about 82% at the time the FY22 budget was

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**FY 2021-22**

<table>
<thead>
<tr>
<th></th>
<th>Programs</th>
<th>CRCR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund balance at beginning of period</td>
<td>$5,838</td>
<td>$7,990</td>
</tr>
<tr>
<td>Transfer from Operating Fund</td>
<td>$6,781</td>
<td></td>
</tr>
<tr>
<td>Nuclear Allocation</td>
<td>$600</td>
<td></td>
</tr>
<tr>
<td>Double Down Program Allocation</td>
<td>$17,000</td>
<td></td>
</tr>
<tr>
<td>Double down Customer Bill Relief</td>
<td>$3,000</td>
<td></td>
</tr>
<tr>
<td>Available Funds</td>
<td>$33,219</td>
<td>$7,990</td>
</tr>
<tr>
<td>Forecast Expenditures</td>
<td>$8,582</td>
<td>$2,850</td>
</tr>
<tr>
<td><strong>Fund balance at end of period</strong></td>
<td><strong>$24,637</strong></td>
<td><strong>$5,140</strong></td>
</tr>
</tbody>
</table>
created to about 95% of load. The COVID-related reduction in energy consumption created additional capacity within the Direct Access cap, making additional load eligible for Direct Access. We anticipate about 1% of load loss to Direct Access.

**Operating Expenses**
Operating expenses are slightly lower than the adopted budget by about $714,000 due largely to ongoing personnel vacancies. Eleven full-time positions are currently vacant, more than offsetting increases from the addition of a new Senior Manager of Public Sector Services position and an increase in the monthly contribution to employee health premiums from $1000 / month to $1200 / month. SVCE’s monthly contribution to employee health premiums has remained constant at $1000 / month since 2017 while health insurance costs have risen by 6% / year (34% cumulative increase) and recent benchmarking against other Bay Area CCAs has shown that our contribution lags our peers. A more thorough analysis and update to employee benefit amounts is planned for mid-2022, with any additional changes to be proposed and incorporated during the FY22-23 budget process.

Beyond personnel, there are only small changes in the professional services, marketing, and general & administrative budgets. Professional services costs are declining in the Decarbonization group, but increasing in Power Resources, for a net increase of $21,000. Marketing costs are declining by $11,000 due to a reduction in the eHub online promotions budget. And the General and Administrative budget is increasing by $12,000 to account for increased data subscription costs for the now-larger Power Resources team.

**Non-Operating Revenues**
Non-operating revenues are projected to remain flat, as interest rates continue to remain low.

**Table of Organization**
This Adjusted Operating Budget funds thirty-nine (39) full-time equivalent positions and seven (7) part-time positions, along with two external consultants and two Climate Corps fellows. As noted above, the only additional FTE position included in the budget is the Senior Manager of Public Sector Services, previously created under the authority granted to the Personnel Officer, and formally incorporated into the budget at this time. A current Table of Organization is included in the presentation accompanying this item, and as an Exhibit.

**STRATEGIC PLAN**
The recommendation supports all goals of the Board adopted Strategic Plan. Specifically, the recommendations strongly support Goal 13 - "Commit to maintaining a strong financial position" and the accompanying Measure "Balanced budget that achieves cash reserve targets and maintains customer value”.

**ALTERNATIVE**
Staff is open to suggestions from the Board.

**FISCAL IMPACT**
The FY 2021-22 Adjusted Operating Budget includes total revenues of $385.5 million and total expenses of $296.67 million resulting in an operating surplus of $89.14 million. Taking into account transfers and capital expenses, the Budget anticipates $61.6 million to contribute to reserves.

**ATTACHMENTS**
1. FY 2021-22 Adjusted Operating Budget
2. Current SVCE Table of Organization
3. Resolution 2022-09, Adopting the Mid-Year 2021-22 Adjusted Operating Budget
SILICON VALLEY CLEAN ENERGY  
MY 2021-22 BUDGET WORKSHEET  
($ in thousands)

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FY 2021-22 APPROVED BUDGET</th>
<th>FY 2021-22 ADJUSTED BUDGET</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
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<tr>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>ENERGY REVENUES</td>
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<td>Interest</td>
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<td>TOTAL NON-OPERATING INCOME (EXPENSES)</td>
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<td>Other</td>
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<td>$61,609</td>
<td>$25,126</td>
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VARIANCE: $ represents the difference between the approved and adjusted budget. The percentage column indicates the change in percentage from the approved budget to the adjusted budget.
SILICON VALLEY CLEAN ENERGY AUTHORITY RESOLUTION

NO. 2022-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO APPROVE THE MID-YEAR 2021-2022 ADJUSTED BUDGET FOR SILICON VALLEY CLEAN ENERGY

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 Authority operates on a fiscal year budget cycle from October 1st through September 30th;

WHEREAS, a mid-year adjusted version of the Authority’s budget for each fiscal year is generally presented to the Board of Directors at the midpoint of the fiscal year in March;

WHEREAS, staff has incorporated direction from recent Board discussions around rates, programs, and customer relief and has prepared an adjusted budget, set forth in Exhibit A (the “Adjusted Budget”);

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve that:

1. The foregoing recitals are true and correct.

2. The Board of Directors hereby approves and adopts the Adjusted Budget, as set forth in Exhibit A, as the Authority’s fiscal year 2021-2022 budget.

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

<table>
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<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
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<td>Director Sinks</td>
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<td>Director Hilton</td>
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<td>City of Los Altos</td>
<td>Director Fligor</td>
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<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
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<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
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<td>City of Milpitas</td>
<td>Director Chua</td>
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<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
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<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
<td></td>
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<td>-----------------------</td>
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<tr>
<td>County of Santa Clara</td>
<td>Director Lee</td>
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<td>City of Sunnyvale</td>
<td>Director Klein</td>
<td></td>
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ATTEST:

Andrea Pizano, Board Secretary
Staff Report – Item 5

Item 5: Authorize the Chief Executive Officer to Execute Necessary Agreements for Goal Line Long Duration Energy Storage with California Community Power, Participating Community Choice Aggregators and Goal Line BESS 1, LLC

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources

Date: 3/9/2022

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 Goal Line Long Duration Storage (LDS) project with a delivery term of 15 years starting on or about June 1, 2025, for a quantity not to exceed 22.81 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 Goal Line BESS 1, LLC – Attachment 2
3. Operations Agreement (COA) between Silicon Valley Clean Energy Authority, California Community Power and participating CCAs for Goal Line – 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 long-duration storage (i.e., a minimum of eight-hour discharge duration) to enable grid integration of a large fleet of intermittent resources to meet California’s greenhouse gas emission reduction goals and to replace several methane gas once-through-cooling (OTC) power plants 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.
In February 2022, SVCE Board authorized participation in Tumbleweed, the first CC Power approved LDS project resulting from the Joint LDS RFO: Item 5, SVCE Feb. 9, 2022 Bord of Directors Meeting. The other six CCAs participating in Tumbleweed have either gained or are in process gaining the necessary approvals to fully effect the Tumbleweed LDS project.

In addition to Tumbleweed, the Joint LDS RFO, shortlisted two other projects for consideration, Goal Line is the second LDS project. SVCE along with five other CCAs have agreed to participate in the Goal Line LDS Project including:

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

The contract structure used for Tumbleweed is proposed for Goal Line which involves CC Power signing an ESSA with the project seller and each of the participating CCAs signing a PPSA with CC Power.

**ANALYSIS & DISCUSSION**

The Goal Line LDS project is a 50 MW/400 MWh lithium-ion battery storage facility located in Escondido, CA. The anticipated commercial operations date of the project is June 2025.

<table>
<thead>
<tr>
<th>Overview of Project</th>
<th>Goal Line BESS 1, LLC</th>
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<tr>
<td>Project Name</td>
<td>Li-Ion Storage – 8 hour discharge duration</td>
</tr>
<tr>
<td>Technology</td>
<td>50 MW / 400 MWh</td>
</tr>
<tr>
<td>Storage Capacity</td>
<td>6/1/2025, 15 years</td>
</tr>
<tr>
<td>Commercial Operation Date &amp; Term</td>
<td>Onward</td>
</tr>
<tr>
<td>Developer</td>
<td>Escondido, CA</td>
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</table>

Under the contract, CC Power will pay ESSA rate and in return will be 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 in turn receive its share of the attributes and benefits of the LDS project. The Goal Line ESSA has a rate expressed in dollar per kilowatt-month, with no escalation, for the term of the contract and a variable cost component expressed in dollar per megawatt-hour which is triggered if the battery is cycled more than a threshold amount.

Goal Line is in process of achieving 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 and ancillary service benefits. The project will interconnect to one of San Diego Gas & Electric’s substations.

**Developer**

The project is being developed by Onward Energy an independent power generator that owns and operates 43 projects in 16 states across North America including solar, wind, and methane gas electric generation plants. In California, Onward has developed over 2,300 MW of renewable and methane gas projects that are in operation today. Onward currently has 200 MW of battery storage in development in California.

Consistent with the CC Power Board direction for enhanced contracting conditions, the developer will construct the project 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.
Project Participation and Recommended Maximum Authority

The six participating CCAs will receive an entitlement share of the obligations and benefits associated with its capacity share. Table 1 is the expected entitlement share percentage per CCA.

<table>
<thead>
<tr>
<th>CCA</th>
<th>Entitlement Share %</th>
<th>Expected Entitlement Share MW</th>
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<tr>
<td>CPSF</td>
<td>21.50%</td>
<td>10.75</td>
</tr>
<tr>
<td>RCEA</td>
<td>4.00%</td>
<td>2.00</td>
</tr>
<tr>
<td>SJCE</td>
<td>24.22%</td>
<td>12.11</td>
</tr>
<tr>
<td>SVCE</td>
<td>28.42%</td>
<td>14.21</td>
</tr>
<tr>
<td>SCPA</td>
<td>17.36%</td>
<td>8.68</td>
</tr>
<tr>
<td>VCE</td>
<td>4.50%</td>
<td>2.25</td>
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<tr>
<td>Total</td>
<td>100%</td>
<td>50</td>
</tr>
</tbody>
</table>

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 share of the agreement is 28.42% or 14.21 MW/114 MWh and authority is sought to take up to 22.81 MW to cover the two contingencies.

MTR Order and Compliance

Goal Line meets the conditions established in the MTR Order for LDS resources including the minimum eight-hour discharge duration, minimum ten-year contract term, start date by mid-2026 and ability to meet resource adequacy requirements. In aggregate, the long duration storage mandate for the CCAs participating in joint LDS procurement through CC Power is 96.5 MW of nameplate capacity. Once adjusted for effective load carrying capacity (ELCC) the requirement increases to 123.39 MW of Net Qualifying Capacity (NQC).

SVCE’s obligation is 26.2 MW which will be fully met with the execution of Tumbleweed and Goal Line as shown in Table 2.

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<td>20.5</td>
<td>26.2</td>
<td>14.66</td>
<td>11.54</td>
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<td>2.67</td>
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STRATEGIC PLAN

Execution of the Goal Line 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 SVCE’s requirements are relatively small and would be 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 may expose SVCE’s ratepayers to significant cost in the form of “back-stop” procurement undertaken by a central procurement entity in addition to CPUC penalties imposed on SVCE.

FISCAL IMPACT
Ultimate execution of the Goal Line agreements will result in cost to SVCE starting in Fiscal Year 2024-25, 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
GOAL LINE STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT

among

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

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
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**EXHIBIT A** NOTICES

**EXHIBIT B** SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS

**EXHIBIT C** PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT’S ENTITLEMENT SHARE

**EXHIBIT D** PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING
GOAL LINE 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, 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 Goal Line Storage Project (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 Goal Line BESS 1, 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.

“Annual Excess Cycle Payment” means the payment, if any, to be made by CCP to Project Developer annually during the Delivery Term if Buyer dispatches the Facility for more than 200 cycles during a Contract Year, as calculated in accordance with Exhibit C of the ESSA.

“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 undischmissed 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 Goal Line Storage Project, 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) 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 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 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 Section6.1.

“**Project Developer**” means Goal Line BESS 1, 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.

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, license or 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, Annual Excess Cycle 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.

(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.

(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**


(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 Annual Excess Cycle Payment that is included in the invoice for such Month, if any, 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:

\[
\text{Monthly Cost} = ((\text{Project Participant’s Entitlement Share} \times (\text{Monthly Capacity Payments})) + ((\text{Project Participant’s Entitlement Share} \times (\text{Annual Excess Cycle Payment})) + ((\text{Project Participant’s Entitlement Share} \times (\text{Operating Costs}))) - ((\text{Project Participant’s Entitlement Share}) \times \text{(revenue from sale of Facility Energy or Ancillary Services, net of any CAISO costs or Scheduling Coordinator costs)}))
\]

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, 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 or Annual Excess Cycle Payment shall be limited to the amount of Monthly Capacity Payment or Annual Excess Cycle 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.

(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.


(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]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

<table>
<thead>
<tr>
<th>California Community Power</th>
<th>Clean Power San Francisco</th>
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<tr>
<td>By:</td>
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<td>Name:</td>
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## EXHIBIT A

### NOTICES

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<tr>
<td>California Community Power</td>
<td>California Community Power Tim Haines</td>
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<tr>
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<td><a href="mailto:timhaines@powergridsymmetry.com">timhaines@powergridsymmetry.com</a></td>
<td></td>
</tr>
<tr>
<td>Clean Power San Francisco</td>
<td>Clean Power San Francisco Barbara Hale, Assistant General Manager, Power</td>
<td></td>
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<tr>
<td></td>
<td>San Francisco Public Utilities Commission</td>
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</tr>
<tr>
<td></td>
<td>525 Golden Gate Ave, 13th Floor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>San Francisco, CA 94102</td>
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<tr>
<td></td>
<td><a href="mailto:bhale@sfwater.org">bhale@sfwater.org</a></td>
<td></td>
</tr>
<tr>
<td>Redwood Coast Energy Authority</td>
<td>Redwood Coast Energy Authority Matthew Marshall, CEO</td>
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<tr>
<td></td>
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<tr>
<td></td>
<td>Eureka, CA 95501</td>
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<tr>
<td></td>
<td><a href="mailto:mmmarshall@redwoodenergy.org">mmmarshall@redwoodenergy.org</a></td>
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</tr>
<tr>
<td>San José Clean Energy</td>
<td>San José Clean Energy Lori Mitchell, Director</td>
<td></td>
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<tr>
<td></td>
<td>cc: Luisa Elkins, Senior Deputy City Attorney</td>
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<tr>
<td></td>
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<tr>
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<tr>
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Exhibit A - 1
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| Silicon Valley Clean Energy       | 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          |                                   |
| Sonoma Clean Power                | Sonoma Clean Power  
Geof Syphers, CEO  
Sonoma Clean Power  
50 Santa Rosa Avenue, 5th Floor  
Santa Rosa, CA 95404  
gsyphers@sonomacleanpower.org     |                                   |
| Valley Clean Energy               | Valley Clean Energy  
Gordon Samuel  
Assistant General Manager & Director of Power Resource  
604 2nd Street  
Davis, CA 95616  
gordon.samuel@valleycleanenergy.org |                                   |
EXHIBIT B

SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES
AND STEP-UP ALLOCATION CAPS

Dated:______________

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<td>As of Effective Date</td>
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**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.
ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

**Seller**: Goal Line BESS 1, LLC, a Delaware limited liability company

**Buyer**: California Community Power, a California joint powers authority

**Description of Facility**: A grid-connected 50 MW/400 MWh battery energy storage facility, located in Escondido, CA, as further described in Exhibit A.

**Milestones**:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>[ ]</td>
</tr>
<tr>
<td>Conditional Use Permit obtained</td>
<td>[ ]</td>
</tr>
<tr>
<td>Phase I and Phase II Interconnection study results obtained</td>
<td>[ ]</td>
</tr>
<tr>
<td>Interconnection Agreement executed</td>
<td>[ ]</td>
</tr>
<tr>
<td>Major equipment procurement agreements executed</td>
<td>[ ]</td>
</tr>
<tr>
<td>Federal and state discretionary permits issued</td>
<td>[ ]</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>[ ]</td>
</tr>
<tr>
<td>Guaranteed Construction Start Date</td>
<td>[ ]</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>[ ]</td>
</tr>
<tr>
<td>Full Capacity Deliverability Status or Interim Deliverability Status obtained</td>
<td>[ ]</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>[ ]</td>
</tr>
<tr>
<td>Guaranteed Commercial Operation Date</td>
<td>6/1/2025</td>
</tr>
</tbody>
</table>

**Delivery Term**: 15 Contract Years

**Guaranteed Capacity**: 50 MW of Installed Capacity at eight (8) hours of continuous discharge
Dedicated Interconnection Capacity: 50 MW

Guaranteed Efficiency Rate: [ ]

Contract Price & Excess Cycle Price:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price &amp; Excess Cycle Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>Contract Price: [ ] (flat) with no escalation and subject to adjustments in Exhibit C</td>
</tr>
<tr>
<td></td>
<td>Excess Cycle Price: [ ]</td>
</tr>
</tbody>
</table>

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: [ ] of Guaranteed Capacity
- Performance Security: [ ] of Guaranteed Capacity
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Exhibit I  Form of Capacity and Efficiency Rate Test Certificate
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Exhibit L  Form of Buyer Liability Pass Through Agreement
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Exhibit V  Project Participants and Liability Shares
ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("Agreement") is entered into as of [Effective Date] (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.

"Accepted Compliance Costs" has the meaning set forth in Section 3.8(c).

"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.

"Alternative Dispatches" has the meaning set forth in Section 4.6(b).
“Ancillary Services” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time, that the Facility is at the relevant time actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, which may be updated to add new Ancillary Services pursuant to Section 3.4.

“Annual Excess Cycle Payment” has the meaning set forth in Exhibit C.

“Approval Period” has the meaning in Section 2.1(b).

“Approved Maintenance Hours” means up to ___ hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.12, calculated on a pro rata basis based upon the time period of such Facility maintenance and the Available Capacity.

“Automated Dispatches” has the meaning set forth in Section 4.6(b).

“Automated Dispatch System” or “ADS” has the meaning set forth in the CAISO Tariff.

“Automated 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.

“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 any breach or 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 Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can 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, Efficiency Rate or any other test conducted pursuant to Exhibit O.
“CEQA” means the California Environmental Quality Act, as amended or supplemented from time to time.

“Change in Law” means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Effective Date, by any Governmental Authority of any Law, including a change in interpretation or enforcement of any existing Law.

“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.

“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 and the CAISO Tariff. Any instruction to charge the 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 one hundred eighty (180) days prior to 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 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)

“Communications Protocols” means certain operating and dispatch protocols 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.

“Compliance Actions” has the meaning set forth in Section 3.8(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.8.

“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. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

“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 the 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 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) [redacted].

“Daily Operating Report” has the meaning in Section 4.11.

“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 the 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 Interconnection Point.

**“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; provided, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. Any instruction to discharge the 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 to a specified Storage Level; provided, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff.

**“Early Termination Date”** has the meaning set forth in Section 11.2(a).

**“Effective Capacity”** means the lesser of (a) PMAX, and (b) the Effective Capacity 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 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 applies during such calendar month.

“Efficiency Rate Adjustment” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, 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. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“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 Level” means the actual amount of Energy (expressed in MWh) physically stored in the Facility at any moment in time. The Facility’s EMS shall provide a continuous monitoring and read out of the Energy Level.

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

“Energy Ratio” means the ratio of the Energy Level to the actual full storage capacity of the Facility, expressed as a percentage as shown on the EMS.

“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, but excluding Tax 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.

“Excess Cycle Discharging Energy” has the meaning set forth in Exhibit C.

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

“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 without regard to the source of energy used to charge 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 Capacity Ratio” has the meaning set forth in Section 3.5(b)(i)(B).
“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.

“Forced Labor” has the meaning set forth in Section 13.4(c).

“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 Environmental Attributes and Capacity Attributes.

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

“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 Guaranteed Capacity 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 Effective Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 50
MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate 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 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate 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 deviates from the applicable amount of Energy in a CAISO Dispatch.

“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) PMAX, and (b) Installed Capacity that achieves Commercial Operation, as determined pursuant to the most recent Commercial Operation
Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity. It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility 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 Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the Effective Capacity or (ii) charge the Facility to a level in excess of 100% Storage Level.

“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 the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

“Interconnection Point” has the meaning set forth in Exhibit A.

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

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

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


“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 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)).

“Master Data 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 charging rate at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

“Maximum Discharging Capacity” means the highest discharging rate at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

“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.

“Monthly Forecast” has the meaning in Section 4.10(a).

“Monthly RA Replacement Adjustment” has the meaning set forth in Exhibit C.

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

“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) Business 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” has the meaning set forth in the CAISO Tariff.

“Participating Transmission Owner” or “PTO” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is San Diego Gas & Electric.

“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 (on a consolidated basis with its Affiliates) that satisfies the following requirements:

(a) A tangible net worth of not less than [REDacted] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least one (1) year of experience in the ownership and operations of energy storage facilities similar to the Facility, or (failing such operations experience) 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 at the Interconnection Point.

“PMIN” means the applicable CAISO-certified minimum operating level of the Facility at the Interconnection Point.

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

“Point of Change of Ownership” has the meaning set forth in Exhibit A.

“Portfolio” means the single 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).

“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.

“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 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.

“Project Participation Share Agreement” means that certain Goal Line 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.

“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 independent power producers within 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.

“RA Change in Law” means any Change in Law which results in a reduction of the maximum quantity of Effective Flexible Capacity or Net Qualifying Capacity that a storage capacity of 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate 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.

“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 Full Capacity Deliverability Status or Interim Deliverability Status.

“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 FCDS (unless the Facility has achieved Interim Deliverability Status); 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 (other than due to Buyer’s action or inaction), 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 (other than due to Buyer’s action or inaction), 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, 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 issued 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” 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 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.

“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 ____________.

“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.

“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 does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“Settlement Period” has the meaning set forth in the CAISO Tariff.
“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of 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 Control**” means that, for the Contract Term, Seller or, prior to the Delivery Term, its Affiliates: (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, at a particular time, the Storage Level in the Facility divided by the Effective Capacity multiplied by eight (8), expressed as a percentage.

“**Station Use**” means the Energy that is used within the Facility as defined by the retail energy provider and CAISO Tariff in accordance with applicable CPUC rules and decisions regarding such station use, except during periods in which the Facility is charging or discharging pursuant to a Charging Notice, Discharging Notice, Buyer Dispatched Test or Seller Initiated Test.

“**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. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point (as referenced in the definition of Discharging Energy), the Energy Level (expressed in MWh) physically stored in the Facility at any moment in time will be greater than the Storage Level.

“**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.

“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 the Facility’s Energy onto the Transmission System.

“Ultimate Parent” means Onward

“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 (the "Approval Period"), 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). During the Approval Period, Seller or Seller’s Affiliates may at their sole discretion actively market and negotiate to sell, transfer or assign the Facility and any Product associated with or attributable thereto, provided that neither Seller nor Seller’s Affiliates may enter into any agreement to sell, transfer or assign the Facility and any Product associated with or attributable thereto to a party other than Buyer prior to the expiration of the Approval Period.

(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 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 Commercial Operation. 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 or its Affiliates, as applicable, shall have executed the 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 Full Capacity Deliverability Status or Interim Deliverability Status, as applicable. If the Seller provides written notice that is has achieved Interim Deliverability Status, Seller shall also provide a timeline under which Full Capacity Deliverability Status is expected to be obtained and an explanation of any required transmission upgrades;

(d) A Participating Generator Agreement and a Meter Service Agreement shall have been executed by Seller or its Affiliates, as applicable, with CAISO, which shall 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;

(f) The Facility has successfully completed all testing required by any requirement of Law to operate the Facility;

(g) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained and all conditions thereof required for the commencement of operations that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(h) Seller or its Affiliates, as applicable, shall have obtained Site Control;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

(k) 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
2.4 **Remedial Action Plan.** If a Milestone is missed 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, as such date may be extended pursuant to **Exhibit B**; 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 (to the extent not addressed in an earlier Remedial Action Plan) 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, or causes any of its Affiliates to comply, with the 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(s); provided, in the event any Milestone is missed by more than sixty (60) days and Seller cannot reasonably demonstrate a plan for achieving Commercial Operation by the Guaranteed Commercial Operation Date, as such date may, or is reasonably expected to, be extended pursuant to **Exhibit B**, Buyer shall have the right to terminate this Agreement pursuant to Section 11.1(a)(iii) (following notice and expiration of any applicable cure periods).

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Seller to achieve the Commercial Operation Date, Seller will need to conduct operational testing of the Facility (including charging and discharging the Facility), and 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 Charging Energy and Dispatch Notices consistent with Seller’s reasonable requests to enable Facility operational testing and nominating and scheduling the Facility, in advance of the Commercial Operation Date. The Parties shall cooperate with each other to facilitate the foregoing and to avoid delaying the Commercial Operation Date, including Buyer’s use of commercially reasonable efforts to provide Scheduling Coordinator services prior to the Commercial Operation Date for the limited purpose of aiding Seller in achieving Commercial Operation of the Facility under this Agreement.

**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 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 (except for Replacement RA) 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.** 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 Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the 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 Full Capacity Deliverability Status or 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 Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, 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 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 the 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, provided that Buyer has agreed to reimburse Seller for any material 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 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 quantity 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 (other than due to Buyer’s action or inaction), 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 quantity of the then applicable Guaranteed Flexible 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 (other than due to Buyer’s action or inaction), 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, divided by the ratio of Guaranteed Flexible Capacity to Guaranteed Net Qualifying Capacity (the “Flexible Capacity Ratio”);
(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 of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month; provided that any Replacement RA provided pursuant to this Section 3.5 is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the RA Shortfall Month.

3.6 **Buyer’s Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion and at its sole cost and expense 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 at its sole cost and expense 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 administrative actions (at Buyer’s cost and expense) and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product. 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.

3.7 **Pre-COD Operations.** Prior to the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, Seller shall have the right to operate the Facility and sell Products therefrom for its own account, so long as such operation does not interfere with Seller’s ability to perform its obligations under this Agreement. Subject to Section 2.5, 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, and Seller shall be entitled to all revenues and other amounts paid by CAISO for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

3.8 **Compliance Expenditure Cap.** If a Change in Law (excluding any RA Change in Law) occurring after the Effective Date (1) results in or gives rise to any increase in Seller’s costs, liabilities or obligations to comply with its obligations under this Agreement exceeding the cost, liabilities or obligations that Seller incurred or expected to incur as of the Effective Date to comply with Seller’s obligations under this Agreement, or (2) precludes or prohibits Seller from performing any of its obligations under this Agreement, in each case of clause (1) and (2) above with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of any Product or any obligation under Sections 3.1 through 3.4, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at (i) total replacement cost per MW of Guaranteed Capacity in the aggregate over the Delivery Term (“Compliance Expenditure Cap”).
Cap”). For the avoidance of doubt, the requirements of this Section 3.8 do not apply to any RA Change in Law that impacts RA Deficiency Amounts that Seller may owe under Section 3.5(b).

(a) Any actions required for Seller to comply with any Change(s) in Law the cost of which is included in the Compliance Expenditure Cap as set forth in the first paragraph above, shall be referred to collectively as the “Compliance Actions”; provided that notwithstanding anything to the contrary hereunder, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any Change in Law occurring after the Effective Date.

(b) If Seller reasonably anticipates the need to incur costs and expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated costs and expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.8 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and notwithstanding anything to the contrary hereunder, if Buyer waives or is so deemed to have waived Seller’s obligation to take such Compliance Actions, Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions for the remainder of the Delivery Term (and there shall be no reduction in Seller’s compensation hereunder or imposition of any damages, penalties or fees hereunder as a result of Seller’s failure to take any Compliance Actions).

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller; provided that notwithstanding anything to the contrary hereunder, any such Compliance Actions implemented by Seller shall not reduce Seller’s compensation hereunder or cause Seller to incur any damages, penalty or fee hereunder, including for the avoidance of doubt, that if any Compliance Action causes the Facility to have reduced Monthly Capacity Availability, Efficiency Rate or Effective Capacity for any period of time, then such reduced availability or capacity shall be excluded for purposes of calculating Seller’s compensation hereunder.
ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller 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.

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 [Redacted] 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 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 Q. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit Q.

   (i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests, subject to applicable NERC requirements and other applicable Laws.
(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, at times and for durations reasonably agreed to by Buyer, conduct necessary testing 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 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 was not tested, 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 in accordance with Prudent Operating Practices 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 in accordance with Prudent Operating Practices accurate records with respect to all Capacity Tests.

(e) Seller shall maintain in accordance with Prudent Operating Practices and make available to Buyer upon request records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and upon request 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 in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy during the Delivery Term. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(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; provided Buyer’s right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the provisions of Section 4.9(a). 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.

(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 the CAISO Tariff), or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any 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, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Facility. 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.

(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 the CAISO Tariff), or in connection with a Seller Initiated Test
(including Facility maintenance or a storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or anyone under Seller’s control charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, Seller shall reimburse Buyer for all FERC, CPUC or CAISO charges or penalties 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 (following notice and applicable cure periods) 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. Except to the extent otherwise expressly stated herein, Buyer shall be liable for all CAISO charges, penalties and costs, including any imbalance charges and penalties, provided that 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 solely due to (i) Seller’s violation of the CAISO Tariff, (ii) Seller’s breach of this Agreement or (iii) operating or performance deficiencies or defects of Seller or the Facility (except to the extent arising from a Force Majeure Event), Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (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 Section 4.9 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 (or Buyer’s SC) shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with CAISO rules and 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 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 Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice or Seller Initiated Test shall not be considered Station Use, and (iii) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from 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)) is supplied by the applicable utility’s retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

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 **Daily Operating Report.** Upon Buyer’s request, Seller shall, on each day immediately after each operating day, provide Buyer an operating report for the Facility substantially in the form attached in Exhibit S (the “Daily Operating Report”).

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 reasonable 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 Product during any period of such Planned Outages.
(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.12(a)(i); provided that Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer), and Seller shall (A) reimburse Buyer for any costs, penalties or charges imposed by CAISO in connection therewith, (B) provide Buyer with Replacement RA corresponding to such time period to the extent required by the CAISO and (C) subject to Prudent Operating Practices, use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.12(a)(ii) to periods reasonably acceptable to Buyer.

(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 _, 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 fullest extent practical and without limiting Seller’s rights pursuant to Section 4.12(a)(ii), 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 ten (10) minutes following Seller becoming aware of the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. 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. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation 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 all Environmental Costs, excluding, however, environmental related costs of any type arising out of or related to Charging Energy or Discharging Energy where such costs are assessed or arise at, or on the grid side of, the Delivery Point, all of which costs shall (as between Seller and Buyer) be the sole responsibility of Buyer.

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.

(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) Subject to Article 10 and the other provisions hereof, 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 pursuant to which certain Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements. Seller agrees that any such 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 (v) shall provide that any curtailment or restriction of Shared Facility capacity shall be allocated to all generating or energy storage facilities using 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 Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement 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 will 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. The Facility Meter will 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.** Annually, if Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer’s reasonable request, Seller shall request permission from CAISO to 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 (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of 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) data showing a calculation of the Annual Excess Cycle Payment (if any), 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.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Capacity Payments for Product (and any other amounts due, including, if applicable, the Annual Excess Cycle Payment) 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 Project Participant Approval of this Agreement is obtained. Seller shall maintain the Development Security in full force and effect. Subject to Section 11.10, 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. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form.

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. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form.

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. 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. 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 executed by Buyer and the Seller-approved Project Participants and incorporating the revised Liability Shares set forth in the amended Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement executed by Buyer and such Seller-approved Project Participants 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.
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 MAJEUERE

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 (including the COVID 19 pandemic); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; any Change in Law that renders this Agreement or any provisions hereof incapable of (or delayed in) being performed or administered; 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 any Change 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 or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable 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, (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) 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 partially unable to perform its obligations hereunder in any material respect, 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 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 any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision), 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:
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 by Seller Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date with Seller as the Defaulting Party, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).
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.

(b) Other Termination Payment. The payment owed by (i) Buyer as the Defaulting Party to Seller as the Non-Defaulting Party for a Terminated Transaction occurring prior to the Commercial Operation Date or (ii) the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or 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. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (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.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other express remedy or measure of damages are provided herein as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 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.

11.10 Seller Pre-COD Liability Limitations. Notwithstanding any other provision of
this Agreement, Seller’s aggregate liability under or arising out of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to _______________________.

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** Except to the extent part of (A) an express remedy or measure of damages herein, (B) an Article 16 indemnity claim, (C) included in a liquidated damages calculation, or (D) resulting from a party’s gross negligence or 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 or any other exclusive remedy is set forth herein, including under Sections 3.5, 4.3, 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.

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 Delaware 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) Any and all permits and approvals necessary for the construction and operation of the Facility shall be obtained and maintained as and when needed by Seller or its Affiliates, as applicable, 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.

(f) Site Control shall be maintained by Seller or its Affiliates, as applicable, throughout the Delivery Term.

(g) 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 or its Affiliates, as applicable, 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.** 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 shall use best efforts to include the following language in any Project Labor Agreement: “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.

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 and shall include any revisions and comments reasonably required by the Lender and reasonably acceptable to Buyer. 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 agree to any revisions by the Lender to the Collateral Assignment Agreement that materially and adversely affect any of Buyer’s rights, benefits, risks or obligations under this Agreement.

14.3 Permitted Assignment.

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to:

   (i) an Affiliate of Seller; or

   (ii) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (A) such Person is a Permitted
Transferee; (B) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (C) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests pursuant to this Section 14.3(a)(ii) that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any Project Participant that (A) has, and has continued to maintain for at least one hundred eighty (180) consecutive days, a Credit Rating of at least BBB-(stable) from S&P or Baa3 from Moody’s, (B) is a load serving entity, (C) has no pending or threatened actions, suits, proceedings or claims against Seller or Seller’s Affiliates and (D) is not a competitor to Seller and poses no material business, legal or ethical conflict to Seller; 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, in a form acceptable to Seller, 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.

**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) 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, (ii) negligent or tortious acts, errors, or omissions by Seller or its Affiliates, or (iii) intentional acts 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) a violation of applicable Laws by Buyer or its Affiliates, (ii) negligent or tortious acts, errors, or omissions by Buyer or its Affiliates, or (iii) intentional acts or willful misconduct by Buyer or its Affiliates, 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 merits 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 $ per occurrence, and an annual aggregate of not less than $, endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured. Such insurance shall include 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 $ for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the policy limit will apply to each employee.

(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 $ 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 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 include 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 per occurrence and in the aggregate, including Seller (and Lender, if any) as additional insureds.

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of 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 with deductibles and sublimits in accordance with industry standards. Such insurance shall include business interruption coverage in an amount equal to 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 ; (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 per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (i)(i) and (i)(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, that are authorized to do business in the State of California, and that are reasonably satisfactory to Buyer, 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 any material
modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall provide a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(k) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. 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, actual or prospective lenders or investors, counsel, accountants, contractors, vendors, 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 or its Affiliates’ 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

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 (excluding any Change in Law governed by Section 3.8) 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 assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**GOAL LINE BESS 1, LLC**

By: __________________________
Name: __________________________
Title: __________________________

**CALIFORNIA COMMUNITY POWER,**
a California joint powers authority

By: __________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Goal Line BESS

Site includes all or some of the following APNs:

City: Escondido
County: CA
Zip Code: 92025

Latitude and Longitude: GPS:

Facility Description: Grid connected 50 MW/400 MWh battery energy storage facility as depicted in preliminary Site diagrams on the following pages.

Interconnection Point: See Note 1 below.

Point of Change of Ownership: See Note 1 below.

Facility Meter: See Note 1 below.

Facility Metering Points: See Note 1 below.

PNode: See Note 1 below.

Transmission Provider: San Diego Gas & Electric

Additional Information: none

Note 1: The Interconnection Point, Point of Change of Ownership, Facility Meter, Facility Metering Points, and PNode will be defined by Seller by written notice to Buyer following the execution of the Interconnection Agreement.
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

   a. **“Construction Start”** will occur upon (i) acquisition by Seller or its Affiliate, as applicable, of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) the execution by Seller or its Affiliate, as applicable, of any engineering, procurement, or construction contract (or similar contract) with respect to the Facility and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto that authorizes the contractor to mobilize to Site and begin physical construction at the Site, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of a material duration. 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 B hereto, and the date certified therein shall be the **“Construction Start Date.”** Construction Start shall occur no later than the Guaranteed Construction Start Date.

   b. Seller may extend the Guaranteed Construction Start Date 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 \[\text{[Redacted]}\] of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current 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. Seller may extend the Guaranteed Commercial Operation Date 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 [INSERT] 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 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.** Independent of Seller’s extension rights under Sections 1 and 2 of this Exhibit B above, 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. neither Seller nor its Affiliate, as applicable, has acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller or its Affiliates, as applicable; 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 receive approval for Initial Synchronization and to connect and sell Product at the Delivery Point by the original expected Initial Synchronization date as set forth in the Cover Sheet, 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 (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer Default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

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**Exhibit B - 2**
clause 4(d) above) shall not exceed [REDACTED], 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 [REDACTED]. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity [REDACTED] 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 (without limiting Seller’s right to overbuild the Facility in accordance with the definition of “Installed Capacity”)) 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 sum of (x) Contract Price \times Effective Capacity \times Availability Adjustment \times Efficiency Rate Adjustment and (y) Monthly RA Replacement Adjustment. If Buyer dispatches the Facility for more than \text{Cycles} during a Contract Year, Buyer shall pay Seller the Annual Excess Cycle Payment calculated for such Contract Year in accordance with clause (e) below, which shall be included in Seller’s invoice to Buyer following the end of such Contract Year in accordance with Section 8.1. All of such foregoing Monthly Capacity Payments and Annual Excess Cycle Payments constitute 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:

(c) Efficiency Rate Adjustment. The “Efficiency Rate Adjustment” is calculated as follows:

Exhibit C - 1
(d) Monthly RA Replacement Adjustment. The “Monthly RA Replacement Adjustment” is calculated as follows:

(e) Annual Excess Cycle Payment. The “Annual Excess Cycle Payment” is calculated as follows:

(f) Tax Credits. Seller shall take commercially reasonable efforts to evaluate and determine whether to pursue Tax Credits available to Seller under any Federal Investment Tax Credit Legislation that is enacted after the Effective Date and prior to Commercial Operation Date.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Subject to Section 2.5 with respect to pre-Commercial Operations, 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. Buyer (or Buyer’s SC) shall submit an NQC request to CAISO in relation to the Facility as early as is reasonably possible. Seller shall submit an NQC request to CAISO in relation to the Facility for purposes of inclusion on the annual RA plan as early as is reasonably possible. 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’s SC (which may be Buyer) 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 market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(b) Notices. Beginning on the Commercial Operation Date, Buyer’s SC (which may be Buyer) 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 by (in order of preference) telephone or electronic mail to the personnel designated to receive such information. Buyer (as the Facility’s SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, except as otherwise set forth in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy and Charging 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, except to the extent any Non-Availability Charges arise from Scheduling Coordinator’s violation of the CAISO Tariff. 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 or Buyer’s designated SC 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, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer’s or its designated SC’s possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller’s compliance with applicable 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. If Network Upgrades are required by CAISO, a list of any such Network Upgrades and a status report of progress toward completion of such Network Upgrades as and when known by Seller; or if Network Upgrades are not required by CAISO, a notice of such outcome.
15. 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]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _______________________
Station: _________________________  Issued By: _______________________________
Unit: _____________________________  Issued At: _______________________________
Unit 100% Available No Restrictions: _______________________

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<th>Hour Ending</th>
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Comments: ____________________________________________________________
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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, reliable and interconnected, fully integrated and synchronized with the Transmission System.

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 ______ 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: ____________________________
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, and (ii) 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: [Date]
Bank Ref.: [Bank Ref.]
Amount: US$[XXXXXXXX]

Beneficiary:
California Community Power,
a California joint powers authority
[Address]

Ladies and Gentlemen:

By the order of [Applicant], we, [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 [Date] 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
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 one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: 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 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:

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
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. **Financing Cooperation.** Project Participant agrees to provide reasonable cooperation to any Lender, including entering into a customary acknowledgment and consent to assignment and related documents and agreements as are reasonably necessary for obtaining and maintaining financing for the Project typical in non-recourse financing of power projects similar to the Project; provided, Project Participant shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Project Participant and all reasonable attorney’s fees incurred by Project Participant in connection therewith shall be borne by Seller. Project Participant also agrees (i) to respond promptly to reasonable requests for information from any Lender, including financial statements for Project Participant (subject to a reasonably appropriate confidentiality agreement) and (ii) to deliver usual and customary legal opinions of counsel to Project Participant (regarding due authorization, enforceability and such other matters relating to such consent and this BLPTA as reasonably requested) and related certifications (including certificates of good standing and applicable authorizations for execution and delivery of the applicable agreements).

16. **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.

17. **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 17(d) through 17(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 17(d) through 17(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.

18. 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.

By: __________________________

Printed Name: __________________________

Title: __________________________

CALIFORNIA COMMUNITY POWER, a California joint powers authority:

By: __________________________

Printed Name: __________________________

Title: __________________________

By: __________________________

Printed Name: __________________________

Title: __________________________
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to [_______], 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 Information**¹

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
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<tbody>
<tr>
<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<tr>
<td>Unit SCID</td>
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</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td>Point of Interconnection with the CAISO Controlled Grid (&quot;substation or transmission line&quot;)</td>
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<td>Path 26 (North or South)</td>
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<tr>
<td>LCR Area (if any)</td>
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</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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</tr>
<tr>
<td>Run Hour Restrictions</td>
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</tr>
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<td>Delivery Period</td>
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<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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</thead>
<tbody>
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</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

By: __________________________
Its: __________________________

Date: __________________________
## EXHIBIT N

### NOTICES

<table>
<thead>
<tr>
<th>Goal Line BESS 1, LLC (&quot;Seller&quot;)</th>
<th>California Community Power, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td>All Notices:</td>
</tr>
<tr>
<td>[To be provided]</td>
<td>Street: 70 Garden Court, Suite 300</td>
</tr>
<tr>
<td></td>
<td>City: Monterey, CA 93940</td>
</tr>
<tr>
<td></td>
<td>Attn: Tim Haines</td>
</tr>
<tr>
<td></td>
<td>Phone: 916-207-4078</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:timhaines@powergridsymmetry.com">timhaines@powergridsymmetry.com</a></td>
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Exhibit N - 1
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<td>(“Seller”)</td>
<td>(“Buyer”)</td>
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<td>With additional Notices of an Event of Default to:</td>
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<tr>
<td></td>
<td>Attn: Brittany Iles, Attorney</td>
</tr>
<tr>
<td></td>
<td>Street: 555 Capitol Mall, Ste 570</td>
</tr>
<tr>
<td></td>
<td>City: Sacramento, CA 95814</td>
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<tr>
<td></td>
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<td></td>
<td>Facsimile: 916 330-4337</td>
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<td>Email: <a href="mailto:iles@braunlegal.com">iles@braunlegal.com</a></td>
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Exhibit N - 2
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. 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 if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. 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) Business Days following any Capacity Test, Seller shall submit to Buyer raw data and preliminary Capacity Test results. No later than ten (10) Business Days following any Capacity Test, Seller shall submit to Buyer a testing report detailing results and findings of the Capacity 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. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.

(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. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.

(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.

(4) **Additional Testing.** The Seller shall have the right to conduct one or more preliminary runs as a part of any Capacity Test prior to the commencement of a Capacity Test to determine or adjust, as necessary, the then current Energy Ratio at 0% SOC and 100% SOC.

**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 Capacity, and all Energy Level measurements associated with a Capacity Test shall be based on the Storage Level without taking into account any energy that exceeds 100% SOC.*

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. Total electrical energy discharged from the Facility, as recorded at the Facility Meter when Maximum Discharging Capacity is sustained for eight (8) continuous hours; and

2. Total electrical energy used to charge the Facility, as recorded at the Facility Meter when Maximum Charging Capacity is sustained until the SOC
reaches at least 90%, continued by electrical input at a rate up to the Maximum Charging Capacity and 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. Total electrical energy discharged from the Facility, as recorded at the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
3. Total electrical energy used to charge the Facility, as recorded at the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);
4. Storage Level (MWh);
5. Energy Level (MWh); and

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 nominal sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
3. The nominal sustained charging level for ten (10) consecutive hours pursuant to A(2) above;
4. Amount of time between the Facility’s electrical output going from 0 to the Maximum Discharging Capacity 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 Charging Capacity during the CT (for purposes of calculating the ramp rate);

(6) Energy Level (MWh) at 0% SOC and 100% SOC, to be used for the testing and operation of the Facility until the subsequent CT supersedes the values.

(7) Total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC;

(8) Total electrical energy discharged from the Facility, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

(9) Amount of charging reactive energy in VARh, registered at the Facility Meter during the charging period.

(10) Amount of discharging reactive energy in VARh, registered at the Facility Meter during the discharging period.

(11) Maximum, minimum, average, and standard deviation of the battery temperatures (°C).

(12) Battery enclosure temperatures (°C).

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. Capacity Test shall be conducted within 10°C of the industry standard test conditions of 25°C. If battery starting temperatures are not greater than 30°C, preconditioning will be performed prior to the start of the CT. Capacity Tests conducted to determine Effective Capacity and Efficiency Rate shall be conducted at a power factor between 0.99 lagging and 0.99 leading.

(2) Abnormal Conditions. If at any time any operating protocols including but not limited to current, voltage and temperature are exceeded, the test shall be immediately halted and the system placed into a safe mode. 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. The measurement uncertainty calculated in
the post-test measurement uncertainty analysis will be applied to the test results of the Capacity Test.

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 CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties and all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by the Party that requested the initial incomplete CT; provided, however, that if Seller is unable to complete a CT due to any action or inaction of Buyer, all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by Buyer regardless of which Party requested the initial incomplete CT.

G. **Test Report.** Within ten (10) 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 and provides data or reasons with such rejection reasonably indicating that the results were not in accordance with this agreement, or the Supplementary Capacity Test Protocol, such CT shall be repeated in accordance with Section 4.4 of the Agreement.

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 electrical 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) Total electrical energy discharged from the Facility (as reported under Section II.D(8) above) divided by the total electrical energy used to charge the Facility (as reported under Section II.D(7) 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 Energy Ratio, Energy Level, the Storage Level, and the initial time.

(3) Command a real power charge of Facility’s Maximum Charging Capacity and begin the test period once the system has fully ramped. 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 Energy Ratio, Energy Level, Storage Level, and time after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging.

(5) Record and store the total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC, Energy Level, and the Storage Level.
(6) Following an agreed-upon rest period, command a real power discharge of the Facility’s Maximum Discharging Capacity and begin the test period once the system has fully ramped. Maintain the discharging rate until the earlier of (a) the Facility has discharged for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.

(7) Record and store the Energy Ratio, Energy Level, Storage Level, and time after eight (8) hours of continuous discharging.

(8) Record and store the total electrical energy discharged from the Facility 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 0% SOC or 0% Energy Ratio, whichever occurs first.

(10) Record and store the Storage Level, Energy Level, and the total electrical energy discharged from the Facility as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached 0% SOC or 0% Energy Ratio, whichever occurs first, 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 electrical energy discharged from the Facility, as registered at the Facility Meter, divided by eight (8) hours.

  (2) Total electrical energy discharged from the Facility (as reported under Section III.A(10) above) divided by the total electrical energy used to charge the Facility (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.

B. AGC Discharge Test

• Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility’s nominal discharging level within 8 seconds.

• 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 nominal charging level within 8 seconds.

- **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 25 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 25 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:

\[
\text{Monthly Capacity Availability (\%) = } \frac{\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m}{\text{MONTHERS}_m}
\]

Where:

- \( m \) = relevant month "m" in which Monthly Capacity Availability is calculated;
- \( \text{MONTHERS}_m \) is the total number of hours for the month;
- \( \text{AVAILHRS}_m \) is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership (excluding, for avoidance of doubt, all circumstances on or beyond the PTO’s side of the Point of Change of Ownership). 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 the quotient of (a) divided 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.
- \( \text{EXCUSEDHRS}_m \) is the total number of hours, or partial hours, in the month during which the Facility is unavailable to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership due to Approved Maintenance Hours, Force Majeure Events, Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer Default, or any circumstances arising on or beyond the PTO’s side of the Point of Change of Ownership 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 available 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 the quotient of (a) divided 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.

If the Facility or any component thereof was previously deemed unavailable for an

Exhibit P - 1
hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time Buyer is required to schedule or bid the Facility in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.
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.

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A. Contract Capacity

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B. Total Unit Dispatchable Range Information

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Exhibit Q - 1
EXHIBIT R

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EXHIBIT S

FORM OF DAILY OPERATING REPORT

DAILY OPERATING REPORT

for ___MM/DD/YY___

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See significant events

### Previous 24 Hours:

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(0001 – 2400 Total On Line Hours)

(0001 – 2400 Total Net Generation)

### Facility

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[00%] (On Line Hr + Off Line Available Hr)/24
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**Period Availability:**

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<td>MonthTD Availability</td>
<td><strong>100.00 %</strong></td>
</tr>
<tr>
<td>PeakTD Availability</td>
<td><strong>100.00 %</strong></td>
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</tbody>
</table>

**State of Charge Ratio:**

<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Initial SOC: __</td>
</tr>
<tr>
<td></td>
<td>Ending SOC: __</td>
</tr>
<tr>
<td></td>
<td>Battery String SOC: __</td>
</tr>
</tbody>
</table>

**Significant Events**

- No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

**Losses of Generation:** (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)

**List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies.**
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 Facility (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 sixty (60) 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 sixty (60) 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 one hundred eighty (180) 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 have provided reasonable evidence to CCP that the Substitute Owner is a Permitted Transferee (as defined below). 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.

“Permitted Transferee” means any person or entity who is at least as creditworthy as the Project Company on the Effective Date (as defined in the ESSA) and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating energy storage facilities. Collateral Agent may from time to time, following the occurrence of a Financing Document Event of Default, notify CCP in writing of the identity of a proposed transferee of the ESSA, which proposed transferee may include any Lender, in connection with the enforcement of Lender’s rights under the Financing Documents, and CCP shall, within thirty (30) Business Days of its receipt of such written notice, confirm to Lender whether or not such proposed transferee is a “Permitted Transferee” (together with a written statement of the reason(s) for any negative determination) it being understood that if CCP shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

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, at Collateral Agent’s or any Replacement Owner’s request, enter into a new agreement with Collateral Agent or Replacement Owner, as applicable, 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 provided reasonable evidence to CCP 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 other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment default).

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 provided reasonable evidence to CCP 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 other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment 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 other than any such ESSA obligations that are personal to Project Company and not reasonably capable of cure (which shall not include
any payment default), 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 Project Company or 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 or that the Financing Document Default Notice has been withdrawn, 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. RESERVED

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.

<table>
<thead>
<tr>
<th>[NAME OF PROJECT COMPANY], [Legal Status of Project Company]</th>
<th>CALIFORNIA COMMUNITY POWER, a California joint powers authority.</th>
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<tbody>
<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>[Name]</td>
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<td>[Title]</td>
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<table>
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<tr>
<th>[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent]</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>[Name]</td>
<td>[Name]</td>
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<tr>
<td>[Title]</td>
<td>[Title]</td>
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<tr>
<td>Date: _________________</td>
<td>Date: _________________</td>
</tr>
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SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
EXHIBIT U
MATERIAL PERMITS

<p>| | |</p>
<table>
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Exhibit U - 1
# EXHIBIT V

## PROJECT PARTICIPANTS AND LIABILITY SHARES

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<tr>
<td>San Jose Clean Energy</td>
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</tr>
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<td>Silicon Valley Clean Energy</td>
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<td>Sonoma Clean Power</td>
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</tr>
<tr>
<td>Valley Clean Energy</td>
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</table>
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 Goal Line 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 Goal Line LDS Project; and

WHEREAS, pursuant to Section 6.02 of the CC Power JPA, on February 25, 2022, the CC Power Board has waived the required notice of intent to bring the Goal Line LDS 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 Goal Line 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 Goal Line 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 Goal Line LDS 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 Goal Line LDS Project Agreements described above and attached hereto, on behalf of CC Power.
California Community Power
Resolution 22-02-03

PASSED AND ADOPTED by the Board of Directors of California Community Power this 25th day of February, 2022, by the following vote:

<table>
<thead>
<tr>
<th>Organization</th>
<th>Name</th>
<th>Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Coast Community Energy</td>
<td>Rob Shaw</td>
<td>X</td>
</tr>
<tr>
<td>CleanPowerSF</td>
<td>Barbara Hale</td>
<td>X</td>
</tr>
<tr>
<td>East Bay Community Energy</td>
<td>Nick Chaset</td>
<td>X</td>
</tr>
<tr>
<td>Marin Clean Energy</td>
<td>Dawn Weisz</td>
<td>X</td>
</tr>
<tr>
<td>Peninsula Clean Energy</td>
<td>Jan Pepper</td>
<td>X</td>
</tr>
<tr>
<td>Redwood Coast Energy Authority</td>
<td>Matthew Marshall</td>
<td>X</td>
</tr>
<tr>
<td>San José Clean Energy</td>
<td>Lori Mitchell</td>
<td>X</td>
</tr>
<tr>
<td>Silicon Valley Clean Energy</td>
<td>Girish Balachandran</td>
<td>X</td>
</tr>
<tr>
<td>Sonoma Clean Power Authority</td>
<td>Geof Syphers</td>
<td>X</td>
</tr>
<tr>
<td>Valley Clean Energy</td>
<td>Mitch Sears</td>
<td>X</td>
</tr>
</tbody>
</table>

Chair: [Signature]

Attest: [Signature]
Staff Report – Item 6

**Item 6: Adopt Resolution Approving Funding Allocations for “Double Down” on Decarbonization Programs**

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization and Grid Innovation Programs

Date: 3/9/2022

**RECOMMENDATION**

Staff recommends that the Board of Directors (“Board”) adopt Resolution No. 2022-10 to approve the initial funding allocations and details provided for the five programs herein. This resolution allocates the $17 million in additional programs funding approved by the Board in February 2022 and identifies what elements will be added to the programs with these additional resources. The allocations and additional programmatic details are summarized in the table below.

<table>
<thead>
<tr>
<th>Program</th>
<th>New Elements</th>
<th>Allocation</th>
</tr>
</thead>
</table>
| Multifamily EV charging assistance and funding | • Add incentives to existing technical assistance program  
• Direct installation for toughest sites, affordable housing | +$2M       |
| Whole-building electrification emphasis and funding | • Menu of incentives, pushing towards total electrification  
• Direct installation for large, affordable multifamily | +$4M       |
| Local policy support                 | • EV charging incentives for new construction affordable housing (supporting Reach Codes 2.0)  
• Support for cities to identify and pursue existing building policies (e.g. retrofit-on-burnout, EV charging mandate) | +$3M       |
| Permitting simplification            | • Funding and technical resources for cities to simplify their processes (and compliance support for EVI) | +$3M       |
| Accessible financing                 | • Pursue Tariffed On-Bill financing  
• Test out alternate financing approach(es) | +$5M       |
| **TOTAL**                            |                                                                     | **+$17M**  |

*Table 1: Summary of initial allocations and program details*

**BACKGROUND**

In August 2021, the Board provided feedback on the FY 2021-22 proposed operating budget indicating an interest in “doubling down” on decarbonization program efforts in the context of the need for urgent climate action and the forecasted reserves in the FY 2021-22 budget. Staff brought these five program concepts to the Board in November 2021 to discuss how they fit with the critical role that SVCE and its cities can play in achieving
full decarbonization. The Board approved $17 million in additional funding for programs in February 2022, on top of the roughly $6 million per year that is already committed to programs (based on 2% of revenues).

**STAKEHOLDER REVIEW AND FEEDBACK**
Staff has received feedback on the program approach, concepts, funding allocations and details from various stakeholder groups. Environmental leaders and the Executive Committee were consulted in September-October 2021 on the direction of the double down, followed by the Board in November 2021. Through the monthly standing meetings with SVCE and its member agencies, interested sustainability staff from the agencies reviewed and provided feedback. Finally, the Executive Committee met again in February 2022 for a discussion on the material presented in this item. All of this input informs the final proposal brought to the Board today.

**ANALYSIS & DISCUSSION**

**Overview**
The Board has approved an additional one-time transfer of $17 million to spend on decarbonization programs, which will likely take ~3 years to fully deploy. This will double the funding available for these programs over the time period – from $18 million to ~$35 million. The five programs receiving additional funding through the double down allocations are active or planned programs already approved by the Board in some form. By infusing them with additional dollars, staff will significantly increase the scope and ambition of these programs.

The selection of these five programs was driven by learnings from previous and ongoing SVCE programs, along with the success of the first Reach Code initiative. Programs alone will not be sufficient to achieve rapid and widespread decarbonization through electrification; policy is the strongest lever to make large-scale impact. But policy is not passed in a vacuum – there must be support to get it passed and complementary efforts to ensure it can succeed. Programs help to build the foundation (e.g. by providing incentives to support cost-effectiveness) or to identify and showcase when pieces of the foundation are already in place (e.g. awareness/education). Viewing programs through the lens of enabling policy will ensure that SVCE is best supporting rapid and comprehensive decarbonization.

*Multifamily EV charging assistance and grants/incentives (+$2 million)*
SVCE is running a technical assistance program to help multifamily properties consider EV charging, get bids and pursue incentives. But existing regional and state incentive programs can be challenging for multifamily sites to participate in due to utilization requirements, rapid uptake and other barriers. The double down allocation will allow SVCE to add $1 million in incentives to ensure sites who go through SVCE’s technical assistance can add chargers. The other $1 million will be set aside to run a direct installation program that will target sites in need of even more support (primarily affordable housing). These efforts will enable future policy by further testing how EV charging approaches connect to tenant EV adoption, as well as supporting growth of the local workforce.

*Whole building electrification grants/incentives (+$4 million)*
SVCE is running a heat pump water heater incentive program and plans to add other end uses through an upcoming program leveraging outside incentives. But convincing customers to switch not just one device in their home but to move towards complete electrification is challenging and novel. The double down allocation will allow SVCE to add $1 million for residential and $1 million for commercial incentives to promote complete electrification or pre-wiring. The other $2 million will be set aside to run a direct installation program to target large affordable housing properties. These efforts will enable future policy by supporting the local product markets, tracking actual costs and necessary program approaches for complete electrification.

*Reach Codes 2.0 and pilot policy (+$3 million)*
SVCE is working with its member agencies on the next round of reach codes, to build on the success of the last cycle. But taking more aggressive policy steps can be difficult due to limited resources and political concerns. The double down allocation will allow SVCE to add $1.5 million to the Reach Codes 2.0 effort as EV charger incentives for affordable housing new construction compliance. The other $1.5 million will be used to support...
interested agencies in exploring policies targeting existing buildings through free technical analysis, an award for agencies who adopt innovative policy and potentially a tailored incentive program to pair with the policy if necessary. These efforts will enable future policy by first testing out approaches at a smaller scale and garnering support for more widespread efforts.

Permitting simplification (+$3 million)
SVCE previously interviewed its agencies and put together a recommendation document to assist with simplification. But making substantial changes to permitting, inspection and other processes can be difficult for agencies due to limited resources. The double down allocation will allow SVCE to provide $0.5 million to help agencies comply with AB 970 ahead of 2023. The other $2.5 million will help simplify general electrification by providing free technical support, offering grants to cities to commit staff resources towards this effort and potentially offering an award for cities able to get their processes to meet certain outcomes (e.g. low fees, quick turnaround time). These efforts will enable future policy by reducing friction in customer electrification process and improving cost-effectiveness.

Accessible financing (+$5 million)
SVCE plans to assess financing mechanisms, particularly for low-income communities. But deploying financing solutions for these customers will require additional effort, particularly to resolve co-pay and up-front capital barriers. The double down allocation will allow SVCE to put $4 million towards a tariffed on-bill financing pilot that is co-funded by the state and is particularly promising because repayment is tied to the customer meter and should better allow renters to participate. The other $1 million will be used to pilot one or more other financing approaches at a smaller scale. These efforts will enable future policy by demonstrating a way to support electrification without requiring major up-front capital investments – particularly key for ensuring lower-income customers can participate in the benefits of electrification.

Equity Framework
Ensuring that all SVCE customers can enjoy the benefits of electrification is critical not just because equitable access is important but also because comprehensive electrification necessitates participation by all customers. SVCE has long had “equity in service” as a priority guiding programs, and the portfolio has included programs targeting certain populations due to barriers and issues that they uniquely experience (e.g. EV charging at multifamily sites). To help SVCE ensure equity is rigorously and consistently considered, staff have created an Equity Framework that provides clear steps to take when designing, deploying and evaluating programs – this will ensure equity is systematically incorporated across the portfolio. Not all programs will target all customers, but the Equity Framework will ensure that SVCE tracks and understands the design decisions made and how they impact access and participation. A key component of the Framework is to build strong ties with local community-based organizations to help with communication and provide input on program approaches.

STRATEGIC PLAN
The proposal supports the 6th Focus Area approved by the Board in September 2021 to “grow the organization to expand our strategic efforts on climate change and decarbonization” and the updated 2021-2022 Strategic Plan Goal 8, which is to “coordinate development of decarbonization and resilience strategy, lead design of local policy and programs, and support program deployment.”

FISCAL IMPACT
This item has no incremental fiscal impact, as the $17 million being allocated has already been authorized by the Board. This resolution merely indicates how the funding will be split amongst program areas and what features will be added to those programs as a result.

ATTACHMENTS
1. Resolution No. 2022-10 Approving Funding Allocations for "Double Down" on Decarbonization Programs
2. List of program design feedback from the Board meeting in November 2021
SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2022-10

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY APPROVING FUNDING ALLOCATIONS FOR “DOUBLE DOWN” ON DECARBONIZATION PROGRAMS

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

WHEREAS, the Board adopted 2025 and 2030 greenhouse gas emissions reduction targets; and

WHEREAS, the Board adopted the Decarbonization Strategy and Programs Roadmap and initial budget for the implementation of decarbonization programs pursuant to the Roadmap on December 12, 2018 by Resolution No. 2018-20; and

WHEREAS, the Board provided feedback on the FY 2021-22 proposed operating budget indicating an interest in “doubling down” on decarbonization program efforts;

WHEREAS, Staff brought five program concepts to the Board in November 2021 to discuss how they fit with the critical role that SVCE and its cities can play in achieving full decarbonization;

WHEREAS, the Board approved $17 million in additional funding for programs in February 2022, on top of the 2% of revenues per year that is already committed to programs;

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby approve the initial funding allocations and details provided for the five decarbonization programs as outlined in the following table:

<table>
<thead>
<tr>
<th>Program</th>
<th>New Elements</th>
<th>Allocation</th>
</tr>
</thead>
</table>
| Multifamily EV charging assistance and funding | • Add incentives to existing technical assistance program
• Direct installation for toughest sites, affordable housing | +$2M        |
| Whole-building electrification emphasis and funding  | • Menu of incentives, pushing towards total electrification
• Direct installation for large, affordable multifamily | +$4M        |
Local policy support
• EV charging incentives for new construction affordable housing (supporting Reach Codes 2.0)
• Support for cities to identify and pursue existing building policies (e.g. retrofit-on-burnout, EV charging mandate)  +$3M

Permitting simplification
• Funding and technical resources for cities to simplify their processes (and compliance support for EVI)  +$3M

Accessible financing
• Pursue Tariffed On-Bill financing
• Test out alternate financing approach(es)  +$5M

TOTAL  +$17M

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

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

______________________________

Chair

ATTEST:

______________________________
Andrea Pizano, Board Secretary
Attachment 2: Summary of Board Feedback from November
Incorporating feedback

Board provided significant input on program details for staff to consider

- Some input has already been incorporated into initial program details

- As final design work is completed for double down programs, staff will continue to review the Board input and consider specific design decisions accordingly
## Multifamily EV Charging Assistance and Grants/Incentives

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make sure we reach the decisionmakers at these properties.</td>
<td>Plan to Include</td>
<td>This is a key element of our existing program that offers free technical assistance.</td>
</tr>
<tr>
<td>Think about different charging power levels.</td>
<td>Plan to Include</td>
<td>The existing program includes L1 and L2 technologies, and we intend to support incentives for both.</td>
</tr>
</tbody>
</table>
# Support for proposed programs

## Whole-Building Electrification Grants/Incentives

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should we do geographical targeting with incentives?</td>
<td>Plan to Include</td>
<td>Important to consider as we try to support pruning of the natural gas distribution system.</td>
</tr>
<tr>
<td>Should we focus on newer homes because they are less likely to be</td>
<td>Under Consideration</td>
<td>We will continue to discuss this. There are some concerns around unintended consequences for equitable access to the incentives.</td>
</tr>
<tr>
<td>renovated? That would protect the SVCE investment in electrification</td>
<td></td>
<td></td>
</tr>
<tr>
<td>for longer.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Support for proposed programs

### Reach Codes 2.0 and Pilot Policy

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prioritize new construction.</td>
<td>Plan to Include</td>
<td>-</td>
</tr>
<tr>
<td>Common ordinances across cities would be helpful. Also consistency in interpreting the code by officials.</td>
<td>Plan to Include</td>
<td>-</td>
</tr>
<tr>
<td>Consider the Utility User Tax as a tool and a potential barrier to electrification costs.</td>
<td>Under Consideration</td>
<td>We will work with cities to consider this topic and determine where/if to address it.</td>
</tr>
<tr>
<td>Using the codes to support EV charging at multifamily properties is a good idea.</td>
<td>Plan to Include</td>
<td>-</td>
</tr>
<tr>
<td>Can we share results from other cities that have adopted reach codes? What are the impacts?</td>
<td>Plan to Include</td>
<td>We are working on the evaluation of Reach Codes 1.0 and will share information when we have it. Further, our support will include analysis of other codes where applicable.</td>
</tr>
</tbody>
</table>

Could we summarize where each city is and share that? SVCE can keep pushing things forward.
# Permitting Simplification

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the staff impact on city officials when so many pieces of</td>
<td>Under Consideration</td>
<td>We will discuss necessary support and preferred approaches with city staff through the program. SVCE will consider what resources and policies may help.</td>
</tr>
<tr>
<td>equipment need to be replaced? What is the endgame – eventually no</td>
<td></td>
<td></td>
</tr>
<tr>
<td>permits required? Could we certify at the state level so that there isn’t a need for inspection?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common ordinances across cities would be helpful.</td>
<td>Plan to Include</td>
<td></td>
</tr>
<tr>
<td>Could we summarize where each city is and share that? SVCE can keep</td>
<td>Plan to Include</td>
<td>Staff has worked with city officials to complete an initial assessment of permitting across all cities and will build on that work.</td>
</tr>
<tr>
<td>pushing things forward.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Could SVCE offer grants/support to cities to help with staffing</td>
<td>Plan to Include</td>
<td>Intending to include additional funding and other resources to help all cities pursue permitting simplification, even with staffing constraints.</td>
</tr>
<tr>
<td>constraints – e.g. an intern/fellow?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Support for proposed programs

Accessible Financing

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could this include financing of the EVs, not just EV charging?</td>
<td>Under Consideration</td>
<td>We are tracking what else is happening at the state and regional levels to determine what role SVCE can best play.</td>
</tr>
</tbody>
</table>
For staff consideration generally, or as specific program ideas

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should we be focusing on the biggest bang for the buck and/or the fastest return?</td>
<td>Under Consideration</td>
<td>We want these, and also some other key elements: scalability, equity, and things that are within SVCE control/influence. We will continue to consider this balance.</td>
</tr>
<tr>
<td>Leveraging relationships with city staff is important across cities.</td>
<td>Plan to Include</td>
<td>-</td>
</tr>
<tr>
<td>Some concern about de-prioritizing the fleet electrification grants.</td>
<td>Under Consideration</td>
<td>The currently planned SVCE program would be small-scale and focused on helping various fleet owners plan for electrification – including help going after other incentives for the vehicles and charging. We will delay for now, rather than cancel.</td>
</tr>
<tr>
<td>As a part of education and awareness, could we offer a 211-like help line for those with appliance failures to promote electrification at that moment?</td>
<td>Under Consideration</td>
<td>The SVCE suite of online resources in the eHub has a lot of relevant info for customers in these situations, but there may be other ways we can continue to help make it come alive and be engaging.</td>
</tr>
</tbody>
</table>
### Additional comments (2 of 3)

For staff consideration generally, or as specific program ideas

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should SVCE focus on supporting Caltrain electrification?</td>
<td>Put in Parking Lot, for Now</td>
<td>SVCE Board members may be best suited to help push this initiative forward, rather than staff via a program. There are other entities involved in planning and funding that are better suited.</td>
</tr>
<tr>
<td>Doing substantial PR and awareness-building of electric technologies is important.</td>
<td>Plan to Include</td>
<td>SVCE will continue ongoing and planned outreach via emails, online, and returning to in-person events. Further, the incentive programs will help promote awareness through demonstration projects.</td>
</tr>
<tr>
<td>Make sure we leverage best practices from others who are working on these same challenges.</td>
<td>Plan to Include</td>
<td>-</td>
</tr>
<tr>
<td>Could SVCE help cities compare and align their CAPs? Or play some sort of coordinating role there?</td>
<td>Put in Parking Lot, for Now</td>
<td>SVCE has been and will continue to support cities through compiling and maintaining GHG inventories on an annual basis. SVCE also provides a forum for cross-city sharing of key topics like CAP approaches, initiatives and deliverables. Further centralizing is challenging given divergent timelines and processes.</td>
</tr>
</tbody>
</table>
### Additional comments (3 of 3)

For staff consideration generally, or as specific program ideas

<table>
<thead>
<tr>
<th>Comment</th>
<th>Status</th>
<th>Staff Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could we add police vehicles and/or support for VTA electrification to the SVCE fleet electrification program?</td>
<td>Put in Parking Lot, for Now</td>
<td>Given the scope of the planned SVCE program, it may include some police vehicles but was not intended to support VTA given the other entities engaged in that effort.</td>
</tr>
<tr>
<td>Figure out specific recommendations for cities to reduce emissions from their own operations.</td>
<td>Under Consideration</td>
<td>SVCE will continue to discuss with city staff to identify support needed. City staff will play a key role here.</td>
</tr>
<tr>
<td>Think about the lifetime of equipment we are incentivizing as a part of the prioritization.</td>
<td>Plan to Include</td>
<td>Lifetime emissions is an important factor that will be considered. Scalability and key SVCE role will also influence decisions.</td>
</tr>
<tr>
<td>Support autonomous EV deployment.</td>
<td>Put in Parking Lot, for Now</td>
<td>Will keep an eye on the technology and see when/if SVCE could play an important role.</td>
</tr>
<tr>
<td>Support hydrogen vehicle deployment, particularly for VTA.</td>
<td>Put in Parking Lot, for Now</td>
<td>Will keep an eye on the technology. SVCE’s core role as an electricity provider fits more naturally with EVs, and the EV market is greater for residential. VTA has support from other entities that are better suited.</td>
</tr>
</tbody>
</table>

**SILICON VALLEY CLEAN ENERGY**
Staff Report – Item 7

Item 7: Update on New Construction Reach Codes and Existing Building Electrification Policies

From: Girish Balachandran, CEO

Prepared by: Don Bray, Director of Account Services and Community Relations
Zoe Elizabeth, Manager of Energy Services

Date: 3/9/2022

RECOMMENDATION
Staff requests that the Board of Directors receive an update from the Account Services and Community Relations team on New Construction Reach Codes and Existing Building Electrification Policies.

BACKGROUND
In 2019, SVCE offered technical support to member jurisdictions that were evaluating options for amending the state’s 2020 building code. Eleven of SVCE’s jurisdiction’s passed reach codes applying to the 2019 building code. These reach codes (with the exception of those passed by Morgan Hill and Campbell) will expire 12/31/2022.

Staff is in the process of supporting member agencies with core technical assistance and supportive elements, to adopt, renew, or enhance these codes. In addition, staff is in the process of developing resources that will support policies for existing building electrification. The details of these efforts will be discussed in more detail at the Board of Directors meeting.

ANALYSIS & DISCUSSION
SVCE staff will address the analysis in the form of a presentation to the Board of Directors.

STRATEGIC PLAN
The proposal supports SVCE’s Strategic Plan Goal 8, “coordinate development of decarbonization and resilience strategy, lead design of local policy and programs, and support program deployment.”

FISCAL IMPACT
N/A

ATTACHMENTS
The presentation for this item is posted to the SVCE website.
Silicon Valley Clean Energy
Board of Directors Meeting

March 9, 2022

Appendix A

Power Resource Contracts Executed by CEO
Joint CCA WSPP Standard RA Confirmation

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Seller”) and Central Coast Community Energy, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of February 15, 2022 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated July 28, 2020 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ Firm RA Product:

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ Contingent Firm RA Product:

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.
ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller’s obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.

(b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.

(d) Seller 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
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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 the AES Confirmation is terminated or AES fails to deliver such Contract Quantity under the AES Confirmation for any reason, including AES’s failure to obtain an Extension Order from the SWRCB; provided, however, that Seller’s right to reduce the Contract Quantity under this Section 2.2(c) is subject to Seller providing written notice to Purchaser of such modification no later than ten (10) calendar days before the Compliance Showings related to such Showing Month.

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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
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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.

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.
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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 amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
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(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

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.
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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.
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4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser’s request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser’s use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Purchaser’s request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with
Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Each Party to this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

6.3 Dodd-Frank Act


6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.
6.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 **No Recourse to Members**

The Parties are each 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 each a public entity separate from their constituent members. Each Party will solely be responsible for all of such Party’s debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

6.8 **Other WSPP Agreement Changes**

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]”

(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”
Joint CCA WSPP Standard RA Confirmation

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:

“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),
Joint CCA WSPP Standard RA Confirmation

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. 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
Joint CCA WSPP Standard RA Confirmation

or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

CENTRAL COAST COMMUNITY ENERGY, a California joint powers authority

By: Tom Habashi
Name: Tom Habashi
Title: Chief Executive Officer

Approved as to form:

By: Robert M. Shaw
Name: Robert M. Shaw
Title: COO and General Counsel
APPENDIX A
DEFINED TERMS

“AES” means AES Redondo Beach, LLC.

“AES Confirmation” means that certain WSPP Agreement Confirmation between Seller and AES, dated July 20, 2021.

“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, however 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.

“Extension Order” has the meaning set forth in the AES Confirmation.

“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.

“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: NP26
Resource Category (MCC Bucket): 4, 24/7 - N
CPUC Local Area (if applicable): Fresno
Flexible Capacity Category (if applicable): N/A

Delivery period:

Contract Quantity and Contract Price:

<table>
<thead>
<tr>
<th>Showing Month and Year</th>
<th>RAR Contract Quantity (MW)</th>
<th>Contract Price ($/kW-mo)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Unit 1

<table>
<thead>
<tr>
<th><strong>Unit Specific Information</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Resource Name</strong></td>
<td>SLATE_2</td>
</tr>
<tr>
<td><strong>Physical Location</strong></td>
<td>Kings County, CA</td>
</tr>
<tr>
<td><strong>CAISO Resource ID</strong></td>
<td>SLATE_2_SLASR2</td>
</tr>
<tr>
<td><strong>SCID of Resource</strong></td>
<td>ZEUS</td>
</tr>
<tr>
<td><strong>Unit NQC by month (e.g., Jan=50, Feb=65):</strong></td>
<td>56.77</td>
</tr>
<tr>
<td><strong>Unit EFC by month (e.g., Jan=30, Feb=50):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Resource Type (e.g., gas, hydro, solar, etc.):</strong></td>
<td>Hybrid Solar &amp; BESS</td>
</tr>
<tr>
<td><strong>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3):</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>TAC Area (e.g., PG&amp;E, SCE):</strong></td>
<td>PG&amp;E</td>
</tr>
<tr>
<td><strong>Prorated Percentage of Unit Factor</strong></td>
<td></td>
</tr>
<tr>
<td>**Prorated Percentage of Unit Flexible Factor: **</td>
<td></td>
</tr>
<tr>
<td><strong>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt):</strong></td>
<td>Fresno</td>
</tr>
<tr>
<td><strong>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4):</strong></td>
<td>4</td>
</tr>
<tr>
<td><strong>Available 24/7?</strong></td>
<td>N</td>
</tr>
</tbody>
</table>
APPENDIX C
RESERVED
## APPENDIX D
### PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
**WSPP CONFIRMATION**
**CARBON FREE ENERGY**

This confirmation ("Confirmation") confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Purchaser") and Central Coast Community Energy, a California joint powers authority ("Seller" and, together with Purchaser, the "Parties" and each individually, a "Party") dated as of December 12, 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 terms of the WSPP Agreement, effective as of August 12, 2021, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference (the "Master Agreement") and as amended and supplemented by this Confirmation; provided that, in the case of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. This Confirmation and the Master Agreement, including any schedules, appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement" and will constitute a single agreement between the Parties.

<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>☒ Large Hydroelectric; and/or</td>
</tr>
<tr>
<td></td>
<td>☐ Nuclear</td>
</tr>
</tbody>
</table>

The list of Resources in each Resource Pool is set forth in Exhibit A.

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.

<table>
<thead>
<tr>
<th><strong>Contract Quantity:</strong></th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Contract Price:</strong></th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Payment:</strong></th>
<th>For each month during the Delivery Period, (a) Purchaser will pay Seller an amount equal to the Contract Quantity delivered in such month multiplied by the Contract Price and (b) Seller’s designee shall cause the Energy associated with the Product to be delivered to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such Energy.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Seller shall invoice Purchaser on or before the 20th day of each calendar month in an amount equal to the quantity of Product delivered to Purchaser during the previous month multiplied by the Contract Price. With each invoice, Seller shall provide documentation to verify delivery</td>
</tr>
</tbody>
</table>

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Appendix A
of invoiced amounts of Product. Within ten (10) Business Days after the delivery of the invoice or the 20th day of each calendar month, whichever is later, Purchaser shall pay Seller the amount invoiced.

<table>
<thead>
<tr>
<th>Resource Pool:</th>
<th>“Resource Pool” means, collectively, one or more of the Resources specified in Exhibit A for the Large Hydroelectric Resource Pool.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery Period:</td>
<td></td>
</tr>
<tr>
<td>Delivery Point:</td>
<td>“Delivery Point” means where Seller shall deliver to, and Purchaser shall take possession of, the Product, which shall be NP 15.</td>
</tr>
<tr>
<td>Attestation:</td>
<td>Seller shall provide to Purchaser a report confirming the monthly Carbon Free Energy from the Resources within 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 Purchaser from each Resource from the selected Resource Pool(s) as indicated above. Seller will provide Purchaser with the Final Report promptly once the information is received from PG&amp;E.</td>
</tr>
<tr>
<td>Scheduling:</td>
<td>Throughout the Delivery Period, Seller shall cause to be delivered, and Purchaser shall receive the Product in accordance with the Confirmation. PG&amp;E or its designee will act as Scheduling Coordinator to deliver the Product in each hour to the CAISO at the Delivery Point.</td>
</tr>
<tr>
<td>Title and Reporting Rights:</td>
<td>Title to the Product shall be deemed to pass from Seller to Purchaser at the Delivery Point.</td>
</tr>
</tbody>
</table>
| Seller Representations and Warranties: | Seller represents and warrants the following: (a) that it has the contractual rights to sell all rights, title, and interest in the Product to be delivered hereunder; (b) it has not sold the Product required to be delivered hereunder, or any attribute thereof, to any other person or entity; (c) 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 (d) it will not include the Product in any of its own Power Content Label (PCL) reporting except to allow it to report the Product as a “sale” to Purchaser. (e) To the extent reasonably available to Seller from PG&E, Seller will provide all reasonable information to Purchaser necessary for Purchaser 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 Purchaser is required to maintain or provide to the California Air Resources Board (CARB) in accordance with Assembly Bill (AB) 32. To the extent reasonably available to Seller from PG&E, Seller shall maintain adequate records to reasonably assist Purchaser in meeting any reporting, verification, transfer, registration, or retirement requirements of a Governmental Authority associated with the Confirmation.

Seller makes no representation, warranty or covenant with respect to the following:

(a) 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.

(b) The ability of Purchaser to use the Product for any compliance, regulatory, or reporting purpose.

<table>
<thead>
<tr>
<th>Limitation of Liability:</th>
<th>Notwithstanding any provision to the contrary in the Master Agreement or this Confirmation, Seller shall have no liability to Purchaser for the failure to deliver any quantities of Product that were not delivered to Seller by PG&amp;E.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality:</td>
<td>Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a “Receiving Party”) acknowledges that the other Party (a “Disclosing Party”) may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to 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). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information”), the Receiving Party shall...</td>
</tr>
</tbody>
</table>
notify the Disclosing Party as soon as practical that such request has been made. 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 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.

<table>
<thead>
<tr>
<th>Governing Law:</th>
<th>Notwithstanding Section 24 of the Master 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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collateral/Credit Requirements:</td>
<td>Notwithstanding any provision in the Master Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.</td>
</tr>
<tr>
<td>No Recourse to Members:</td>
<td>The Parties are each 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 each a public entity separate from their constituent members. Each Party will solely be responsible for all of its debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.</td>
</tr>
<tr>
<td>Notices:</td>
<td>Notwithstanding Section 12.1 of the Master Agreement, notices under this Confirmation shall be in writing and shall be deemed properly served, given or made if delivered by hand delivery, United States mail, overnight courier service, or email. The following names and addresses shall be used for notices and either Party may update its notice information by providing notice to the other Party in accordance with this paragraph.</td>
</tr>
</tbody>
</table>
### 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.

### 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.

### Definitions:
Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

- “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.
- “Energy” means electrical energy, measured in MWh.
- “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.
| “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. |
| “PG&E” means the Pacific Gas and Electric Company, its successors and assigns. |
| “Power Content Label” has the meaning set forth in Cal. Code Regs., Title 20, § 1393(a)(3). |
| “Resource” means generation units contracted for through power purchase agreements by Seller with PG&E. |
| “Uncontrollable Force” shall have the meaning set forth in the Master Agreement. |

[Signatures appear on the following page.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign:
Girish Balachandran
Print:
Girish Balachandran
Title: CEO

CENTRAL COAST COMMUNITY ENERGY, a California joint powers authority

Sign:
Tom Habashi
Print:
Tom Habashi
Title: Chief Executive Officer

Approved as to form:

Sign:
Robert M. Shaw
Print:
Robert M. Shaw
Title: COO and General Counsel
EXHIBIT A

List of Resources by Resource Pool

Resource Pool: Large Hydroelectric

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>CAISO Resource ID</th>
<th>EIA IDs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balch #1 PH</td>
<td>BALCHS_7_UNIT 1</td>
<td>217</td>
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<tr>
<td>Balch #2 PH</td>
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<td>218</td>
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<tr>
<td></td>
<td>BALCHS_7_UNIT 3</td>
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<td>Belden</td>
<td>BELDEN_7_UNIT 1</td>
<td>219</td>
</tr>
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<td>Bucks Creek</td>
<td>BUCKCK_7_PL1X2</td>
<td>220</td>
</tr>
<tr>
<td>Butt Valley</td>
<td>BUTTVL_7_UNIT 1</td>
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<td>Caribou 1</td>
<td>CARBOU_7_UNIT 1</td>
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<td>CARBOU_7_PL2X3</td>
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<td>Caribou 2</td>
<td>CARBOU_7_PL4X5</td>
<td>223</td>
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<td>Cresta</td>
<td>CRESTA_7_PL1X2</td>
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<tr>
<td>Drum #1</td>
<td>DRUM_7_PL1X2</td>
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<td>DRUM_7_PL3X4</td>
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<td>Drum #2</td>
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<td>Electra</td>
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<td>Haas</td>
<td>HAASPH_7_PL1X2</td>
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<td>James B Black</td>
<td>BLACK_7_UNIT 1</td>
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<td>BLACK_7_UNIT 2</td>
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<td>Kerckhoff #2 PH</td>
<td>KERKH2_7_UNIT 1</td>
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<td>Kings River</td>
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<td>Pit 1</td>
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<td>265</td>
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<td></td>
<td>PIT1_7_UNIT 2</td>
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<td>Pit 3</td>
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<td>Rock Creek</td>
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<td>RCKCRK_7_UNIT 2</td>
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<td>Salt Springs</td>
<td>SALTSP_7_UNITS</td>
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<td>Stanislaus</td>
<td>STANIS_7_UNIT 1</td>
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<td>Tiger Creek</td>
<td>TIGRCK_7_UNITS</td>
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<td>NID-Chicago Park</td>
<td>CHICPK_7_UNIT 1</td>
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Resource Pool: Nuclear

Exhibit A-1
<table>
<thead>
<tr>
<th>Resource Name</th>
<th>CAISO Resource ID</th>
<th>EIA IDs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diablo Canyon Power Plant Unit 1</td>
<td>DIABLO_7_UNIT 1</td>
<td>6099</td>
</tr>
<tr>
<td>Diablo Canyon Power Plan Unit 2</td>
<td>DIABLO_7_UNIT 2</td>
<td>6099</td>
</tr>
</tbody>
</table>
EEI MASTER POWER PURCHASE AND SALE AGREEMENT
SHORT TERM SALES CONFIRMATION
BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY

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

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

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

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

<table>
<thead>
<tr>
<th>Seller: Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions</th>
<th>Buyer: Silicon Valley Clean Energy Authority, a California Joint Powers Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Pacific Gas and Electric Company, limited for all purposes hereunder to its electric procurement and electric fuels functions (“Seller” or “Party B”)</td>
<td>Name: Silicon Valley Clean Energy Authority, a California Joint Powers Authority (“Buyer” or “Party A”)</td>
</tr>
</tbody>
</table>

Contact Information:
ARTICLE 1
COMMERCIAL TERMS

<table>
<thead>
<tr>
<th>Seller: PACIFIC GAS AND ELECTRIC COMPANY, limited for all purposes hereunder to its electric procurement and electric fuels functions</th>
<th>Buyer: SILICON VALLEY CLEAN ENERGY AUTHORITY, a California Joint Powers Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product:</strong> The Product shall consist of Electric Energy and associated Green Attributes from the Project, as further described and subject to the provisions herein.</td>
<td></td>
</tr>
<tr>
<td><strong>Project:</strong> All Product sold hereunder shall be generated from one or more facilities, listed in Appendix A to this Confirmation or identified pursuant to Section 8.2 herein, each meeting the requirements set forth in 6.1 (collectively, the “Project”). Seller shall have sole discretion throughout the Term to designate and re-designate, as applicable, the Project by selecting one or more of the facilities from Appendix A or pursuant to Section 8.2 herein. Buyer shall not be entitled to, and shall not receive, any amount of Green Attributes produced by the Project that is in excess of the Total Quantity. Buyer shall not be entitled to, and shall not receive, any amount of Electric Energy produced by the Project that is in excess of the Energy Quantity.</td>
<td></td>
</tr>
<tr>
<td><strong>Quantity:</strong> (a) For Green Attributes: “Total Quantity”, with respect to an applicable year, shall be equal to those volumes of Green Attributes specified for that applicable year in the Delivery Term Quantity Schedule set forth below and shall be conveyed during the Green Attributes Delivery Period to Buyer as provided herein. (b) For Electric Energy: “Energy Quantity”, with respect to an applicable year, shall be equal to those volumes of Electric Energy produced by the Project specified for that applicable year in the Delivery Term Quantity Schedule set forth below and shall be delivered during the Energy Delivery Period to Buyer as provided herein.</td>
<td></td>
</tr>
<tr>
<td><strong>Delivery Term Quantity Schedule</strong></td>
<td></td>
</tr>
<tr>
<td>Year</td>
<td>Green Attributes (MWh)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Energy Price:</strong> The Energy Price shall mean the Index Price for each MWh of Delivered Energy delivered to Buyer under this Agreement.</td>
<td></td>
</tr>
<tr>
<td><strong>Green Attributes Price:</strong> The Green Attributes Price shall mean, with respect to an applicable year, that price in dollars for each MWh of Green Attributes conveyed to Buyer under this Agreement, as specified in the table below.</td>
<td></td>
</tr>
<tr>
<td><strong>Year</strong></td>
<td><strong>Green Attributes Price ($)</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Term of Transaction:</strong> Except for the obligations in Sections 4 (CPUC Filing and Approval) and 9 (Confidentiality) which shall be effective and binding as of the Execution Date, the term of the Transaction shall commence upon the Effective Date and shall continue until the end of the Delivery Term, provided that this Agreement shall thereafter remain in effect as to</td>
<td></td>
</tr>
</tbody>
</table>
those terms and conditions that expressly survive termination or expiration of the Agreement (“Term”).

This Confirmation, and the Transaction and Term hereunder, shall terminate early in the event of a failure to satisfy the Green Attributes Condition Precedent defined below or as otherwise provided in the Agreement.

Termination because of a failure to satisfy the Green Attributes Condition Precedent shall terminate all of the Parties’ obligations under the Confirmation as of the Transaction Termination Date as provided in Section 4.2, except for the Parties’ confidentiality obligations under Article 9 herein.

| Credit Requirements: | (a) This Confirmation’s credit requirements for the Electric Energy portion of the Product shall be governed by the EEI Agreement.  
(b) This Confirmation’s credit requirements for the Green Attributes portion of the Product shall be governed by the EEI Agreement. |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Delivery Term:</td>
<td>The “Delivery Term” shall consist of both the Energy Delivery Period and the Green Attributes Delivery Period.</td>
</tr>
</tbody>
</table>
| Energy Delivery Period: | Subject to the satisfaction, or waiver in writing by both Parties, of the Green Attributes Condition Precedent, the “Green Attributes Delivery Period” shall commence on the first day that Seller conveys Green Attributes to Buyer and shall end on that date upon which the amount of Green Attributes conveyed to Buyer satisfies the Total Quantity.  
Seller shall convey Green Attributes to Buyer in the form of WREGIS Certificates.  Seller shall transfer WREGIS Certificates into Buyer’s WREGIS account in an amount required to satisfy the Total Quantity. |
| Green Attributes Delivery Period: | The “Delivery Point” shall be any of the following as selected by Seller in its discretion: NP15, SP15, and/or ZP26.  Buyer shall take title and risk of loss of the Product from the Project at the applicable Delivery Point selected by Seller. |
| Delivery Point:       | Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator for the Project.  Buyer hereby authorizes Seller, or its third party Scheduling Coordinator designee, to deliver the Electric Energy to the CAISO at the Delivery Point. |
| Scheduling Obligations: | Notwithstanding any other provision of this Confirmation to the contrary, all of the Parties’ obligations except for the Parties’ confidentiality obligations under Article 9 herein, are conditioned upon (a) Seller’s receipt, or the Parties’ written waiver, of CPUC Approval as defined below; and (b) Seller’s receipt of the Performance Assurance from Buyer no later than five (5) Business Days following Seller’s Notice to Buyer of CPUC Approval (defined below) (collectively, “Green Attributes Condition Precedent”). |
ARTICLE 2
DEFINITIONS

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

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

2.3 “Broker or Index Quotes” means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets.

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

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

2.6 “CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the Tariff.

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

2.8 “CARB” means the California Air Resources Board or its successor agency.

2.9 “CEC” means the California Energy Commission or its successor agency.

2.10 “Contract Price” means the Energy Price plus the Green Attributes Price.

2.11 “CPUC” means the California Public Utilities Commission or its successor entity.

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

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

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

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

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

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

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

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

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

2.18 “Effective Date” is the same as the Execution Date.

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

2.21 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Electric Energy. Green Attributes do not include (i) any Electric Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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

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

2.24 “Letter of Credit” means an irrevocable, non-transferable, standby letter of credit the form of which shall be substantially as contained in Appendix B to this Agreement; provided that, if the

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1 Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.
issuer is a U.S. branch of a foreign commercial bank, the intended beneficiary may require changes to such form; and the issuer must be a Qualified Institution on the date of delivery of the Letter of Credit to the Secured Party. In case of a conflict of this definition with any other definition of “Letter of Credit” contained in the EEI Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Agreement applies.

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

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

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

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

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

2.30 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (a) costs reasonably incurred by Buyer in purchasing such substitute Product and (b) additional transmission charges, if any, reasonably incurred by Buyer to
the Delivery Point, or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratched demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

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

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

2.33 “Transactions” as used in the EEI Agreement shall mean the “Transaction” as defined in the preamble above.

2.34 “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

2.35 “WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

2.36 “WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 3
CONVEYANCE OF ELECTRIC ENERGY AND GREEN ATTRIBUTES

3.1 Seller’s Delivery of Electric Energy.

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

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

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

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

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

**ARTICLE 4**

**CPUC FILING AND APPROVAL**

4.1 **Filing for CPUC Approval.**

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

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

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

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

**ARTICLE 5**

**COMPENSATION**

5.1 **Calculation Period.**

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

5.2 **Monthly Cash Settlement Amount.**

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

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

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

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

5.3 **Payment Date.**

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

5.4 **Invoices.**

The invoice shall include a statement detailing the amount of Delivered Energy, and associated Green Attributes, transferred to Buyer during the applicable Calculation Period. For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon Buyer’s receipt by e-mail of such invoice in PDF format from Seller. Invoices to Buyer shall be sent by email to set forth in the Notices section of this Agreement.
ARTICLE 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Seller's Representations, Warranties, and Covenants.

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

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

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

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

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

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

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

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

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

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

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

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

(i) The Project either has a first point of interconnection with a California Balancing Authority, or a first point of interconnection with distribution facilities used to serve end users within a California Balancing Authority Area; or

(ii) The Project has an agreement to dynamically transfer electricity to a California Balancing Authority.

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

(i) The original upstream third party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);

(ii) This Agreement transfers only Electric Energy and Green Attributes that have not yet been generated prior to the commencement of the Energy Delivery Period;

(iii) The Delivered Energy transferred hereunder is transferred to Buyer in real time; and

(iv) If the Project has an agreement to dynamically transfer electricity to a California Balancing Authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a Balancing Authority participating in the dynamic transfer arrangement.

6.2 To the extent a change in Law occurs after the Effective Date that causes the representations, warranties, and/or covenants in Section 6.1 that continue beyond the Effective Date to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

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

ARTICLE 7
TERMINATION AND CALCULATION OF TERMINATION PAYMENT

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

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

**ARTICLE 8**

**GENERAL PROVISIONS**

8.1 **Buyer Audit Rights.**

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

8.2 **Facility Identification.**

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

8.3 **Governing Law.**

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

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

For the purposes of Section 8.3(b) above, the words “party” and “parties” shall have the meaning ascribed to them in the preamble of this Confirmation, and the word “agreement” shall mean the term “Agreement” as defined in the preamble of this Confirmation.
ARTICLE 9
CONFIDENTIALITY

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

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

9.2 The Parties agree that the Agreement may be shared on a confidential basis, without prior Notice or consent of the other Party, with the Parties’ counsel and advisors.

9.3 Except as set forth in this Article 9 and the EEI Agreement, each Party shall provide prior Notice to the other Party of disclosure of confidential information of such other Party for purposes of compliance with any applicable regulation, rule, or order of the CPUC, Federal Energy Regulatory Commission, CEC, or other Governmental Authorities.
ACKNOWLEDGED AND AGREED TO BY EACH PARTY'S DULY AUTHORIZED REPRESENTATIVE OR OFFICER:

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, limited for all purposes hereunder to its electric procurement and electric fuels functions.

Signature: ________________________
Name: Don Howerton
Title: Director, Structured Energy Transactions
Date: 2/14/2022

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California Joint Powers Authority, by its duly authorized officers

Signature: ________________________
Name: Girish Balachandran
Title: CEO
Date: 2/9/2022
## APPENDIX A to EEI Master Power Purchase and Sale Agreement
Short Term Sales Confirmation

### PROJECT

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| Facility Name                        | Type      | Location   | ZIP Code | ISO  
|------------------------------------|-----------|------------|----------|------
| North Sky River Energy Center      | Wind      | Tehachapi, CA | 61385A | CAISO   
| Copper Mountain Solar 2            | Solar PV  | Boulder City, NV | 60990A | CAISO   
| Shiloh IV                          | Wind      | Rio Vista, CA | 61617A | CAISO   
| NID (RPS) - Bowman                 | Small Hydro | Nevada City, CA | 60171A | CAISO   
| NID (RPS) - Dutch Flat             | Small Hydro | Nevada City, CA | 60264A | CAISO   
| NID (RPS) - Rollins                | Small Hydro | Nevada City, CA | 60265A | CAISO   
| SPI Burney                         | Biomass   | Burney, CA | 60087A | CAISO   
| SPI Lincoln                        | Biomass   | Lincoln, CA | 60088A | CAISO   
| SPI Quincy                         | Biomass   | Quincy, CA | 60089A | CAISO   
| SPI Sonora                         | Biomass   | Sonora, CA | 60576A | CAISO   
| SPI Anderson II                    | Biomass   | Anderson, CA | 61146A | CAISO   
| Kansas                             | Solar PV  | Stratford, CA | 61263A | CAISO   
| Henrietta Solar                    | Solar PV  | Lemoore, CA | 61841A | CAISO   
| Diablo Winds (2)                   | Wind      | Livermore, CA | 60030A | CAISO   
| PGE Alta                           | Small Hydro | Placer, CA | 60033A | CAISO   
| PGE Centerville                   | Small Hydro | Butte, CA | 60034A | CAISO   
| PGE Coleman                        | Small Hydro | Shasta, CA | 60037A | CAISO   
| PGE Cow Creek                      | Small Hydro | Shasta, CA | 60038A | CAISO   
| PGE Crane Valley                   | Small Hydro | Madera, CA | 60039A | CAISO   
| PGE Deer Creek                     | Small Hydro | Nevada, CA | 60040A | CAISO   
| PGE De Sabla                       | Small Hydro | Butte, CA | 60041A | CAISO   
| PGE Dutch Flat 1                   | Small Hydro | Placer, CA | 60042A | CAISO   
| PGE Halsey                         | Small Hydro | Placer, CA | 60043A | CAISO   
| PGE Hamilton Branch                | Small Hydro | Lassen, CA | 60044A | CAISO   
| PGE Hat 1                          | Small Hydro | Shasta, CA | 60045A | CAISO   
| PGE Hat 2                          | Small Hydro | Shasta, CA | 60046A | CAISO   
| PGE Inskip                         | Small Hydro | Tehama, CA | 60047A | CAISO   
| PGE Kerckhoff 1                    | Small Hydro | Fresno, CA | 62360A | CAISO   
| PGE Kern Canyon                    | Small Hydro | Kern, CA | 60048A | CAISO   
| PGE Kilarc                         | Small Hydro | Shasta, CA | 60049A | CAISO   

Appendix A
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APPENDIX B

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXX

Date: [insert issue date]

Beneficiary: [insert name and address of Beneficiary]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of [insert name of Applicant] (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. [insert number of letter of credit] (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. $[insert amount in figures followed by (amount in words)] (“Letter of Credit Amount”). This Letter of Credit is available with [insert name of issuing bank, and the city and state in which it is located] by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on [insert expiry date] (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. [insert number] and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

   A. “Pursuant to the terms of that certain EEI Power Purchase and Sale Agreement (the “Agreement”), dated [insert date of the Agreement], between Beneficiary and [insert name of Seller under the Agreement], or any Confirmation thereunder or related thereto, Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by [insert name of Seller under the Agreement] under the Agreement; or

   B. “Letter of Credit No. [insert number] will expire in thirty (30) days or less and [insert name of Seller under the Agreement] has not provided replacement security acceptable to Beneficiary.
Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date in case of an interruption of our business as stated below), at our offices at [insert issuing bank’s address for drawings].

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to [Insert fax number, email or other electronic transmission], Attention: [Insert name of bank’s receiving department] or [Insert e-mail or other electronic transmission address]. If a demand is made by facsimile, e-mail or other electronic transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at [Insert phone number(s)] to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce (ICC) Publication No. 600 (the “UCP 600”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and will effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.
For telephone assistance regarding this Letter of Credit, please contact us at [insert number and any other necessary details].

Very truly yours,

[insert name of issuing bank]

By: ____________________________

Authorized Signature

Name: ______________ [print or type name]

Title: ______________ [print or type title]

[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]
APPENDIX B
FORM OF LETTER OF CREDIT
EXHIBIT A – SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: $________________________  DATE: __________________________

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC COMPANY THE AMOUNT OF U.S.$________ (______________ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: ________________________________
NAME AND TITLE