



Liz Gibbons, Chair  
City of Campbell

George Tyson, Vice Chair  
Town of Los Altos Hills

Jon Robert Willey  
City of Cupertino

Zach Hilton  
City of Gilroy

Neysa Fligor  
City of Los Altos

Rob Rennie  
Town of Los Gatos

Evelyn Chua  
City of Milpitas

Javed Ellahie  
City of Monte Sereno

Yvonne Martinez Beltran  
City of Morgan Hill

Margaret Abe-Koga  
City of Mountain View

Tina Walia  
City of Saratoga

Larry Klein  
City of Sunnyvale

Otto Lee  
County of Santa Clara

**Silicon Valley Clean Energy Authority  
Board of Directors Meeting**

Wednesday, May 11, 2022  
7:00 pm

Cupertino Community Hall  
10350 Torre Avenue  
Cupertino, CA

Teleconference Meeting  
Webinar:

<https://cityofcupertino.zoom.us/j/98528986275>

Telephone (Audio Only):  
US: +1 669-900-6833  
Webinar ID: 985 2898 6275

In accordance with California Government Code Section 54953(e), in consideration of the Coronavirus (COVID-19), members of the Silicon Valley Clean Energy Board of Directors and staff have the option to participate in this meeting by teleconference.

Members of the public may also attend this meeting in person, or observe this meeting electronically by accessing the meeting via instructions above. Public Comments can be sent in advance of the meeting via email up to three hours before the meeting begins to Board Clerk Andrea Pizano at [Andrea.Pizano@svcleanenergy.org](mailto:Andrea.Pizano@svcleanenergy.org) and will be distributed to the Board of Directors. The public will also have an opportunity to provide comments during the meeting. Members of the public participating remotely and 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.

**[svcleanenergy.org](http://svcleanenergy.org)**

333 W El Camino Real  
Suite 330  
Sunnyvale, CA 94087

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](mailto:Andrea.Pizano@svcleanenergy.org) prior to the meeting for assistance.



Liz Gibbons, Chair  
City of Campbell

## AGENDA

George Tyson, Vice Chair  
Town of Los Altos Hills

### Call to Order

Jon Robert Willey  
City of Cupertino

### Roll Call

Zach Hilton  
City of Gilroy

### Public Comment on Matters Not Listed on the Agenda

Neysa Fligor  
City of Los Altos

*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.*

Rob Rennie  
Town of Los Gatos

### Consent Calendar (Action)

Evelyn Chua  
City of Milpitas

1a) Approve Minutes of the April 13, 2022, Board of Directors Meeting

1b) Receive March 2022 Treasurer Report

Javed Ellahie  
City of Monte Sereno

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

Yvonne Martinez Beltran  
City of Morgan Hill

1d) Authorize the Chief Executive Officer to Amend Agreement with UtilityAPI, Inc. to Explore and Develop Innovative New Data Hive Features to Support More Seamless Customer Experience for Future Applications

Margaret Abe-Koga  
City of Mountain View

1e) Receive Update on California Electric Vehicle Infrastructure Project (CALeVIP) Program Launch and Status

Tina Walia  
City of Saratoga

1f) Authorize the Chief Executive Officer to Approve the Agreement with Strategic Energy Innovations to Host Two Climate Corps Fellows for the 2022-2023 Fellowship Cycle

Larry Klein  
City of Sunnyvale

1g) Executive Committee Report

1h) Finance and Administration Committee Report

Otto Lee  
County of Santa Clara

1i) Audit Committee Report

1j) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report

1k) California Community Power Report

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Margaret Abe-Koga  
City of Mountain View

Tina Walia  
City of Saratoga

Larry Klein  
City of Sunnyvale

Otto Lee  
County of Santa Clara

### Regular Calendar

- 2) CEO Report (Discussion)
- 3) Delegate Authority to the Chief Executive Officer to Participate in PG&E's Voluntary Allocation Market Offer Renewable Energy Credit Solicitation and Transact for a Portion of SVCE's Load Ratio Share Allocation (Action)
- 4) New Construction Reach Code Update (Presentation)

### Board Member Announcements and Direction on Future Agenda Items

#### Public Comment on Closed Session

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

#### Convene to Closed Session

Public Employee Performance Evaluation  
Title: Chief Executive Officer

#### Conference with Labor Negotiators

Agency Representatives: Liz Gibbons, Chair, Board of Directors,  
George Tyson, Vice Chair, Board of Directors  
Unrepresented Employee: Chief Executive Officer

#### Report from Closed Session

### Adjourn

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## 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, April 13, 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 Regular Meeting to order at 7:03 p.m.

**Roll Call**

**Present:**

Director Liz Gibbons (Chair), Campbell  
Director George Tyson (Vice Chair), Los Altos Hills  
Director Jon Robert Willey, Cupertino  
Alternate Director Rebeca Armendariz, Gilroy  
Alternate Director Sally Meadows, Los Altos  
Director Evelyn Chua, Milpitas  
Director Javed Ellahie, Monte Sereno  
Director Yvonne Martinez Beltran, Morgan Hill  
Director Margaret Abe-Koga, Mountain View  
Director Tina Walia, Saratoga  
Director Larry Klein, Sunnyvale

**Absent:**

Director Rob Rennie, Los Gatos  
Director Otto Lee, Santa Clara County

All present Board members participated via teleconference.

**Public Comment on Matters Not Listed on the Agenda**

No speakers.

**Consent Calendar**

- 1a) Approve Minutes of the March 9, 2022, Board of Directors Meeting
- 1b) Receive February 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 to Execute Agreement with UtilityAPI, Inc. for a Long-Term Data Hive Program
- 1e) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions
- 1f) Authorize the Chief Executive Officer to Execute Amendment to Agreement with Joint Venture Silicon Valley to Add Convening Support for a Building Electrification Stakeholder Group
- 1g) Receive Q1 2022 Decarbonization Programs Update

- 1h) Receive 2022 New Construction Reach Codes and Existing Building Policy Update
- 1i) Executive Committee Report
- 1j) Finance and Administration Committee Report
- 1k) Audit Committee Report
- 1l) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report
- 1m) 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 Martinez Beltran moved and Director Klein seconded the motion to approve the Consent Calendar, Items 1a through 1m.**

**The motion carried unanimously by verbal roll call vote with Directors Lee and Rennie absent.**

### Regular Calendar

#### **2) CEO Report (Discussion)**

CEO Girish Balachandran addressed four updates in his CEO report:

- 1) Earth Day and SVCE Anniversary communications with a video presentation from Communications Manager Pamela Leonard,
- 2) Introduction of new employee Nupur Hiremath, Manager of Decarbonization and Grid Innovation Programs, who provided brief welcome comments,
- 3) An SVCE Organization update with supporting slides, and
- 4) A legislative update from Senior Government Affairs Manager Bena Chang with supporting slides.

#### **3) Approve Plan to Conduct the May 2022 Board of Directors Meeting as a Hybrid Meeting (Action)**

Administrative Services Manager Kevin Armstrong introduced the item and presented a PowerPoint presentation outlining remote meetings and noticing requirements, virtual attendance in the event stricter Brown Act requirements return, a draft schedule for introducing hybrid meetings over the next few months, and a recommendation to conduct the May Board of Directors meeting as a hybrid meeting. Administrative Services Manager Armstrong responded to board member questions.

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

Director Willey provided comments on the layout for meetings at Cupertino Community Hall.

**MOTION: Director Abe-Koga moved and Director Martinez Beltran seconded the motion to approve staff's recommendation to conduct the May 11, 2022 Board of Directors meeting as a hybrid meeting, with the option to attend in-person at Cupertino Community Hall, or remote via Zoom.**

**The motion carried by the following roll call vote:**

**Yes: 10 – Chair Gibbons  
Vice Chair Tyson  
Director Willey  
Alternate Director Armendariz  
Alternate Director Meadows  
Director Chua  
Director Ellahie**

**Director Martinez Beltran  
Director Abe-Koga  
Director Klein**

**No: 1 – Director Walia**

**Absent: 2 – Director Lee  
Director Rennie**

**4) Clean Energy Procurement Informational Update (Presentation)**

Power Contracts and Settlements Manager Zak Liske updated the Board on the development status of all SVCE long-term clean energy contracts, via a presentation titled “Clean Power Update”.

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

**Board Member Announcements and Future Agenda Items**

Director Chua announced the City of Milpitas launched a website, Incentive Corner, which is a one-stop shop for information and rebates related to water conservation and energy efficiency.

Chair Gibbons announced the Board of Directors would meet in Closed Session following public comment and provided the process for doing so.

**Public Comment on Closed Session**

No speakers.

**Convene to Closed Session**

Chair Gibbons announced the Board of Directors would convene to Closed Session at 7:53 p.m. to discuss the following:

Conference with Legal Counsel – Anticipated Litigation  
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (one potential case)

**Report from Closed Session**

The Board of Directors returned from Closed Session at 9:39 p.m. General Counsel Trisha Ortiz announced there was no reportable action from the Closed Session.

**Adjourn**

Chair Gibbons adjourned the meeting at 9:40 p.m.

**ATTEST:**

\_\_\_\_\_  
Andrea Pizano, Board Secretary



## TREASURER REPORT

**Fiscal Year to Date  
As of March 31, 2022**

*(Preliminary & Unaudited)*

**Issue Date: May 11, 2022**

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

**Financial Highlights for the month of March 2022:**

- > SVCE operations resulted in a change in net position for the month of \$1.7 million and fiscal-year-to-date (FYTD) change in net position of negative \$15.5 million.
- > Retail GWh sales for the month landed 2% below budget.
- > FYTD operating margin of negative \$6.8 million or negative 5.9% is below budget expectations of a negative 1.9% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are 3.5% above budget.
- > SVCE is investing ~95% of available funds generating FYTD investment income of \$0.11 million.

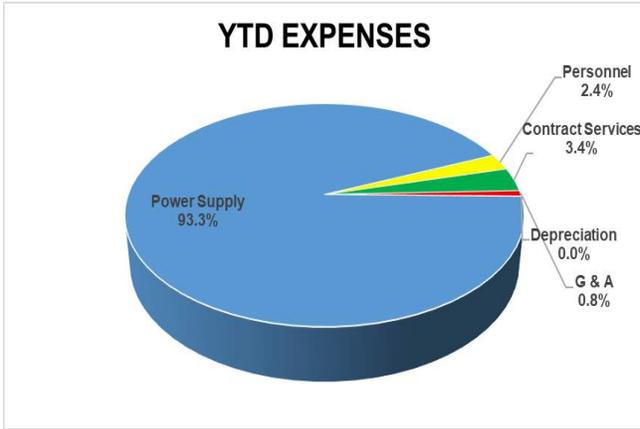
Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	1,532	(4,526)	(2,237)	(6,275)	(5,774)	1,734							(15,547)	61,611

Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	11,938	15,483	13,478	17,209	15,665	20,556							94,329	
Wholesale Sales	(195)	(15)	-	(82)	(182)	(208)							(681)	
Capacity	2,890	2,207	2,324	3,281	3,557	3,544							17,802	
CAISO Charges	(1,301)	205	2,286	1,116	1,004	(328)							2,983	
NEM Expense	3	152	(187)	(200)	(30)	151							(110)	
Charge/Credit (IST/Net Rev)	1,189	(125)	759	1,855	2,020	3,029							8,728	
Net Power Costs	14,525	17,908	18,660	23,179	22,035	26,744	-	-	-	-	-	-	123,050	274,979

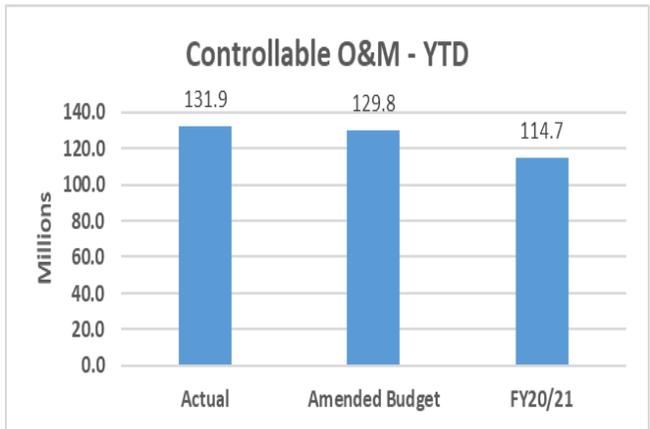
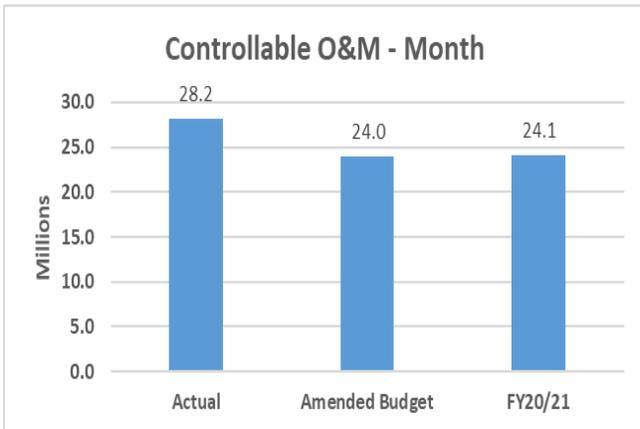
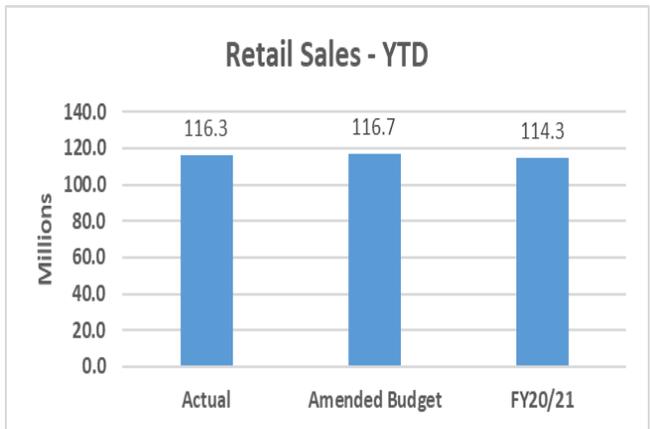
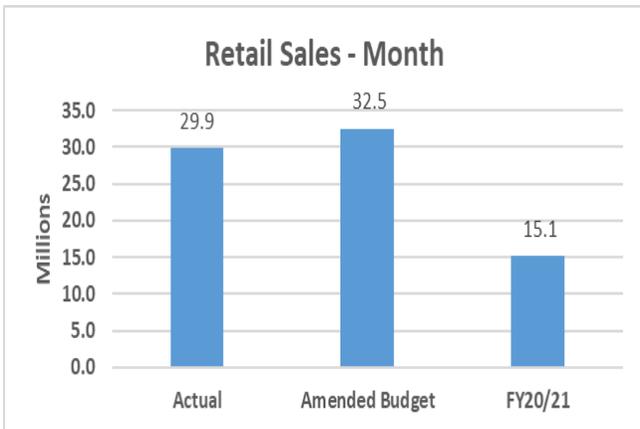
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	4	13	10	-	5	18							50	150
Energy Programs	68	123	116	220	114	134							775	8,582

Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	302	288	327	322	286	306							1,831	
Retail Sales Budget	302	288	327	322	296	311	297	313	337	350	362	339	3,844	3,844

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



Other Statistics and Ratios	
Working Capital	\$158,640,058
Current Ratio	5.9
Operating Margin	-5.8%
Expense Coverage Days	165
Long-Term Debt	\$0
Total Accounts	275,634
Opt-Out Accounts (Month)	46
Opt-Out Accounts (FYTD)	225
Opt-Up Accounts (Month)	24
Opt-Up Accounts (FYTD)	220



## SILICON VALLEY CLEAN ENERGY AUTHORITY

### STATEMENT OF NET POSITION

As of March 31, 2022

#### ASSETS

##### Current Assets

Cash & Cash Equivalents	\$ 146,987,059
Accounts Receivable, net of allowance	23,806,054
Accrued Revenue	16,655,173
Other Receivables	1,081,043
Prepaid Expenses	1,891,334
Deposits	645,132
Restricted cash	661,776

<b>Total Current Assets</b>	<b>191,727,571</b>
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##### Noncurrent assets

Capital assets, net of depreciation	320,030
Deposits	45,330

<b>Total Noncurrent Assets</b>	<b>365,360</b>
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<b>Total Assets</b>	<b>192,092,931</b>
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#### LIABILITIES

##### Current Liabilities

Accounts Payable	1,070,032
Accrued Cost of Electricity	29,695,695
Other accrued liabilities	788,566
User Taxes and Energy Surcharges due to other gov'ts	871,444

<b>Total Current Liabilities</b>	<b>32,425,737</b>
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##### Noncurrent Liabilities

Supplier security deposits	9,131,250
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<b>Total noncurrent liabilities</b>	<b>9,131,250</b>
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<b>Total Liabilities</b>	<b>41,556,987</b>
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#### NET POSITION

Net investment in capital assets	320,030
Restricted for security collateral	661,776
Unrestricted (deficit)	149,554,138

<b>Total Net Position</b>	<b>\$ 150,535,944</b>
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**SILICON VALLEY CLEAN ENERGY AUTHORITY**

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

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

**OPERATING REVENUES**

Electricity Sales, Net	\$ 113,089,818
GreenPrime electricity premium	935,033
Other income	15,501
Liquidated damages	<u>2,224,250</u>
<b>TOTAL OPERATING REVENUES</b>	<b><u>116,264,602</u></b>

**OPERATING EXPENSES**

Cost of Electricity	123,050,364
Contract services	4,491,659
Staff compensation and benefits	3,169,769
General & Administrative	1,094,026
Depreciation	<u>46,962</u>
<b>TOTAL OPERATING EXPENSES</b>	<b><u>131,852,780</u></b>
<b>OPERATING INCOME(LOSS)</b>	<b><u>(15,588,178)</u></b>

**NONOPERATING REVENUES (EXPENSES)**

Interest Income	109,641
Financing costs	<u>(68,005)</u>
<b>TOTAL NONOPERATING REVENUES (EXPENSES)</b>	<b><u>41,636</u></b>

**CHANGE IN NET POSITION**

	(15,546,542)
Net Position at beginning of period	<u>166,082,486</u>
<b>Net Position at end of period</b>	<b><u>\$ 150,535,944</u></b>

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

**STATEMENT OF CASH FLOWS**  
**October 1, 2021 through March 31, 2022**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 116,109,385
Receipts from liquidated damages	\$ 2,224,250
Other operating receipts	2,196,453
Payments to suppliers for electricity	(124,068,768)
Payments for other goods and services	(6,202,804)
Payments for staff compensation and benefits	(3,099,316)
Tax and surcharge payments to other governments	(2,328,548)
<b>Net cash provided (used) by operating activities</b>	<b><u>(15,169,348)</u></b>

**CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES**

Finance costs paid	<u>(68,005)</u>
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**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Acquisition of capital assets	<u>(32,016)</u>
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**CASH FLOWS FROM INVESTING ACTIVITIES**

Interest income received	<u>109,641</u>
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Net change in cash and cash equivalents	(15,159,728)
Cash and cash equivalents at beginning of year	<u>162,808,564</u>
<b>Cash and cash equivalents at end of period</b>	<b><u>\$ 147,648,836</u></b>

**Reconciliation to the Statement of Net Position**

Cash and cash equivalents (unrestricted)	\$ 146,987,059
Restricted cash	<u>661,776</u>
Cash and cash equivalents	<b><u>\$ 147,648,835</u></b>

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

**STATEMENT OF CASH FLOWS (Continued)**

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

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

Operating Income (loss)	\$ (15,588,178)
<b>Adjustments to reconcile operating income to net cash provided (used) by operating activities</b>	
Depreciation expense	46,962
Revenue adjusted for uncollectible accounts	(407,452)
(Increase) decrease in net accounts receivable	2,591,582
(Increase) decrease in energy settlements receivable	269,012
(Increase) decrease in other receivables	(850,558)
(Increase) decrease in accrued revenue	(2,244,553)
(Increase) decrease in prepaid expenses	486,902
(Increase) decrease in current deposits	80,952
Increase (decrease) in accounts payable	(485,554)
Increase (decrease) in accrued cost of electricity	(3,149,686)
Increase (decrease) in accrued liabilities	146,523
Increase (decrease) in energy settlements payable	2,018,290
Increase (decrease) in taxes and surcharges due to other governments	(183,591)
Increase (decrease) in supplier security deposits	2,100,000
<b>Net cash provided (used) by operating activities</b>	<b><u>\$ (15,169,349)</u></b>

**SILICON VALLEY CLEAN ENERGY AUTHORITY**  
**BUDGETARY COMPARISON SCHEDULE**  
October 1, 2021 through March 31, 2022

	FYTD <u>Actual</u>	FYTD <u>Amended Budget</u>	<u>Variance</u>		FY 2021-22 <u>Amended Budget</u>	FY 2021-22 <u>Remaining Budget</u>
			\$	%		
<b>OPERATING REVENUES</b>						
Energy Sales	\$113,089,818	\$115,915,253	-\$2,825,435	-2%	\$384,498,000	\$271,408,182
Green Prime Premium	935,033	766,837	168,196	22%	1,005,000	69,967
Liquidated damages	<u>2,224,250</u>		<u>2,224,250</u>			
<b>TOTAL OPERATING REVENUES</b>	<b><u>116,249,101</u></b>	<b><u>116,682,090</u></b>	<b><u>(432,989)</u></b>	<b><u>0%</u></b>	<b><u>385,503,000</u></b>	<b><u>271,478,149</u></b>
<b>ENERGY EXPENSES</b>						
Power Supply	<u>123,050,364</u>	<u>118,932,275</u>	<u>4,118,089</u>	<u>3.5%</u>	<u>274,979,000</u>	151,928,636
Operating Margin	<b><u>(6,801,263)</u></b>	<b><u>(2,250,185)</u></b>	<b><u>(4,551,078)</u></b>	<b><u>202%</u></b>	<b><u>110,524,000</u></b>	
<b>OPERATING EXPENSES</b>						
Data Management	1,582,804	1,624,706	(41,902)	-3%	3,249,000	1,666,196
PG&E Fees	589,831	724,973	(135,142)	-19%	1,450,000	860,169
Salaries & Benefits	3,169,769	4,267,321	(1,097,552)	-26%	8,535,000	5,365,231
Professional Services	1,544,500	2,879,244	(1,334,744)	-46%	5,669,000	4,124,500
Marketing & Promotions	219,068	458,659	(239,591)	-52%	908,000	688,932
Notifications	45,135	65,625	(20,490)	-31%	131,000	85,865
Lease	248,375	262,500	(14,125)	-5%	525,000	276,625
General & Administrative	<u>578,223</u>	<u>612,308</u>	<u>(34,085)</u>	<u>-6%</u>	<u>1,225,000</u>	<u>646,777</u>
<b>TOTAL OPERATING EXPENSES</b>	<b><u>7,977,705</u></b>	<b><u>10,895,336</u></b>	<b><u>(2,917,631)</u></b>	<b><u>-27%</u></b>	<b><u>21,692,000</u></b>	<b><u>13,714,295</u></b>
<b>OPERATING INCOME/(LOSS)</b>	<b><u>(14,778,968)</u></b>	<b><u>(13,145,521)</u></b>	<b><u>(1,633,447)</u></b>	<b><u>12%</u></b>	<b><u>88,832,000</u></b>	<b><u>103,610,968</u></b>
<b>NON-OPERATING REVENUES</b>						
Other Income	15,501	25,000	(9,499)	-38%	50,000	34,499
Investment Income	<u>109,641</u>	<u>150,000</u>	<u>(40,359)</u>	<u>-27%</u>	<u>300,000</u>	<u>190,359</u>
<b>TOTAL NON-OPERATING REVENUES</b>	<b><u>125,142</u></b>	<b><u>175,000</u></b>	<b><u>(49,858)</u></b>	<b><u>-28%</u></b>	<b><u>350,000</u></b>	<b><u>224,858</u></b>
<b>NON-OPERATING EXPENSES</b>						
Financing	68,005	20,000	48,005	240%	40,000	(28,005)
<b>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</b>						
Capital Outlay	50,318	75,000	(24,682)	-33%	150,000	99,682
Transfer to Programs Fund	3,390,729	3,390,729	-	0%	6,781,000	3,390,271
Nuclear Allocation	300,000	300,000			600,000	300,000
Double Down Programs Allocation	8,500,000	8,500,000			17,000,000	8,500,000
Customer Bill Relief	<u>-</u>	<u>1,500,000</u>			<u>3,000,000</u>	<u>3,000,000</u>
<b>TOTAL OTHER USES</b>	<b><u>12,241,047</u></b>	<b><u>13,765,729</u></b>	<b><u>(1,524,682)</u></b>	<b><u>-11%</u></b>	<b><u>27,531,000</u></b>	<b><u>15,289,953</u></b>
<b>NET INCREASE/(DECREASE) IN AVAILABLE FUND BALANCE</b>	<b><u>-\$26,962,878</u></b>	<b><u>-\$26,756,250</u></b>	<b><u>-\$206,628</u></b>	<b><u>1%</u></b>	<b><u>\$61,611,000</u></b>	

**SILICON VALLEY CLEAN ENERGY AUTHORITY  
PROGRAM FUND  
BUDGETARY COMPARISON SCHEDULE  
October 1, 2021 through March 31, 2022**

	<u>Amended BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
<b>REVENUE &amp; OTHER SOURCES:</b>				
Transfer from Operating Fund	\$ 24,381,000	\$ 12,190,729	\$ 12,190,271	50%
<b>EXPENDITURES &amp; OTHER USES:</b>				
Program expenditures	8,581,581	774,676	7,806,905	9.0%
<b>Net increase (decrease) in fund balance</b>	<u><b>\$ 15,799,419</b></u>	<u><b>\$11,416,053</b></u>		
Fund balance at beginning of period		<u>5,837,711</u>		
Fund balance at end of period		<u><u>\$17,253,764</u></u>		

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

	<u>Amended BUDGET</u>	<u>ACTUAL</u>	<u>ADOPTED BUDGET REMAINING</u>	<u>ACTUAL/ ADOPTED BUDGET</u>
<b>REVENUE &amp; OTHER SOURCES:</b>				
Transfer from Operating Fund *	\$ -	\$ -	\$ -	
<b>EXPENDITURES &amp; OTHER USES:</b>				
Program expenditures *	2,850,000	3,073	2,846,927	0.1%
<b>Net increase (decrease) in fund balance</b>	<u><b>\$ (2,850,000)</b></u>	<u><b>(3,073)</b></u>		
Fund balance at beginning of period		<u>7,990,315</u>		
Fund balance at end of period		<u><u>\$7,987,242</u></u>		

**SILICON VALLEY CLEAN ENERGY AUTHORITY**

**OPERATING FUND**

**BUDGET RECONCILIATION TO STATEMENT OF**

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

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

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ (26,962,878)
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(46,962)
Subtract program expense not in operating budget	(774,676)
Subtract CRCR expense not in operating budget	(3,073)
Add back transfer to Program fund	12,190,729
Add back capital asset acquisition	50,318
<b>Change in Net Position</b>	<b><u>(15,546,542)</u></b>

**SILICON VALLEY CLEAN ENERGY AUTHORITY**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**October 1, 2021 through March 31, 2022**

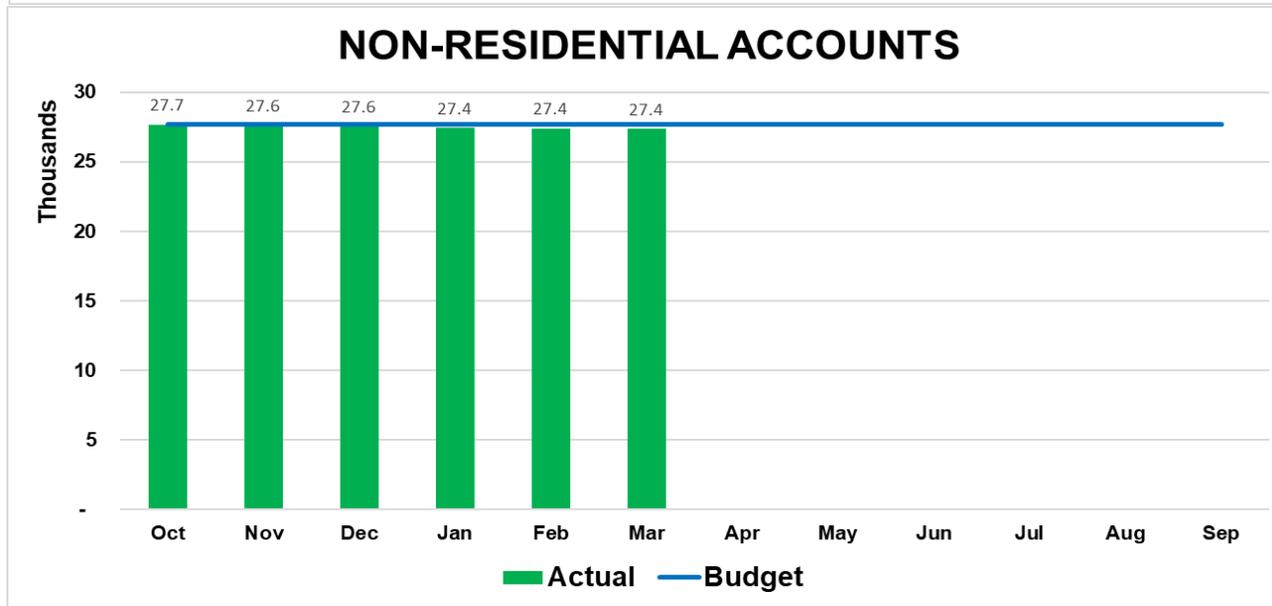
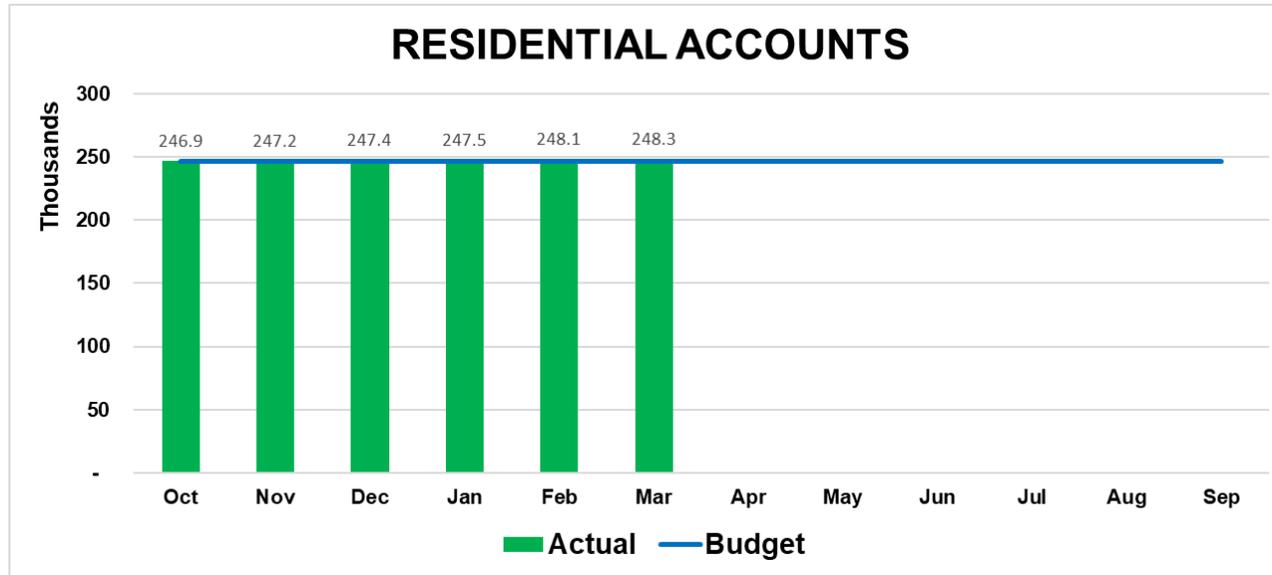
	October	November	December	January	February	March	April	May	June	July	August	September	YTD
<b>OPERATING REVENUES</b>													
Electricity sales, net	\$ 17,365,080	\$ 14,621,707	\$ 17,815,729	\$ 17,228,581	\$ 16,277,554	\$ 29,781,167							\$ 113,089,818
Green electricity premium	80,961	\$ 60,556	\$ 95,594	\$ 462,687	\$ 103,634	\$ 131,601							935,033
Other Income	1,000	\$ 2,500	\$ 1,000	\$ 3,500	\$ 2,250	\$ 5,251							15,501
Liquidated damages				922,250	\$ 1,302,000	\$ -							2,224,250
Total operating revenues	<u>17,447,041</u>	<u>14,684,763</u>	<u>17,912,323</u>	<u>18,617,018</u>	<u>17,685,438</u>	<u>29,918,019</u>	-	-	-	-	-	-	<u>116,264,602</u>
<b>OPERATING EXPENSES</b>													
Cost of electricity	14,524,607	17,907,845	18,660,060	23,179,137	22,034,894	26,743,821							123,050,364
Staff compensation and benefits	448,844	465,162	593,320	572,350	538,861	551,232							3,169,769
Data manager	263,759	263,759	262,863	263,514	264,092	264,817							1,582,804
Service fees - PG&E	97,254	96,768	104,341	97,053	97,084	97,331							589,831
Consultants and other professional fees	370,413	341,404	376,273	473,924	393,452	363,558							2,319,024
General and administration	209,985	134,289	152,437	306,490	129,063	161,762							1,094,026
Depreciation	7,289	8,162	7,774	7,716	7,853	8,168							46,962
Total operating expenses	<u>15,922,151</u>	<u>19,217,389</u>	<u>20,157,068</u>	<u>24,900,184</u>	<u>23,465,299</u>	<u>28,190,689</u>	-	-	-	-	-	-	<u>131,852,780</u>
Operating income (loss)	<u>1,524,890</u>	<u>(4,532,626)</u>	<u>(2,244,745)</u>	<u>(6,283,166)</u>	<u>(5,779,861)</u>	<u>1,727,330</u>	-	-	-	-	-	-	<u>(15,588,178)</u>
<b>NONOPERATING REVENUES (EXPENSES)</b>													
Interest income	18,545	18,382	19,370	18,957	16,791	17,596							109,641
Financing costs	(11,042)	(11,626)	(12,027)	(11,042)	(11,226)	(11,042)							(68,005)
Total nonoperating revenues (expenses)	<u>7,503</u>	<u>6,756</u>	<u>7,343</u>	<u>7,915</u>	<u>5,565</u>	<u>6,554</u>	-	-	-	-	-	-	<u>41,636</u>
<b>CHANGE IN NET POSITION</b>	<b>\$ 1,532,393</b>	<b>\$ (4,525,870)</b>	<b>\$ (2,237,402)</b>	<b>\$ (6,275,251)</b>	<b>\$ (5,774,296)</b>	<b>\$ 1,733,884</b>	<b>\$ -</b>	<b>\$ (15,546,542)</b>					

**SILICON VALLEY CLEAN ENERGY AUTHORITY  
INVESTMENTS SUMMARY  
October 1, 2021 through March 31, 2022**

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>YTD</u> <u>Total</u>
	\$18,545	\$18,382	\$19,370	\$18,957	\$16,791	\$17,596	\$0	\$0	\$0	\$0	\$0	\$0	<u>\$109,641</u>
<hr/>													
<b>Portfolio Invested</b>													
<i>Average daily portfolio available to invest*</i>	152,976,979	155,897,345	155,743,105	157,270,808	153,138,549	145,837,752							
<i>Average daily portfolio invested</i>	141,994,910	145,456,026	148,530,962	147,297,741	145,363,213	137,891,490							
<i>% of average daily portfolio invested</i>	92.8%	93.3%	95.4%	93.7%	94.9%	94.6%							
<hr/>													
<b>Detail of Portfolio</b>													
	<u>Opening Rate</u>	<u>Current Rate</u>	<u>Carrying Value</u>	<u>Interest Earned</u>									
<i>Money Market - River City Bank</i>	1.26%	0.15%	\$129,206,878	\$17,568									

\* Note: Balance available to invest does not include lockbox funds.

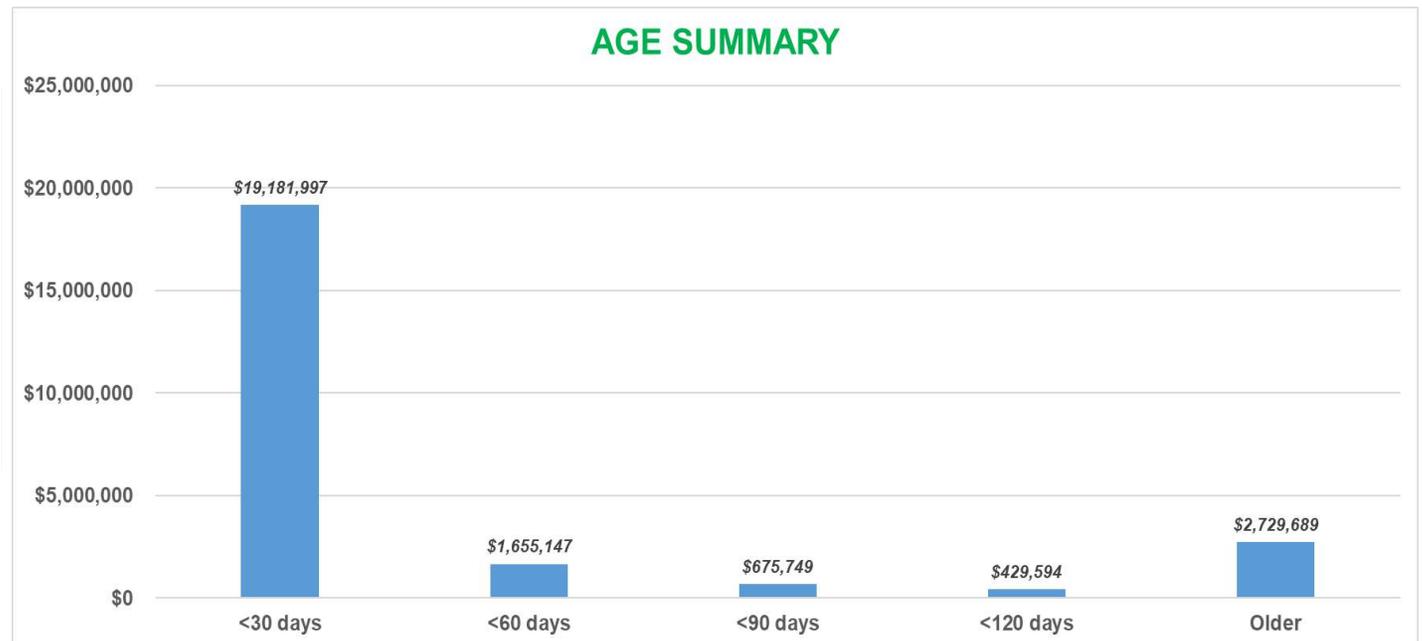
# CUSTOMER ACCOUNTS



## SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	October	November	December	January	February	March	April	May	June	July	August	September
<b>0 to 30 days</b>	74.6%	66.6%	67.7%	70.4%	73.9%	77.7%						
<b>31 to 60 days</b>	8.3%	11.6%	9.1%	5.4%	6.9%	6.7%						
<b>61 to 90 days</b>	3.1%	3.7%	5.1%	3.9%	2.7%	2.7%						
<b>91 to 120 days</b>	2.0%	2.9%	3.0%	3.2%	2.5%	1.7%						
<b>Over 120 days</b>	12.0%	15.1%	15.0%	17.1%	14.1%	11.1%						

Accounts Receivable Days
<b>23 Days</b>
<b>\$24,672,176</b>
<b>TOTAL DUE</b>
Bad Debt % ( <i>Budget</i> )
<b>1%</b>





## Staff Report – Item 1c

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**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:            5/11/2022

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### **RECOMMENDATION**

To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-13 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).

**Agenda Item: 1c****Agenda Date: 5/11/2022**

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, February 9, 2022, March 9, 2022, and April 13, 2022 the Board adopted Resolutions 2021-26, 2021-27, 2022-02, 2022-03, 2022-07, and 2022-11 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 2022-13 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. 2022-13**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PASSED AND ADOPTED** this 11th day of May 2022, by the following vote:

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

Town of Los Altos Hills	Alternate Director Schmidt				
Town of Los Gatos	Alternate Director Sayoc				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				
City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Alternate Director Matichak				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Andrea Pizano, Board Clerk



## Staff Report – Item 1d

**Item 1d: Authorize the Chief Executive Officer to Amend Agreement with UtilityAPI, Inc. to Explore and Develop Innovative New Data Hive Features to Support More Seamless Customer Experience for Future Applications**

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy

Date: 5/11/2022

### **RECOMMENDATION**

Staff recommends that the Silicon Valley Clean Energy Authority Board (“SVCE Board”) authorize the Chief Executive Officer (“CEO”) to execute the attached amendment with a not-to-exceed amount of \$332,800 with UtilityAPI, Inc. (“UAPI”), to explore and develop innovative new features for SVCE’s Data Hive that could be used within third party applications to integrate more seamlessly and further simplify customer experience while retaining the informed consent elements essential to Data Hive.

### **BACKGROUND**

SVCE launched its “Data Hive” pilot in 2020, and has since deployed this data exchange platform within SVCE’s service territory to allow third parties to request and download customer utility bill and usage data upon customer authorization. In April 2022, the SVCE Board approved a three-year contract for \$405,000 to continue offering Data Hive to customers with the same core set of functionality and incremental improvements made by UAPI.

### **ANALYSIS & DISCUSSION**

Today, there are over 180 companies registered to use the Data Hive. While transactional activity was low upon initial launch of the Data Hive, public third-party usage has increased over time. In addition, several of SVCE’s other programs (e.g. GridShift: EV Charging pilot and FutureFit Assist: EV Charging) began to use the Data Hive to help our third-party administrators easily access customer data. These values to SVCE led the Board to approve extending the platform for another three years to continue to help customers access and share their data needed for smart energy solution decisions.

Providing simplified, effective access to usage data is beneficial to SVCE’s ongoing and future decarbonization programs, streamlining the process by which customers can authorize and share their data with third-party vendors. As a part of continuing to use Data Hive to help third parties explore new and innovative approaches to decarbonization, SVCE has spoken with UAPI about the development of new functionality that has the potential to unlock novel and more widespread use by sophisticated third parties.

This new feature set is called “OTP-Auth” and has been a part of California Public Utilities Commission (CPUC) discussions on streamlined customer data access. Much as Data Hive currently demonstrates an optimal implementation of the Green Button Connect standard, this OTP-Auth feature would be the cutting edge in informed customer data access and demonstrate to the CPUC and other utilities that it works to improve deployment of decarbonization technologies.

**Agenda Item: 1d****Agenda Date: 5/11/2022**

OTP-Auth builds on the existing Data Hive authorization process. OTP-Auth can smooth customer experience by removing the pop-out authorization interface (which brings the customer to SVCE's Data Hive page and requires a few clicks of buttons and data entry). Instead, it sends the customer a one-time passcode they can put directly in a third-party application. While this necessitates a more complex integration between Data Hive and the third-party applications, the customer has fewer steps while still giving informed consent to share.

Because this functionality will only be usable by more sophisticated third parties, SVCE and UAPI will need to spend additional time investigating what features would be needed and whether there is sufficient commercial interest to warrant full development of OTP-Auth. As such, the work approved through this resolution will be broken into two phases with a required SVCE staff approval before advancing from the first phase to the second:

1. Finalize the OTP-Auth features - \$52,000
2. Perform development and testing of OTP-Auth - \$280,800

SVCE staff will review the results of the first phase of work and assess whether the finalized features are likely to lead to expanded commercial interest in the final OTP-Auth deployment. If so, SVCE staff will approve UAPI to move into the development phase. If not, the work will be suspended and no additional funds will be spent.

Providing customers the ability to share their own data with third parties in a simple way is essential to large-scale deployment of clean resources and is a major benefit that SVCE provides to our communities. This commitment to advancing the Data Hive functionality will serve to further differentiate the SVCE service territory as one that empowers our customers and supports innovative development of decarbonization solutions.

**STRATEGIC PLAN**

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

**ALTERNATIVE**

The primary alternative to the Staff recommendation is to not sign this amendment. This would keep the previously-approved contract in place but not lead to the exploration and possible development of the OTP-Auth functionality, and associated expanded use of the Data Hive platform.

**FISCAL IMPACT**

The staff proposal has no incremental fiscal impact. Through the annual budget process, the Board approved 2% of annual operating revenues for programs and \$2.4M towards Innovation funding. Approval of this contract would allocate \$332,800 within the Innovation budget towards this UAPI contract. When combined with the funds previously approved for the three-year contract, this amendment will increase the total contract with UAPI to \$737,800.

**ATTACHMENTS**

1. Amendment Adding OTP-Auth Development Work to UtilityAPI, Inc. Agreement
2. April 2022 Agreement with UtilityAPI, Inc. for Long-Term Data Hive Program

## **FIRST AMENDMENT TO AGREEMENT WITH UTILITYAPI, INC**

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and UTILITYAPI, INC., entered into that certain agreement entitled SOFTWARE AS A SERVICE, effective on April 14, 2022, hereinafter referred to as “Original Agreement”; and

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

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

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

SVCE shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A (the “Services Fees”), subject to the terms and conditions contained in this Agreement, including, but not limited to, Section 11 Fees; Billing, below. The total amount payable to Service Provider under this Agreement shall not exceed \$737,800.

2. EXHIBIT A STATEMENT OF SERVICES, SUPPORT, AND SERVICE LEVEL AGREEMENT Section of Original Agreement shall be amended to read as follows:

### **SVCE Data Hive - OTP-Auth Scope of Work**

#### **Overview**

To facilitate a more fully embedded data sharing experience, UtilityAPI will explore, and at the direction of SVCE add, additional functionality to the SVCE Data Hive that will enable customers to securely authorize data sharing from directly within third party applications. The functionality will be based on the previously proposed "OTP-Auth" authorization process described in various CPUC CDAC meetings, CEC filings, and the OTP-Auth description memo to SVCE.

#### **Description of Work**

UtilityAPI will work with SVCE to assess commercial interest and applicability of OTP-Auth with current and prospective users of Data Hive. Through conversation with SVCE staff, and third-party companies if interested, UtilityAPI will formalize the specific technical implementation details of the OTP-Auth protocol to be added to Data Hive under Milestone 1. UtilityAPI will require written approval from SVCE to proceed with the remaining, bulk of the OTP-Auth development based upon the Milestone 1 deliverable and SVCE’s assessment of commercial interest from current and prospective Data Hive users. UtilityAPI will then develop the agreed upon protocol to be used by approved third party companies.

## Milestones Table

Milestone	Description	Estimated Completion Date	Invoice Amount
M1	Finalize initial OTP-Auth protocol specifics	May 31, 2022	\$52,000
<i>SVCE reviews M1 and UtilityAPI waits for approval to proceed</i>			
M2	Complete sandbox-mode only (i.e. no real data) implementation of OTP-Auth protocol	August 1, 2022	\$197,000
M3	Perform updates based on sandbox testing	September 1, 2022	\$76,000
M4	Enable OTP-Auth on Data Hive for real SVCE customers (i.e. "live" release)	October 1, 2022	\$7,800
<b>Total</b>			<b>\$332,800</b>

### Detailed Milestone Breakdown

#### M1: Finalize OTP-Auth specifics

- UtilityAPI will participate in technical meetings with SVCE and interested third party companies to finalize the specific OTP-Auth protocol behavior to be implemented in M2
- SVCE will finalize any legal and regulatory requirements for OTP-Auth implementation
- Deliverables:
  - OTP-Auth protocol diagrams and API behavior specifications
- Estimated completion date: May 31, 2022

#### SVCE review for commercial viability and approval of additional work

#### M2: Sandbox-mode OTP-Auth

- UtilityAPI will add the agreed to functionality for OTP-Auth specifications finalized in M1
- Functionality will be limited to test accounts only (i.e. "sandbox mode") for testing
- This milestone constitutes the majority of the development work by UtilityAPI
- Deliverables:
  - Functional OTP-Auth endpoints that work with test account data
- Estimated completion date: August 1, 2022

M3: Updates based on feedback/testing

- SVCE and companies that used M2 sandbox-mode OTP-Auth functionality provide feedback.
- UtilityAPI will make updates to OTP-Auth functionality with approval from SVCE for the list of modifications.
- Reasonable efforts will be made by UtilityAPI to incorporate as much feedback into updates as possible, however, development work will be capped at the pre-approved limit (see Milestones Table), unless additional work is approved by SVCE.
- Deliverables:
  - List of functionality updates based on feedback
  - Completed updated of functionality
- Estimated completion date: September 1, 2022

M4: Launch

- UtilityAPI will update Data Hive to allow real SVCE customers to authorize via OTP-Auth
- Deliverables:
  - Demonstration of real SVCE customer authorizing via OTP-Auth
- Estimated completion date: October 1, 2022

3. This Amendment shall be effective on May 12, 2022.

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

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

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

RECOMMENDED FOR APPROVAL

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Justin Zagunis Manager of Decarbonization and Grid Innovation Programs

RECOMMENDED FOR APPROVAL

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Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME  
UTILITYAPI, INC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SILICON VALLEY CLEAN ENERGY  
AUTHORITY  
A Joint Powers Authority

By: \_\_\_\_\_  
Name: Girish Balachandran  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel for Authority

ATTEST:

\_\_\_\_\_  
Authority Clerk

**MASTER AGREEMENT****SOFTWARE AS A SERVICE**

This agreement ("Agreement") is entered into and is effective as of April 14, 2022 ("Effective Date"), by and between Silicon Valley Clean Energy, an independent public agency located at 333 W El Camino Real, #330, Sunnyvale, California 94087 ("SVCE") and UtilityAPI, Inc., a Delaware corporation, located at 1212 Broadway, 16<sup>th</sup> Floor, Oakland, CA 94612 ("Service Provider").

**RECITALS**

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

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

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

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

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

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

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

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

1. Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein, the term (the "Initial Term") shall commence on the Effective Date and continue for three (3) years. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement may be renewed for successive one (1) year terms (each, a "Renewal Term") upon mutual written agreement of the parties.
2. Fees. SVCE shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A (the "Services Fees"), subject to the terms and conditions contained in this Agreement, including, but not limited to, Section 11 Fees; Billing, below. The total amount payable to Service Provider under this Agreement shall not exceed \$405,000.00.

3. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to license and provide SVCE with access to and use of Service Provider's utility data delivery platform and certain other support and maintenance services necessary for the productive use of such platform, as set forth in Exhibit A (collectively, the "Services"). The parties understand that SVCE is not obtaining a software license or any proprietary right, interest in, or ownership over the software.
- 3.1 Authorized Users. Unless otherwise limited herein, Service Provider hereby grants SVCE a renewable, nonexclusive, non-transferable, and worldwide right and license for any SVCE employee, contractor, or agent, or any other individual or entity properly authorized by SVCE (each, an "Authorized User") to access and use the Services on behalf of SVCE in accordance with the terms of this Agreement. Other than any limitations otherwise described herein, Authorized Users will have no other limitations on their access to or use of the Services. SVCE is responsible for identifying and authenticating all Authorized Users, for approving access by such persons, and for ensuring that such persons keep their usernames, passwords and other authentication information strictly confidential. SVCE is responsible for the acts and omissions of all Authorized Users.
- 3.2 [Omitted]
- 3.3 Changes in Number of Authorized Users. SVCE is entitled to increase or decrease the initial number of Authorized Users on an as-requested basis. Should SVCE elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users specified in Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from SVCE's written request.
- 3.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider (including through its cloud service provider), giving due consideration to the requests of SVCE. In connection with the Services, Service Provider shall utilize only cloud storage service providers that have certified compliance with ISO/IEC 27001 and ISO/IEC 27017, or any successor standard, as applicable. Except as otherwise expressly set forth in Exhibit A, the Services (including all data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein, and, upon request, all such locations shall be disclosed to SVCE within thirty (30) days of such request.
- 3.4.1 Subcontractors. Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement (other than an assignment permitted under Section 20.10) without SVCE's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider's use of subcontractors and other third-party service providers shall not relieve Service Provider of any of its duties or obligations under this Agreement. SVCE understands that Service Provide shall utilize the services of third parties in connection with the Services (including but not limited to Amazon Web Services Inc. (AWS))

for cloud-based storage services); the use of such third-party services does not constitute a “subcontract” for purposes of the above restriction; however any such third-party user that has access or stores SVCE Data shall be required to maintain such data to the same level of security as required for Service Provider.

- 3.5 Storage. The Service Fees are inclusive of all data storage expected to be necessary for the Services. In the event that required data storage materially exceeds the reasonably foreseeable requirements, the parties agree to reasonably negotiate the costs of such additional storage.
- 3.6 Right to Review. In addition to production use of the Services, Service Provider will allow a select group of Authorized Users (as determined by SVCE) the opportunity to review and use any Major Release (as defined) in advance of providing access to such features to all Authorized Users. For purposes hereof, a “Major Release” means a change to the software component of the Services that reflects substantial architectural changes or a significant change in functionality. A Major Release does not include (i) new products that are not included in Client’s Services package, or (ii) patches, corrections and bug fixes to the Services.
- 3.7 Documentation. Service Provider will use its reasonable efforts to ensure that (i) the written and electronic user manuals and guides to the Services (the “Documentation”) will reasonably describe the functions and features of the Services, including all subsequent revisions thereto, (ii) is understandable by a typical administrative user, and (iii) provides Authorized Users with sufficient information to reasonably access and use the Services. SVCE shall have the right to make any number of additional copies of the Documentation at no additional charge.
- 3.8 Changes in Functionality. During the term of this Agreement, Service Provider shall not materially reduce or eliminate functionality in the Services. Where Service Provider has materially reduced or eliminated functionality in the Services and where such functionality has not been restored within 10 business days of SVCE providing Service Provider with written notice thereof, SVCE, at SVCE’s sole election and in SVCE’s sole determination, shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid and unused fees. As further described in Section 6.2, Service Provider may, from time to time, change any component of the Services for the purpose of correcting problems or otherwise maintaining the functionality of the Services. No such change or correction to the functionality of the Services will require the payment of additional Services Fees hereunder.
- 3.9 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement.
- 3.10 Waiver of the Services. SVCE’s Director of Information Technology shall be authorized to waive, in writing, any of the Service Provider’s obligations with respect to the

Services, where deemed to be in SVCE's best interests, provided that no such waiver shall result in any increase in the amount of the Services Fees.

- 3.11 Compliance with All Laws. Service Provider shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect the performance of its services pursuant to this Agreement. Service Provider shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act. SVCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Service Provider to comply with this paragraph.
4. SVCE Restrictions and Responsibilities.
- 4.1 SVCE will not, directly or indirectly: (i) disassemble, decompile, reverse engineer, adapt or otherwise attempt to gain access to any software component of the Services, discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, (ii) modify, translate or create any derivative works based on any part of the Services, (iii) access or use the Services in any way to build or support, or assist any third party in building or supporting, products or services competitive to the Services, (iv) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of the Service Provider, (v) lease, sell, license, publish, transfer, allow access to or otherwise make the Services available to any third party, (vi) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (vii) use the Services to store or transmit Viruses, (viii) attempt to interfere with or disrupt the integrity or performance of the Services, (ix) attempt to gain unauthorized access to the Services or any Service Provider systems or networks, (x) use or attempt to use any data mining, robots, or similar unauthorized data gathering and extraction tools to gather any data from the Services, (xi) copy, frame or mirror any part of the Services, or (xii) remove or obscure any Service Provider tradename or trademark that appear on the Services.
- 4.2 SVCE will maintain the security of its and its Authorized Users' login credentials to the Services and prevent any unauthorized access to or use of the Services, and SVCE will notify Service Provider promptly of any such unauthorized access or use of which SVCE is aware.
- 4.3 SVCE will use the Services only in compliance with this Agreement, the Documentation, and all applicable laws and regulations. Prior to transferring or directing the transfer of any data for processing or transmittal through the Services, SVCE shall make such disclosures and obtain such consents from account holders or other applicable third parties as are required under applicable law, rules or regulations.
- 4.4 SVCE shall be responsible for obtaining and maintaining the security of any equipment, hardware, software and ancillary services needed for SVCE and its Authorized Users to connect to or access the Services from the Internet.
- 4.5 SVCE is responsible for all uses of the Services resulting from access provided by SVCE or its Authorized Users.

5. Service Levels.

- 5.1 Service Levels; Time is of the Essence. For the term of this Agreement, Service Provider shall provide the Services, force majeure events excepted, in accordance with the applicable Service Level Standards, each as described in Exhibit A hereto. Time is of the essence in the performance of the Services.
- 5.2 Service Level Reporting. Service Provider shall provide information, accessible by SVCE via a website on an ongoing basis, describing the performance of the Services as compared to the Availability Service Level Standard. The online service level reporting shall be in a form agreed-to by SVCE, and, in no case shall contain less than the following information: actual monthly performance compared to the Availability Service Level Standard. In the event that the Availability Service Level Standard is not met for a given month, Service Provider shall calculate and include on the applicable invoice the appropriate Performance Credit (as set forth on Exhibit A).

Service Provider and SVCE will meet as often as shall be reasonably requested by SVCE to review the performance of Service Provider as it relates to the Availability Service Level. Service Provider shall, without charge, make SVCE's historical monthly Availability Service Level information available to SVCE upon request.

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

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

- 5.4 Audit of Service Levels. No more than quarterly, SVCE or SVCE's agent shall have the right to audit Service Provider's measurement and auditing tools to verify Availability Service Level Standard achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to SVCE but not paid, Service Provider shall immediately owe to SVCE the applicable Performance Credit.

6. Support; Maintenance; Additional Services.
  - 6.1 Technical Support. Service Provider shall provide the Technical Support as described in Exhibit A. The Services Fees shall be inclusive of the fees for such Technical Support.
  - 6.2 Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in Exhibit A hereto, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation; (c) the Availability Service Level Standard can be achieved; and (d) the Services work with the then-current version and the three prior versions of Microsoft Edge, Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance required under this Section 6.2.
    - 6.2.1 Required Notice of Maintenance. Service Provider shall use its commercially reasonable efforts to perform non-emergency maintenance on the Services that has a reasonable likelihood of disrupting the Services only during the following time windows: Tuesday 8:00 PM – 11:00 PM, Thursday 8:00 PM – 11:00 PM, and Saturday 8:00 PM – 11:00 PM Pacific Time. Service Provider shall provide no less than three (3) calendar days' prior written notice to SVCE of all non-emergency maintenance (with a reasonable likelihood of being disruptive) to be performed on the Services outside of the aforementioned time windows, such written notice including a reasonable description of all maintenance to be performed. For emergency maintenance which is reasonably likely to disrupt the Services, Service Provider shall provide as much prior notice as commercially practicable to SVCE and, upon request of SVCE, shall provide a reasonable description of the purpose of such maintenance.
  - 6.3 Customization / Integration Services. Service Provider shall provide the Customization / Integration Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for such Customization / Integration Services.
  - 6.4 Training Services. Service Provider shall provide the Training Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for such Training Services.
7. Audit Rights of Service Provider. Service Provider shall have no right to conduct an on-premises audit of SVCE's compliance with the use of the Services.
8. Change Control Procedure. SVCE may, upon written notice, request changes to the scope of the Services under Exhibit A. If SVCE requests a change in the scope, SVCE shall notify Service Provider, and, not more than thirty (30) days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify SVCE whether or not the change is acceptable to Service Provider and, if so, its associated cost impact. If SVCE approves, SVCE shall draft an amendment to Exhibit A for review and approval of Service Provider. Such amendment will only be effective once executed and delivered by both parties.

9. Termination; Renewals.

- 9.1 Termination for Convenience. Without limiting the right of a party to terminate this Agreement for Cause as provided for in this Agreement, SVCE may, on the anniversary of the Effective Date each year, terminate this Agreement for convenience upon not less than thirty (30) days prior written notice to Service Provider; provided that SVCE shall pay to Service Provider an early termination fee equal to 10% of the Services Fees that would have been payable (but for the early termination) with respect to the portion of the original Term following the termination date; provided further that, to the extent that the Services Fees are variable, the termination fee will be calculated assuming monthly Services Fees following the termination date equal to the average Services Fees for the months of the Term preceding the termination date. For clarity, unless exercised in accordance with the preceding sentence, each such annual termination right shall expire and be cancelled as of the applicable anniversary date.
- 9.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice. Either party may also terminate this agreement for cause if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 9.3 Payments upon Termination. Upon the termination of this Agreement, SVCE shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to SVCE all undisputed amounts due and payable hereunder, such as Performance Credits and (other than in connection with a termination by Service Provider for cause) any unused prepaid fees (calculated on a prorated basis, if applicable).
- 9.4 Return of SVCE Data. Upon the termination of this Agreement, Service Provider shall, within thirty (30) days following the termination of this Agreement, provide SVCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the Authorized Data and Admin Data (as defined in Section 13.1 below) in a usable format mutually agreed upon by both parties. Further, Service Provider shall certify to SVCE the destruction, in accordance with Section 14.6, of any remaining SVCE Data within the possession or control of Service Provider, but such destruction shall occur only after the Authorized Data and Admin Data have been returned to SVCE. This Section shall survive the termination of this Agreement.
- 9.5 Renewals. Should the Services continue beyond the Initial Term, the Services Fees for any Renewal Term shall be as mutually agreed by the parties in writing.
10. Transition Services. Service Provider will provide to SVCE and/or to the service provider selected by SVCE ("Successor Service Provider") commercially reasonable assistance to the extent

reasonably requested by SVCE to effect the orderly transition of the Services, in whole or in part, to SVCE or to Successor Service Provider ("Transition Services") following the termination of this Agreement, in whole or in part. The Transition Services may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to SVCE or Successor Service Provider; (b) if required, using its commercially reasonable efforts to transfer Authorized Data and Admin Data to Successor Service Provider; (c) using commercially reasonable efforts to assist SVCE in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services; (d) using commercially reasonable efforts to make available to SVCE, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the Services; and (e) such other activities upon which the parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. For the absence of doubt, under no circumstances shall Service Provider be required to pay any fees or charges to third parties, disclose any trade secret or commercially sensitive information, or provide any assistance to any competitor of Service Provider in connection with the Transition Services. This Section shall survive the termination of this Agreement.

11. Fees; Billing. Any sum due Service Provider for the Services for which payment is not otherwise specified shall be due and payable thirty (30) business days after receipt by SVCE of an invoice from Service Provider.
- 11.1 Billing Procedures. Service Provider shall bill to SVCE the sums due pursuant to Exhibit A by Service Provider's invoice, which shall contain: (a) SVCE's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d) taxes, if any; (e) any Performance Credits or other credits; and, (f) total amount due. Service Provider shall forward invoices in electronic format to the email address of the designated SVCE program manager and [invoices@svcleanenergy.org](mailto:invoices@svcleanenergy.org).
- 11.2 Late Payments. If SVCE fails to make any payment when due, then without limiting Service Provider's other rights and remedies: (i) Service Provider may charge interest on the past due amount at the rate of 1.5% per month, or if lower, the highest amount permitted by law, and (ii) subject to Section 11.9, if such delinquency continues for 60 days or more, Service Provider may suspend SVCE's access to any portion or all of the Services.
- 11.3 Disputed Amounts. If SVCE, in good faith, disputes any amounts owed hereunder ("Disputed Amounts"), then SVCE (i) must provide Service Provider with written notice of such disputed charges or fees within 30 days of the applicable invoice receipt date (a "Dispute Notice") (ii) may withhold the Disputed Amount pending resolution of such dispute, (iii) will promptly pay and will not withhold any undisputed amounts, (iv) will work with Service Provider in good faith to promptly resolve such dispute, and (v) upon resolution of such dispute, will promptly pay to Service Provider such portion of the Disputed Amount that is determined to be owed to Service Provider.
- 11.4 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that SVCE is not responsible to collect or withhold any such taxes, including income tax withholding and

social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied on Service Provider or its employees as a result of this Agreement shall be paid or withheld by Service Provider.

- 11.5 Credits. Any amounts due to SVCE, such as a Performance Credit, from Service Provider shall be applied by Service Provider as a credit against the next invoice for Services Fees, unless SVCE provides Service Provider with advance notice that such amounts should be otherwise paid or credited against any current or future fees due to Service Provider. Any such undisputed amounts that are not so credited shall be paid to SVCE by Service Provider within thirty (30) calendar days following SVCE's request. This Section shall survive the termination of this Agreement.
- 11.6 Non-binding Terms. Any terms and conditions included in a Service Provider invoice shall be deemed to be solely for the convenience of the Service Provider, and no such term or condition shall be binding upon SVCE.
- 11.7 Auditable Records. Service Provider shall maintain accurate records of all fees billable to, and payments made by, SVCE in a format that will permit audit by SVCE for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement. For the term of this Agreement, upon SVCE's written request, Service Provider shall provide SVCE with a copy of its annual American Institute of Certified Public Accountants Service Organization Control SOC 2 type 2 report.
- 11.8 Billing Reviews by Third Parties For purposes of determining the competitiveness and appropriateness of fees charged to SVCE by Service Provider, SVCE is entitled to disclose to a third-party this Agreement, and any other data pertaining to fees paid or payable by SVCE to Service Provider.
- 11.9 Suspension of Services. Service Provider shall not suspend any part of the Services because: (a) SVCE is reasonably disputing any amount due to Service Provider in accordance with Section 11.3; provided that not more than 60 days have passed since the provision of the Dispute Notice, or (b) any unpaid but undisputed amount due to Service Provider is less than sixty (60) days in arrears.
12. Representations and Warranties.
- 12.1 Mutual. SVCE and Service Provider represent and warrant that:
- 12.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 12.1.2 it has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
- 12.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms,

except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

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

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

12.2 By Service Provider. Service Provider represents and warrants that:

12.2.1 it is in the business of providing the Services;

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

12.2.3 to the best of its knowledge, none of the Services or any other work performed by Service Provider hereunder shall infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;

12.2.4 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with prevailing industry standards of care, skill and diligence;

12.2.5 to the best of its knowledge, in the original form provided by Service Provider, none of the Services nor any software that Service Provides to SVCE for local installation will contain any computer viruses, worms, malware, or similar unauthorized items (collectively, a "Virus") ;

12.2.6 it shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions and shall perform the Support Service and the Maintenance Services in a professional and workmanlike manner in accordance with this Agreement;

12.2.7 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation.

12.2.8 NOTWITHSTANDING ANY OF THE FOREGOING, SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE, OR MEET SVCE'S REQUIREMENTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 12.2, THE SERVICES ARE PROVIDED "AS IS" AND SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE.

13. SVCE Data.

- 13.1 Ownership. SVCE's data ("SVCE Data," which shall be treated by Service Provider as Confidential Information) shall include: (a) SVCE's data collected, accessed, used, processed, stored, or generated through SVCE's use of the Services; and, (b) personally identifiable information ("PII") collected, used, processed, stored, or generated through SVCE's use of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Except where subject to a third party's intellectual property rights, all SVCE Data is and shall remain the sole and exclusive property of SVCE and all right, title, and interest in the same belongs to SVCE. SVCE Data can be categorized as follows: (a) "Authorized Data", which consists of all data that has been authorized by SVCE customers for release to third parties through the Services; (b) "Calpine Data", which consists of all data that Service Provider has received from Calpine; (c) "Admin Data", which consists of all administrative data generated by SVCE's use of the Services (e.g. number of customer authorizations, identities of the authorizing customers, and the scope of data that was authorized for release). This Section 13 shall survive the termination of this Agreement.
- 13.2 Service Provider Use of SVCE Data. Service Provider is provided a limited license to access SVCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display SVCE Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain SVCE Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose SVCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c) allow access to SVCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available SVCE Data for Service Provider's own purposes or for the benefit of anyone other than SVCE without SVCE's prior written consent. Notwithstanding any of the foregoing, however, it is specifically understood and agreed that Service Provider is affirmatively permitted to release and share Authorized Data in accordance with the applicable customer authorization.

Notwithstanding any other provision herein, Service Provider may aggregate, anonymize, or otherwise de-identify information relating to SVCE's use and the performance of the Services ("Anonymized Data"), and use and disclose such Anonymized Data for its legitimate business purposes, including but not limited to improving the Services and promotion and marketing; provided that such Anonymized Data cannot reasonably be used to identify SVCE or any accountholder. For the absence of doubt, Anonymized Data does not include and may not be derived from any Authorized Data.

This Section shall survive the termination of this Agreement.

- 13.3 Access to, and Extraction of SVCE Data. SVCE shall have full and complete access to, and ability to download, Authorized Data 24 hours per day, 7 days per week, except during periods of maintenance by Service Provider. Further, Service Provider shall, within thirty (30) days of SVCE's written request, provide SVCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any fees due to Service Provider), an extract of the Authorized Data and Admin Data in a usable format agreed upon by both parties. In the event SVCE gives Service Provider written notice of a "litigation hold", then as to all data identified in such notice, Service Provider shall, at no additional cost to SVCE, isolate and preserve all such data pending receipt of further direction from SVCE.
- 13.4 Backup and Recovery of SVCE Data. As a part of the Services, Service Provider is responsible for maintaining a backup of Authorized and Admin Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in Exhibit A, Service Provider shall maintain a contemporaneous backup of Authorized and Admin Data that can be recovered within four (4) days. Such backup of Authorized and Admin Data shall be stored in an off-site (but within the continental United States) facility no less than daily, maintaining the security of Authorized and Admin Data, the security requirements of which are further described herein. Any backups of Authorized and Admin Data shall not be considered in calculating storage used by SVCE.
- 13.5 Loss or Unauthorized Access to Data. In the event of the occurrence of unauthorized access to, or any other event that compromises or is suspected to compromise the security, confidentiality, or integrity of SVCE Data or the physical, technical, administrative, or organizational safeguards put in place by Service Provider that relate to the protection of the security, confidentiality, or integrity of SVCE Data, Service Provider shall, as applicable: (a) notify SVCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with SVCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise reasonably required by SVCE.

Subject to the Data Protection Liability Cap set forth in Section 18.2, Service Provider agrees that in the event of an unauthorized release of SVCE Data caused by its or any of its third-party subcontractors' or service providers' (a) negligence or misconduct, (b) breach of Service Provider's obligations under this Agreement, or (c) failure to adhere to

the processes and procedures of Service Provider's data privacy and information security program pursuant to Section 15.1 hereof, Service Provider shall:

- (A) in the case of PII, at SVCE's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but, to the extent reasonably feasible, no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or in the absence of any legally required notification period, as soon as reasonably practical after the discovery of the occurrence, or reimburse SVCE for its reasonable costs in notifying the affected individuals; and (ii) if the nature of the breach is such that there is a reasonable risk of identity theft as a result of the breach, provide commercially reasonable third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for twelve (12) months following the date of notification to such individuals, and
- (B) in the case of SVCE Data (whether PII or otherwise), (i) perform or take any other actions required to comply with applicable law as a result of the occurrence; (ii) as further described in Section 17 of this Agreement, indemnify, defend, and hold harmless SVCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from SVCE in connection with the occurrence; (iii) be responsible for recreating lost Authorized Data and Admin Data on the schedule reasonably set by SVCE without charge to SVCE; and (iv) will use its commercially reasonable efforts to provide to SVCE a detailed plan within ten (10) calendar days of the discovery of the occurrence, describing the measures Service Provider will undertake to prevent a future occurrence.
- (C) Notification to affected individuals, as described in clause (A) above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Service Provider's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Service Provider has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Service Provider. This Section shall survive the termination of this Agreement.

14. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

- 14.1 Meaning of Confidential Information. For the purposes of this Agreement, the term “Confidential Information” shall mean all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or (c) should reasonably be recognized as confidential information of the disclosing party. Except for electric and gas usage information provided to Service Provider pursuant to this Agreement the term “Confidential Information” does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). To illustrate the types of information that shall qualify as Confidential Information, for purposes of this Agreement, in all cases and for all matters: SVCE Data shall be deemed to be Confidential Information of SVCE and any technical specifications or limitations, software code, algorithms and processes, security measures, audit and inspection results, and product plans and technical proposals relating to the Services shall be deemed to be Confidential Information of the Service Provider.
- 14.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement, or as required by law. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. The parties understand and agree that this provision shall not restrict Service Provider, in any manner, from disclosing Authorized Information in accordance with the applicable customer authorization.
- 14.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its commercially reasonable efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will reasonably cooperate with the other party in seeking injunctive or other equitable relief against any such person. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). If a request under the California Public Records Act is made to view Service Provider’s Confidential Information, SVCE shall notify Service Provider of the request and the date that such records will be released to the requester unless Service Provider obtains a court order

enjoining that disclosure. If Service Provider fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.

- 14.4 Compelled by Law. In the event that either party (as the “Recipient”) becomes compelled by law (by subpoena, court order, or otherwise), to disclose any Confidential Information of the other party (as the “Discloser”), Recipient’s disclosure shall not exceed that required by such legal mandate, and Recipient shall to the extent legally permissible and practicable, provide Discloser with prompt written notice so that Discloser may seek, at Discloser’s own expense, a protective order or other appropriate remedy.
- 14.5 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of a material breach by Service Provider that is reasonably likely to cause significant ongoing disruption or material legal risk to SVCE, the right to SVCE to effect, at the sole election of SVCE, the immediate termination, without liability (other than the payment of all amounts then due), of this Agreement.
- 14.6 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, each party shall, within thirty (30) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which is in such party’s possession, custody, or control; provided, however, that Service Provider shall return SVCE Data to SVCE following the timeframe and procedure described further in this Agreement. Should Service Provider or SVCE determine that the return of any SVCE Data or non-SVCE Data Confidential Information is not feasible, Service Provider shall destroy the data comprising such Confidential Information in compliance with the most current version of NIST standard SP800-88 (or such other standard offered by Service Provider’s cloud service provider), and shall certify the same in writing within thirty (30) calendar days from the date of termination to the other party. Notwithstanding the foregoing, SVCE agrees that Service Provider shall not be required to destroy any copies of Confidential Information that (A) reside on Service Provider’s backup, disaster recovery or business continuity systems, or (B) that Service Provider is obligated by applicable law and/or governmental regulations to retain; provided that Service Provider shall neither retrieve nor use any such Confidential Information for any purpose other than that specified in the foregoing clause (B) and Service Provider maintains the same level of security as required by this Agreement.
15. Data Privacy and Information Security.
- 15.1 Undertaking by Service Provider. Without limiting Service Provider’s obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing, maintaining, and upon request providing a written description to SVCE of, a data privacy and information security program, including physical, technical,

administrative, and organizational safeguards, that is reasonably designed to: (a) ensure the security and confidentiality of the SVCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the SVCE Data; (c) protect against unauthorized disclosure, access to, or use of the SVCE Data; (d) ensure the proper disposal of SVCE Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program used to protect SVCE Data be less stringent than the safeguards used by Service Provider for its own data.

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

SVCE represents and warrants that it will not transfer or direct the transfer, processing, storage or transmittal of any cardholder data through the Services without the prior written consent of Service Provider.

- 15.2 Audit by Service Provider. No less than annually, Service Provider shall obtain an AICPA SOC 2 Type 2 report (in connection with which Service Provider generally conducts a third-party penetration test of Service Provider's data network). Upon request of SVCE, Service Provider will provide SVCE with the most recent such SOC 2 Type 2 Report (provided that Service Provider may redact any information that does not relate to the Services). Such report shall constitute UtilityAPI Confidential Information. The parties acknowledge that industry and accounting practices regarding data security audits are subject to change in the future. In the event that Service Provider deems it advisable and appropriate to obtain an independent data security audit or review other than an AICPA Soc 2 Type 2 report, it may do so without violation of this covenant, provided that such replacement audit or review meets or exceeds then-applicable industry standards.
- 15.3 Right of Audit by SVCE. Without limiting any other audit rights of SVCE, SVCE shall have the right to review Service Provider's data privacy and information security program prior to the commencement of Services and during the term of the Agreement. No more than once in each 12 month period, SVCE, at its own expense and with no less than 30 days' prior notice, shall be entitled to have an audit of Service Provider's data privacy and information security program performed by an independent third-party auditor subject to confidentiality restrictions (with such auditor to be selected by SVCE and reasonably approved by Service Provider). In lieu of an on-site audit, upon request by SVCE, Service Provider agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by SVCE regarding Service Provider's data privacy and information security program. The results of any such audit or questionnaire shall be treated by SVCE as Confidential Information of Service Provider under Section 14.

- 15.4 Audit Findings. Service Provider shall use its commercially reasonable efforts to implement any required safeguards identified in writing in any audit of Service Provider's data privacy and information security program, and to the extent that it fails to do so within 60 days of a written request therefor by SVCE, SVCE may terminate this Agreement, and be entitled to a return of any unused prepaid fees.
- 15.5 Pattern of Violations. It shall be considered a material breach of this Agreement if Service Provider engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Service Provider understands that if SVCE finds that Service Provider is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement SVCE shall promptly cease all disclosures of Confidential Information to Service Provider. Service Provider further understands that if SVCE receives a customer complaint about Service Provider's misuse of data or other violation of the Disclosure Provisions, SVCE shall promptly cease disclosing that customer's information to Service Provider and shall notify the California Public Utilities Commission ("CPUC") of the complaint.
- 15.6 CPUC Compliance. Service Provider shall comply with all applicable consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
- 15.7 Injunction, Specific Performance or Such Other Relief. Service Provider acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Service Provider hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Service Provider or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.
- 15.8 [Omitted]
16. Proprietary Rights.
- 16.1 Pre-existing Materials. SVCE acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.
- 16.2 Software & Services. SVCE acknowledges that Service Provider exclusively owns and shall retain all right, title and interest in and to (a) the Services including all software components and code thereof, and all improvements, enhancements, derivative works, or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with the Services, and (c) all intellectual property rights related to any of the foregoing (collectively, the "Services Assets"); provided that SVCE shall

have the limited right to access and use the Services to the extent expressly set forth in this Agreement.

16.3 No License. Except as expressly set forth herein, no license or rights are granted by either party to the other with respect to the Confidential Information, the Services Assets, or the Pre-existing Materials. Nothing in this Agreement shall be construed to grant to (i) either party any ownership or other interest or license in the other party's Confidential Information, except to the extent explicitly provided in this Agreement, or (ii) to SVCE any ownership or other interest in the Services Assets or Pre-existing Materials.

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

17. Indemnification.

17.1 General Indemnification. Service Provider agrees to indemnify, defend, and hold harmless SVCE and its officers, directors, agents, attorneys and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, fines or judgments resulting from any claims, demands, suits or causes of action brought by any third party (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, to the extent suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or caused by the negligence or misconduct of Service Provider or its officers, directors, agents, employees, or subcontractors during the performance of this Agreement, or the breach by Service Provider of any of its obligations under this Agreement, including Claims relating to: (a) bodily injury (including death) or damage to tangible personal or real property to the extent caused by the negligence or misconduct of Service Provider or its officers, directors, agents, employees, or subcontractors during the performance of this Agreement; (b) any payment required to be paid to subcontractors, if any, of Service Provider; (c) any breach of a representation or warranty of Service Provider set forth in this Agreement; (d) any unauthorized destruction, access, use, or theft of SVCE Data (collectively, "cyber theft") to the extent caused by the negligence or misconduct of Service Provider or any of its officers, directors, agents, employees, or subcontractors or by any breach by Service Provider of any of its obligations under this Agreement; or (e) any material breach by Service Provider of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity obligations shall not apply to the extent that the applicable Claim resulted from the negligence, misconduct or breach of this Agreement by SVCE or any Indemnitee.

17.2 Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all third-party Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right (an "Infringement Claim"). The foregoing obligation does not apply to any Claims arising from any modification or use of the Services by SVCE not in accordance with this Agreement.

In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that SVCE is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, or, if Service Provider otherwise receives information about an infringement claim relating to the Services or believes such a claim is likely, Service Provider may, at its option and expense: (a) obtain for SVCE the right to continue using such Services; or (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and are able to be used by SVCE. In the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall terminate this Agreement and reimburse to SVCE any prepaid unused fees and provide Transition Services as set forth in Section 10.

- 17.3 Indemnification Procedures. Promptly after receipt by SVCE of a threat, notice, or filing of any Claim against an Indemnitee, SVCE shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and SVCE shall not independently defend or respond to a Claim; provided, however, that: (a) SVCE may defend or respond to a Claim (with the reasonable out-of-pocket expense thereof to be borne by Service Provider), solely to the extent that SVCE's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee and, (b) SVCE shall have the right, at its own expense, to monitor Service Provider's defense of a Claim. At Service Provider's request, SVCE shall reasonably cooperate with Service Provider in defending against or settling a Claim; provided, however, that Service Provider shall reimburse SVCE for all reasonable out-of-pocket costs incurred by SVCE (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
- 17.4 Third-Party Beneficiaries. Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.
- 17.5 The provisions of this Section shall survive the termination of this Agreement.

18. Limitation of Liability.

- 18.1 EXCEPT WITH RESPECT TO CLAIMS COVERED BY THE DATA PROTECTION LIABILITY CAP (SECTION 18.2) AND LIABILITY ARISING UNDER SERVICE PROVIDER'S INDEMNITY OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER SECTION 17, SERVICE PROVIDER'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO SERVICE PROVIDER BY SVCE FOR SERVICES IN THE TWELVE MONTH PERIOD PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY, LESS ANY REFUNDS OR CREDITS PAID TO SVCE BY SERVICE PROVIDER. ("SERVICE PROVIDER'S GENERAL LIABILITY CAP"). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

- 18.2 THE AGGREGATE LIABILITY OF SERVICE PROVIDER UNDER THIS AGREEMENT WITH RESPECT TO OR ARISING OUT OF ANY UNAUTHORIZED USE, LOSS OR DISCLOSURE OF SVCE DATA OR ANY DATA OR SECURITY BREACH (WHETHER ARISING UNDER SECTION 13.5, SECTION 17, OR OTHERWISE) SHALL NOT EXCEED FIVE MILLION DOLLARS (\$5,000,000.00) ("DATA PROTECTION LIABILITY CAP"). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 18.3 SERVICE PROVIDER SHALL NOT BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OR FOR DIMINUTION IN VALUE OR LOSS OF PROFITS.
- 18.4 Nothing in this Section 18 shall exclude or limit the liability of Service Provider to the extent that such liability may not be excluded or limited as a matter of applicable law.
- 18.5 The provisions of this Section shall survive the termination of this Agreement.
19. Insurance.
- 19.1 Insurance. Unless otherwise approved in writing by SVCE's risk manager, Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Service Provider, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); cyber liability (\$5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of SVCE Data; (ii) data breach including theft, destruction, and/or unauthorized use of SVCE Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of SVCE Data; and professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate).

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

20. General.

- 20.1 Relationship between SVCE and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for SVCE or in any way to bind or to commit SVCE to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of SVCE. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venturer, or partner of SVCE. In recognition of Service Provider's status as an independent contractor, SVCE shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. SVCE shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of SVCE.
- 20.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the County of Santa Clara, State of California, in all questions and controversies arising out of this Agreement.
- 20.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 20.4 Compliance with Laws. Each of the parties agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable to the provision or use of the Services.
- 20.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will reasonably cooperate with the other by, among other things, making available, as reasonably requested by the other, appropriate information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will reasonably cooperate with any SVCE supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to SVCE, including, without limitation, the Successor Service Provider. Service Provider agrees to reasonably cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 20.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such causes include, but are not limited to, fire, explosion, earthquake, flood or

other natural catastrophe, acts of war or terror, cyber-warfare, civil unrest, epidemics, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, internet service provider or communication line outages, and denial of service attacks, to the extent not caused by the fault or negligence of the delayed party. Any such excuse for delay or failure to perform shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its commercially reasonable efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its commercially reasonable efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from fulfilling its responsibilities relating to the requirements of backup and recovery of SVCE Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance by or unavailability of Service Provider's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for SVCE to access or use the Services. Service Provider shall provide a summary or description of its then-current business continuity plan ("Business Continuity Plan") to SVCE upon SVCE's written request. The Business Continuity Plan shall include procedures designed to facilitate the resumption of critical operations and technology in the event of a disaster

- 20.7 Advertising and Publicity. Service Provider shall not refer to SVCE directly or indirectly in any advertisement, news release, or publication, or use any SVCE logo, seal or mark, without prior written approval from SVCE. Notwithstanding the foregoing, however, Service Provider is permitted, in connection with marketing its products and services, to identify SVCE as a customer of the Services and to use and refer to SVCE's "Data Hive" as an example of the Services (but Service Provider may not reveal any account holder information in connection with such demos). Notwithstanding the foregoing, Service Provider is not permitted to state or imply any endorsements of the Services or Service Provider on behalf of SVCE.
- 20.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 20.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.

- 20.10 Assignment of Agreement. This Agreement may not be assigned or transferred by either party without the written consent of the other party; provided, that a party may assign this Agreement to its Affiliate or in connection with any merger, acquisition, reorganization, sale or transfer of all or substantially all of such party's assets or business provided that such party provides notice of such transfer within thirty (30) days. "Affiliate" for purposes hereof means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity, and "control" means ownership or control of more than 50% of the voting interests.
- 20.11 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.
- 20.12 Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.
- 20.13 Entire Agreement. This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between SVCE and Service Provider as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it, such that 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.
- 20.14 Cumulative Remedies. All rights and remedies of the parties herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- 20.15 No Recourse against Constituent Members of Authority. SVCE is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Service Provider shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE's constituent members in connection with this Agreement.
- 20.16 Non-Discrimination. In the performance of this Agreement, Service Provider, and any subcontractor of Service Provider shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry,

age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Service Provider shall have responsibility for compliance with this Section.

- 20.17 Conflict Of Interest. Service Provider warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement in a manner impermissible under the Conflict Statutes (as defined below), and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Service Provider and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Service Provider's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090 (the "Conflict Statutes"). During the term of this Agreement, Service Provider may perform similar services for other clients, but Service Provider and its officers, employees, associates and subcontractors shall not, without SVCE's prior written approval, perform work for another person or entity for whom Service Provider is not currently performing work that would require Service Provider or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a Conflict Statute. Service Provider shall incorporate a clause substantially similar to this Section into any subcontract that Service Provider executes in connection with the performance of this Agreement. Service Provider understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Service Provider to make certain governmental decisions or serve in a staff capacity, as set forth in Title 2, Division 6, Section 18700 of the California Code of Regulations.
- 20.18 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.
- 20.19 [omitted]
- 20.20 SVCE's Rights to Employ Other Consultants. SVCE reserves the right to employ other consultants in connection with the subject matter of the Services.
- 20.21 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.
- 20.22 Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any Exhibit, or between a provision of this Agreement and a provision of Service Provider's proposal, the provisions of this Agreement shall control.
- 20.23 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

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

RECOMMENDED FOR APPROVAL

DocuSigned by:

*Justin Zagunis*

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Justin Zagunis, Director of Decarbonization and Grid Innovation Programs

SILICON VALLEY CLEAN ENERGY (SVCE)

DocuSigned by:

By: *Girish Balachandran*

Name: Girish Balachandran

Title: Chief Executive Officer

Date:

Address for Notice:  
333 W. El Camino Real  
Suite 330  
Sunnyvale, CA 94087

UTILITYAPI INC. (SERVICE PROVIDER)

DocuSigned by:

By: *Lynne Wander*

Name: Lynne Wander

Title: Chief Operating Officer

Date: 4/18/2022

Address for Notice:  
1212 Broadway, Suite  
1600  
Oakland, CA 94612

APPROVED AS TO FORM:

DocuSigned by:

*Trisha Ortiz*

80CEDB7661684C2...

Counsel for Authority

ATTEST:

DocuSigned by:

*Andrea Pizano*

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Authority Clerk

**EXHIBIT A****STATEMENT OF SERVICES, SUPPORT, AND SERVICE LEVEL AGREEMENT**

This Exhibit A - Statement of Services and Service Level Agreement shall be incorporated in and governed by the terms of that certain Master Software as a Service Agreement by and between **SILICON VALLEY CLEAN ENERGY** ("SVCE") and **UTILITYAPI, INC.** ("Service Provider") dated April 14, 2022, ("Agreement"). In the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

**Services Description.**

- (1) As of the Effective Date, Service Provider shall continue to maintain and provide SVCE with access to and use of the existing UtilityAPI data access and exchange platform for SVCE electricity accountholders (the "Platform"), which currently includes the following features:
  - a. Accountholder Interface - A dashboard for accountholders, white-labeled with SVCE's branding, and including the following components:
    - i. Landing and informational pages about Green Button Connect
    - ii. Links to SVCE Terms and Privacy Policies
    - iii. Third Party Directory with search capabilities
    - iv. Accountholder authorization & authentication interfaces
  - b. Third Party Interface - A dashboard and fully documented API that allows third parties to register with SVCE, manage their third party settings, view accountholder authorizations, and download authorized accountholder data, and including the following components:
    - i. Third party registration form for the Platform.
    - ii. Interface to view and download data authorized for release by accountholders.
    - iii. Data request interface for third parties to send direct data requests to accountholders, allowing third parties to use the Platform without direct software integration.
    - iv. Standards-compliant APIs, including the Green Button XML API, that can be used to integrate the Platform into third parties' websites and apps.
    - v. Settings interface to self-manage registration and technical integration settings.
    - vi. Sandbox mode to test Platform functionality using test accounts and test datasets before the third party has been approved by SVCE.
  - c. Utility Administrator Interface - A dashboard for SVCE administrators to use to view and approve third party registrations and accountholder authorizations by customers for third party access, and including the following components:
    - i. Homepage with the latest accountholder authorizations and third party registrations needing review
    - ii. Interface showing all accountholder authorizations
    - iii. interface for management of registered third parties, with the following features:
      1. Administrator control of third party approval status
      2. Administrator control of Third Party Directory visibility of each third party
      3. Administrator communication via email with third parties

4. Details of third party settings and logs of changes
  5. List of accountholder authorizations to the third party
  6. Ability for manual accountholder authorization to third parties (i.e., to support "paper/call" authorizations)
- (2) After the Effective Date, Service Provider will use its commercially reasonable efforts to (i) expand the Platform to also cover SVCE's gas utility accounts (the "Gas Expansion"), and (ii) to rollout a Utility Discovery Tool (the "Discovery Tool Expansion"). For purposes hereof, the "Utility Discovery Tool" means a tool, to be added to the authorization form, that assists the accountholder and third party in determining the correct utility and/or Community Choice Aggregator holding the accountholder's account.
- (3) Service Provider will manage historical and ongoing data collection, and data cleaning and standardization for the Platform. Service Provider will provide Technical Support for both SVCE and the third-party or commercial users of the platform.

**Services Fees.** As of the Effective Date, the Services Fee shall be \$9,000 per month. The Services Fee shall increase by an additional (i) \$1,500 per month effective as of the first calendar month following the launch of the Gas Expansion, and an additional (ii) \$750 per month effective as of the first calendar month following the launch of the Utility Discovery Tool (the "Service Fee Additions").

Storage fees are included in the Services Fees above.

Technical Support Description.

- A. Service Provider will provide to SVCE telephone and email support (“Technical Support”) as follows:

Standard support: Monday – Friday 9:00 am - 5 p.m., PST, except for Service Provider Holidays

Critical Matters support: For Problems with Severity Level 1 or 2: While Service Provider is responding to and resolving the Problem, support is available twenty-four (24) hours per day, seven (7) days per week, 365 days per year.

Technical Support will include any research and resolution activity performed by Service Provider.

For emailed Technical Support requests, Service Provider shall confirm to the requestor receipt of the request.

- B. Problem Severity Level 1 and 2 Resolution. If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of SVCE within the applicable Request Resolution Time, Service Provider will: (a) immediately escalate the request to Service Provider’s management; (b) take and continue to take the actions which will most expeditiously resolve the request; and (c) provide regular updates to SVCE of the steps taken and to be taken to resolve the request and the estimated time until the request is resolved.
- C. Problem Severity Level 3 or 4 Resolution. If a Problem Severity Level 3 or Level 4 request cannot be corrected to the reasonable satisfaction of SVCE within the applicable Request Resolution Time, then Service Provider will so notify SVCE and will provide regular updates to SVCE of the steps taken and to be taken to resolve the request and the estimated time until the request is resolved.

Technical Support Problem Severity Levels. For purposes hereof, “Problem” means a bug, defect or error in the Services causing them to fail to perform in material conformance with the Documentation. Each technical support request that qualifies as a “Problem” will be assigned a severity level by Service Provider as set forth below. Service Provider will use its commercially reasonable efforts to resolve (or create a patch or work-around that temporarily resolves) each Problem within the applicable Request Resolution Time.

- i. Problem Severity Level 1: A Problem causing a material unauthorized exposure of all or part of SVCE Data or a material loss or corruption of all or part of the SVCE Data.

Request Response Time. 30 minutes.

Request Resolution Time. 2 hours.

- ii. Problem Severity Level 2: A Problem causing a significant interruption of the Services that has a material adverse impact on SVCE operations and for which no reasonable work-around is available.

Request Response Time. 1 hour.

Request Resolution Time. 48 hours.

- iii. Problem Severity Level 3: A Problem causing minor and/or limited interruption of the Services.

Request Response Time. 8 hours.

Request Resolution Time. 5 business days.

- iv. Problem Severity Level 4: This Problem Severity Level is associated with: (a) general questions pertaining to the Services; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.

Request Response Time. 8 hours

Request Resolution Time. 10 business days.

Availability Service Level.1) Definitions.

- (a) "Actual Uptime" means the total minutes in the reporting month of Service Availability.
- (b) "Service Availability" means Authorized Users are able to access the Services for normal use.
- (c) "Maintenance Window" means the total minutes in the reporting month represented by the following days and times during which Service Provider shall maintain the Services: Every Tuesday, Thursday, and Saturday 8:00 PM – 11:00 PM PST.
- (d) "Excluded Downtime" means the total minutes in the reporting month during which there is no Service Availability due to:
- Outages not caused by or within the control of Service Provider or its service providers (i.e., outages on SVCE's network or telecommunication services, denial of service attacks)
  - Downtime requested by SVCE.
  - Outages caused by force majeure events under Section 20.6.
- (e) "Allowed Downtime" shall mean the total minutes in the reporting month represented by the Maintenance Window plus Excluded Downtime.
- (f) "Scheduled Uptime" shall mean the total minutes in the reporting month less the Allowed Downtime.

3) Calculation.  $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$  (rounded to the first decimal point)4) Performance Credit. Where Percentage Uptime is less than 99.9% for any month, SVCE shall be due a Performance Credit in the amount of 10% of such month's Services Fees for each full 1% reduction in Percentage Uptime; but no such Performance Credit may be greater than 30% of the Services Fee for such reporting month.5) Example Calculation.

- (a) Assuming reporting month is January 2022 (44,640 minutes in month total).
- (b) Maintenance Window for such month equals 2,340 minutes and Excluded Downtime (assumed) is 60 minutes, therefore Allowed Downtime equals 2,400 minutes.
- (e) Scheduled Uptime equals 42,240 minutes (44,640 total monthly minutes minus 2,400 minutes of Allowed Downtime).
- (f) Assuming that Actual Uptime is equal to 41,500 minutes, the Percentage Uptime is calculated as follows:  $(41,500 / 42,240) * 100 = 98.3\%$ .

- (e) The threshold of 99.9% less the Percentage Uptime of 98.3% = 1.6% reduction from the threshold.
- (f) The difference is greater than a 1% reduction from the threshold but is less than a 2% reduction; therefore, SVCE is due 10% of the Services Fees as a Performance Credit.



## Staff Report – Item 1e

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**Item 1e: Receive Update on California Electric Vehicle Infrastructure Project (CALeVIP) Program Launch and Status**

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy

Date: 5/11/2022

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### **RECOMMENDATION**

Staff recommends the Board receive and accept the update on the California Electric Vehicle Infrastructure Project (CALeVIP) launch and status.

### **BACKGROUND**

In 2018 and 2019, SVCE explored how to bring a regional CALeVIP launch to its service territory. CALeVIP is an incentive program funded by the California Energy Commission (CEC) in regions across the state. SVCE coordinated with local energy providers across Santa Clara and San Mateo counties to jointly express interest to the CEC, and the SVCE Board approved a letter of intent setting aside up to \$6M in incentives if the CEC deployed CALeVIP and contributed an equal amount within SVCE service territory.

The CEC decided in mid-2019 that they would fund a program locally. The CEC had already selected an administrator for CALeVIP, and had previously established various program requirements, so staff worked to finalize the eligibility, incentive levels and application materials along with the other program partners. The program ultimately launched in December 2020 after some delays by the CEC based on the timing of their other projects.

There was significant interest in the local CALeVIP program and funds were rapidly reserved. The program administrator for CALeVIP has since been processing applications and waiting for approved projects to be installed and submit the required paperwork to receive rebates. The original deadline for an initial portion of applications has now passed – leading to a significant number of extension requests – and the second year’s round of funding for Level 2 chargers has been released in SVCE territory, so staff is providing this update to the Board. Note that each month’s CEO report includes an update on CALeVIP installations.

### **ANALYSIS & DISCUSSION**

Analysis is provided in the attached presentation.

### **FISCAL IMPACT**

Not applicable.

### **ATTACHMENTS**

1. CALeVIP Program Status Update Presentation

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# CALeVIP Program Status Update

May 2022



# CALeVIP Summary - \$12M Local Program

## SVCE territory funding:

- \$6M for DC Fast Chargers (DCFC) funded by California Energy Commission (CEC)
- ~\$6M for Level 2 (L2) chargers funded by SVCE

- SVCE partnered with PCE, Palo Alto, Santa Clara and SJCE to form a two-county coalition and offer co-funding
- CEC selected our counties to deploy its largest-ever CALeVIP launch in **December 2020** – to extreme interest

	DCFC	L2
Available	\$6M	~\$6M
Applications Received	~\$24M	~\$8M

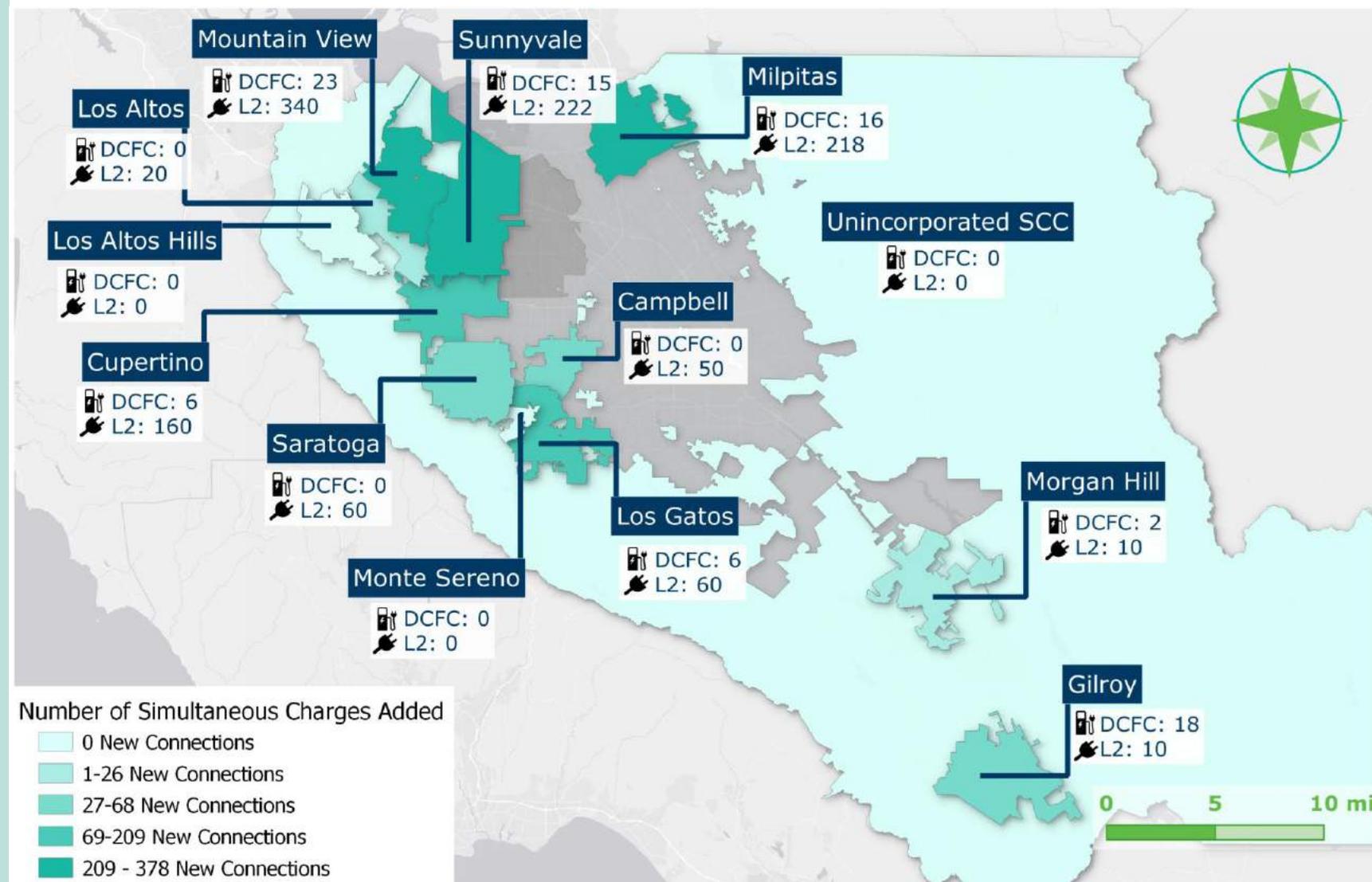


# Expected Number of Chargers\*

\*subject to change due to cancellations

Chargers most likely at workplaces, retail and other public locations

Map shows number of “charging spaces” added – each DCFC charger is one, while each L2 charger can add either one or two depending on model and number of cords





# Key Program Updates

- **CALeVIP will add ~1,100 L2 connectors and ~85 DCFC chargers in SVCE territory**
- Will meet target of 25% of L2 funds reserved for multifamily sites
- SVCE opened a technical assistance program prior to CALeVIP launch to support multifamily and small business applicants
- **16 out of 18 projects** that were expected to be installed by Q1 2022 **requested extensions** – issues include permitting, labor, utility interconnection, and supply chain
- To date, one project fully complete (6 L2 connectors)

Learn more: [calevip.org/incentive-project/peninsula-silicon-valley](https://calevip.org/incentive-project/peninsula-silicon-valley)



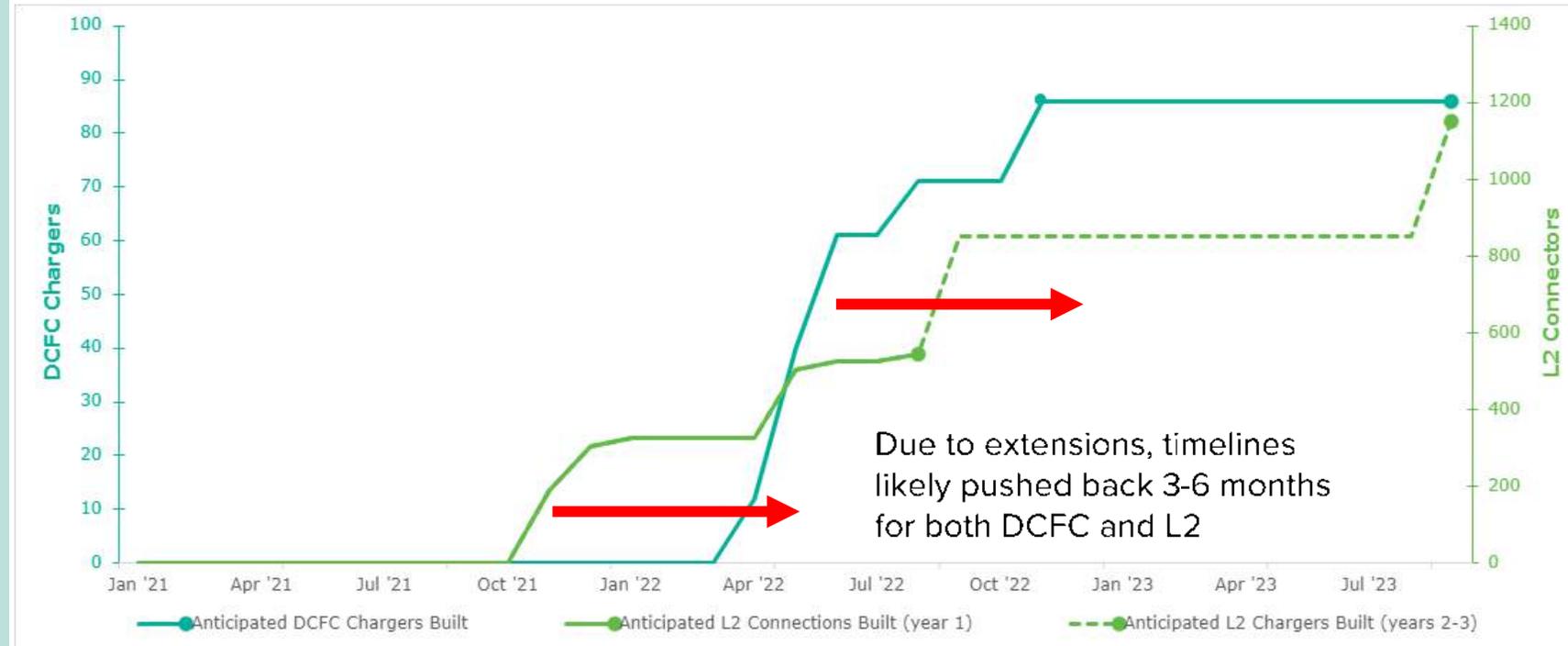
# Charger Install Timeline\*

\*subject to change due to cancellations

Estimated completion dates, based on original deadline to receive funds

After extensions, timeline will probably be 3-6 months later than expected

L2 funding released in waves (second and third waves represented by dashed line)





## Staff Report – Item 1f

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**Item 1f: Authorize the Chief Executive Officer to Approve the Agreement with Strategic Energy Innovations to Host Two Climate Corps Fellows for the 2022-2023 Fellowship Cycle**

From: Girish Balachandran, CEO

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

Date: 5/11/2022

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### **RECOMMENDATION**

Staff recommends the SVCE Board of Directors authorize the CEO to execute the Service Agreement, any nonfinancial amendments, and other related documents for Climate Corps fellow hosting services with the nonprofit Strategic Energy Innovations, not-to-exceed \$139,000 through June 30, 2023.

### **BACKGROUND**

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

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

### **ANALYSIS & DISCUSSION**

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

SVCE has hosted Climate Corps fellows for the past six fellowship cycles, including two fellows this current cycle. Climate Corps fellows have been instrumental in the success of SVCE outreach projects and initiatives. Past and current fellow projects include the Bike to the Future high school scholarship competition focused on clean transportation innovation, the award-winning SVCE Understanding Your Bill video, the current EmPower SV youth film competition focused on climate and energy, and additional support for outreach initiatives and programs.

**Agenda Item: 1f****Agenda Date: 5/11/2022**

The added benefit of working with a defined fellowship program is that much of the recruitment effort and liability for the fellows is managed by SEI, and fellows receive professional development opportunities. The scope of work for SEI includes:

- Recruitment assistance
- Ongoing training and support of selected fellows
- Development of metrics for fellows to measure and track progress
- Monthly follow-ups to review progress
- Receipt of a Climate Protection Professional Career Certificate with Skyline College at conclusion of fellowship

The 2022-2023 fellowship cycle starts in September 2022 and runs until June 2023. With the proposed agreement, SVCE plans to host two fellows, one under the Energy Services and Community Relations team and one under the Decarbonization and Grid Innovation Programs team.

The Community Outreach Fellow, supervised by SVCE Communications Manager Pamela Leonard, will mainly focus on youth engagement activities and the DIY Energy Savings Toolkit program. Other duties may include supporting the community relations team with outreach events and initiatives.

The Programs Fleet Electrification Fellow, supervised by Senior Manager of Public Sector Services Anthony Eulo, will focus on encouraging and supporting the electrification of public sector and private sector fleets around Silicon Valley through research and interfacing with fleet managers and representatives.

**STRATEGIC PLAN**

Hiring two climate corps fellows will help achieve the following goals from the October 2021 Board-adopted Strategic Plan.

- Goal 1: Build and maintain a high-performing team
- Goal 10: Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices
- Goal 11: Engage a full range of public, private and non-profit stakeholders to leverage our decarbonization efforts.

By utilizing SEI's support in recruitment and hiring, SVCE can act on Goal 1 with reduced staff time. With the Outreach Fellow's role to conduct and assist with youth engagement, the DIY Energy Savings Toolkit program and outreach initiatives, the fellow will support the team in continuing to reach the metrics set in Goal 10. The Fleet Electrification Fellow will also work in supporting Goal 11 through engaging with public and private fleet managers and representatives to support the fleet electrification efforts identified in the Electric Vehicle Infrastructure Joint Action Plan.

**ALTERNATIVE**

The alternative is to not hire two Climate Corps fellows, hire only one fellow, or do not hire any fellows and the work outlined within the fellow job descriptions will be led by staff.

**FISCAL IMPACT**

The fiscal impact of this agreement would be \$139,000, which will be included in the 2022-2023 FY budget, should it be approved by the SVCE board. The current 2021-2022 FY budget does account for temporary staff, inclusive of the annual Climate Corps fellowship.

**ATTACHMENTS**

1. SEI Climate Corps Fellowship Agreement
2. Outreach Fellow Job Description
3. Fleet Electrification Fellow Job Description

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY  
AND  
STRATEGIC ENERGY INNOVATIONS  
FOR  
CLIMATE CORPS FELLOW HOSTING SERVICES**

THIS AGREEMENT, is entered into this 11th day of May 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority" or "Partner"), and STRATEGIC ENERGY INNOVATIONS, a nonprofit organization whose address is 100 Smith Ranch Rd. #124 San Rafael, CA 94903 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for Climate Corps fellow hosting upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on September 1, 2022, and shall terminate on June 30, 2023, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference. Exhibit A also includes tasks to be performed by Authority. For purposes of this Agreement, Fellow is an employee/agent of Consultant.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred and thirty-nine thousand dollars and no/100 (\$139,000.00) 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 RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

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

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant, and any subconsultant under the

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

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

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

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

D. Consultant’s indemnifications and obligations under this section shall survive the

expiration or termination of this Agreement.

## 10. INSURANCE

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

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

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

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

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

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

11. **CONFLICT OF INTEREST**

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

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

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

Consultant agrees to include within their subcontract(s) with any and all subcontractors the

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

14. **REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared for Authority by Fellow, as defined in Exhibit A, pursuant to or in connection with this Agreement, shall be the exclusive property of Authority, and all publication rights are reserved to Authority. All training and professional development materials and documents prepared by Consultant shall remain the exclusive property of Consultant.

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer ("Authority Representative") shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Nathan McKenzie (Consultant Representative") shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **INFORMATION AND DOCUMENTS**

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

Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

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

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

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

## 18. **NOTICES**

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

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

TO CONSULTANT:  
Nathan McKenzie  
Strategic Energy Innovations  
100 Smith Ranch Rd. #124  
San Rafael, CA 9403

## 19. **TERMINATION**

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

this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

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

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. Authority, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

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

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

A waiver by Authority 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

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Don Bray, Director of Account Services and Community Relations

RECOMMENDED FOR APPROVAL

\_\_\_\_\_  
Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME  
Strategic Energy Innovations

SILICON VALLEY CLEAN ENERGY  
AUTHORITY  
A Joint Powers Authority

By: \_\_\_\_\_  
Name: Steven Miller  
Title: Deputy Director  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Girish Balachandran  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Counsel for Authority

ATTEST:

\_\_\_\_\_  
Authority Clerk

## Exhibit A Scope of Services

Through Climate Corps, SEI agrees to:

- Recruit and assist in selection of two Fellows for a commitment of 1,756 total hours over a period of 10 months for each Fellow.
  - 1,464 hours of on-site service with Partner (“on-site hours”)
  - 132 hours of training led by SEI (“training hours”)
  - 160 hours personal time off (“PTO hours”)
- Train and support the selected Fellows with a comprehensive training program that includes a training manual, a multi-day orientation led by an array of experts, monthly trainings, a mid-year two-day retreat, and two Professional Development Assessment reviews.
- Work with the Partner to develop a specific Fellowship Scope for specific Partner initiatives that aligns with Climate Corps goals and defines the Training Plan for the Fellows.
- Provide assistance in defining and developing metrics for the Fellow to measure and track the progress of project activities throughout their Fellowship.
- Provide monthly follow-ups to review progress with Site Supervisor and Fellows.
- Define and implement any corrections to Fellows’ plan determined to be necessary based on feedback collected from Fellows and Partner.

Partner agrees to:

- Take part in the recruitment and interview process to identify Fellows best fitted for the specific projects' needs, with the understanding that Partner has right of refusal of any proposed Fellows.
- Provide one to three specific climate resiliency initiatives that each Fellow can work on during their term of service.
  - Initiatives must be well-defined, approved for implementation, and include specific learning objectives.
  - Partner Agency will work with SEI to finalize a mutually agreed-upon Fellowship Scopes no later than one month after the Fellows arrives on site.
- Assign Site Supervisors who will be available to meet at least weekly with the Fellows for one-on-one project meeting time, coordinate other necessary staff supervision needed for successful implementation of the Fellowship Scope.
- Support Fellows to complete monthly reporting to SEI indicating whether progress is being made on the initiatives.
- Provide feedback on Program and Fellows effectiveness by:
  - Filling out and submitting a Professional Development Assessment providing feedback on Fellows activities two times a year;
  - Participating in program-wide conference calls to discuss program progress; and
  - Responding to Partner Agency feedback surveys as requested.

- Refrain from using the Fellows for displacement of a Partner Agency employee during the Fellowship term.
- Allow SEI to share results from this program through grant reporting, program marketing, and fundraising.
- Provide program-wide support through either:
  - Sponsoring a venue and staff presentations for a monthly training event for all Fellows; or
  - Participating in a program sponsored training session or professional development event.
  - Being receptive to informational interview requests from 1 or more current Fellow

**Program Plan**

**Fellow service information**

<b>[A] Number of Fellows</b>	2
<b>Service Term</b>	Full Cycle: September 1, 2022 to June 30, 2023
<b>Standard Hours</b>	<p>Full Cycle: 1,764 total hours, allocated as follows:</p> <ul style="list-style-type: none"> <li>● 1,464 hours of on-site service with Partner (“on-site hours”)</li> <li>● 140 hours of training led by SEI (“training hours”)</li> <li>● 160 hours of vacation, holiday and sick time (VHS)</li> </ul>

**Position fee**

<b>[B] Amount</b>	\$46,500 per non-profit Fellow
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**Additional funding**

<b>[C] Amount</b>	\$20,000 per non-profit Fellow
<b>Use of additional funds</b>	<p><b>[Living Stipend:</b> Additional funds will go towards enhancing Fellow’s Living Stipend. Funds will be paid out to Fellow twice a month as part of the Fellow’s regular stipend checks.]</p>
<b>[D] Administration fee</b>	Partner will pay to SEI a fee equal to 15% of the amount of additional funds.
<b>Timing</b>	<p>[Additional funds to be held in a reimbursement account are due at the same time as the first installment of the Program fee.]</p> <p>[Partner will pay additional funds and the administration fee promptly following receipt of an invoice from SEI.]</p>

**Total fee**

<b>Amount</b>	\$ 139,000
<b>Timing</b>	Partner will pay the fee in two installments: <ul style="list-style-type: none"><li>● \$69,500 due October 15, 2022</li><li>● \$69,500 due February 15, 2023</li></ul>

**Partner contact information**

<b>Contact person and title</b>	Pamela Leonard
<b>Email address</b>	pamela.leonard@svcleanenergy.org
<b>Phone number</b>	(408) 721-5301 x1004
<b>Mailing address</b>	333 W. El Camino Real, Ste. 330 Sunnyvale, CA 94087
<b>Billing contact information (if different from above)</b>	
<b>P.O. Number (if applicable)</b>	

**SEI contact information**

<b>Contact person and title</b>	Nathan McKenzie, Program Director
<b>Email address</b>	nathan@seiinc.org
<b>Phone number</b>	415-507-1432
<b>Mailing address</b>	<b>100 Smith Ranch Rd. #124</b> San Rafael, CA 94903

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<b>1. Additional Terms</b>	<b>2. <u>Program Initiation</u></b>  <b>1. Recruitment and Selection</b> SEI will recruit, screen, and select a Fellow to serve at Partner during the service term set out in the Program Plan (“Service Term”). Partner will assist in the recruitment and selection of Fellow, including, without limitation, developing a job description specific to Partner’s activities and needs, conducting interviews, and participating in the final selection. If Partner ultimately fails to select a Fellow, Partner will pay to SEI a \$2,500 fee for the recruiting effort promptly following receipt of an invoice from SEI.  <b>2. Employment Relationship</b> SEI and Partner acknowledge that Fellow is an employee of SEI. SEI will notify each Fellow that Fellow is not an employee of Partner.  <b>3. Fellow Orientation</b> At the start of the Service Term, SEI will provide Fellow with an orientation to the Program. Partner will provide Fellow with an orientation to Partner’s mission, programs, operations, systems, and facilities.  <b>4. Fellowship Scope</b> Partner will cooperate with SEI to develop a written scope of work (“Fellowship Scope”) for each Fellow. The Fellowship Scope will: (a) outline the training plan for the Fellow, (b) describe one to three specific climate change resiliency projects that the Fellow will work on during the Service Term, and (c) define anticipated deliverables and Fellow performance and learning goals. Partner and SEI will complete the Fellowship Scope within one month after the Fellow’s first day of service.  <b>3. <u>Training and Support</u></b>  <b>1. Fellow Training</b> SEI will train and support the Fellow with a training program that includes: monthly trainings, a mid-year two-day retreat, an end of program symposium, and two professional development assessment reviews. Time spent by the Fellow in this training program will count as training hours under the Program Plan.  <b>2. Training Calendar</b> SEI will provide a calendar of training activities to Partner and will notify Partner of any schedule changes in advance.  <b>3. Ongoing Support and Assistance</b> SEI will help Partner and Fellow develop metrics for evaluating the Fellow’s progress. SEI will schedule monthly sessions with Fellow and Partner to review the Fellow’s progress, and will assist the Fellow and Partner with defining or implementing any changes to the Fellowship Scope or other documents as appropriate.  <b>4. Partner’s Program-wide Support</b> Partner will carry out Program-wide activities reasonably requested by SEI, such as: (a) sponsoring a venue and staff presentations for a monthly training event for all Fellows, (b) participating in a Program-sponsored training session or
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professional development event, or (c) accepting informal interview requests from one or more other Fellows in the Program.

**5. Ownership of Materials**

For clarity, SEI owns all training and professional development materials and documents.

**6.**

**7. Fellow Responsibilities, Scheduling, and Supervision**

**8. Fellow Responsibilities**

Partner may assign specific responsibilities to Fellow so long as they are consistent with the Fellowship Scope.

Fellow shall be required to attend or complete training as directed by Partner regarding data security, and confidentiality and other Partner policies and comply with such policies for the duration of the Term.

**9. Payment to Fellow; Additional Funding**

SEI will pay a living stipend (“Living Stipend”) and end of program award (“End of Program Award”) to Fellow during the Service Term. Partner may provide additional funding for Fellow as may be set out in the Program Plan.

**10. Hours and Work Schedule**

The standard number of service hours for Fellows (“Standard Hours”) is set out in the Program Plan. Partner will provide Fellow with a reasonably consistent schedule during the Service Term so that Fellow can fulfill his or her Target Hours. If a Fellow is required serve as a juror, they will log that time as on-site hours with Partner and continue receiving a living allowance, healthcare coverage and, if applicable, childcare coverage regardless of any reimbursements for incidental expenses received from the court.

**11. Work Environment and Resources**

When in-person work is allowed, Partner will provide Fellow with adequate workspace, a reasonably comfortable work environment, access to a computer with internet connectivity, and other support resources reasonably necessary for Fellow to complete his or her work.

While working remotely, individual Site Supervisors will plan for IT logistics like computer, WiFi, and other technological equipment needed at the Fellows’ home, account and software access, and/or setting up remote VPNs. Fellows should alert their Site and Regional Supervisors immediately if they face any logistical hurdles to remote work, such as WiFi challenges, remote account access or VPNs.

We recognize that sites will have different timelines and protocols for reopening. Site Supervisors, please notify your Climate Corps Regional Supervisor in advance via email if your site plans to reopen and you will be expected to physically report to service. Please share: (1) Date of expected reopening and date you will begin to report to work on site; (2) Health and safety measures in place to minimize the threat of exposure (i.e. distancing, availability of PPE and disinfecting supplies). If your site organization has a COVID-19 policy, please share.

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**12. Fellow Attendance at Climate Corps Events**

Partner will allow Fellow to attend all Program events, including, without limitation, orientation, monthly trainings, retreats, field trips to other Climate Corps partner sites, and the Climate Corps Symposium, so that Fellow can fulfill his or her Program training requirements and enhance his or her professional development. Time spent by the Fellow at these events will count as training hours under the Program Plan.

**13. Site Supervisor**

Partner will designate a paid staff supervisor ("Site Supervisor") to supervise Fellow's day-to-day activities and performance. The responsibilities of Site Supervisor include, without limitation: (a) guiding Fellow towards achieving the goals set out in the Fellowship Scope, (b) meeting with Fellow one-on-one at least weekly to discuss project(s), and (c) helping Fellow complete monthly reporting to SEI to track the progress made on the project(s). If Partner changes the Site Supervisor, Partner will provide SEI with at least 30 days' written notice setting out the name and title of the new Site Supervisor, the reason for the change, and the expected impact, if any, on the Fellowship Scope or Fellow.

**4. Reporting and Recordkeeping**

**1. Program Reports**

Partner will complete and submit all Program forms, surveys, assessments, progress reports, Fellow evaluations, and other documents requested by SEI, including a biannual professional development assessment providing feedback on Fellow activities. SEI may share results related to the Program for the purpose of grant reporting, program marketing, and fundraising.

**2. Site Visits**

SEI may visit Partner sites and film, photograph, and otherwise document Program and Fellow activities during normal business hours and with reasonable advance notice.

**3. Recordkeeping**

SEI and Partner will each maintain records relating to its Program responsibilities in a manner such that the other can evaluate compliance with this MOU. SEI and Partner will make those records available for review by the other on reasonable notice during the term of this MOU and for a period of three years after its termination.

**5. Communication**

**1. Program Contacts**

SEI and Partner will each appoint one individual to act as principal contact person and to coordinate activities in connection with the Program. The initial appointees are identified in the Program Plan. SEI and Partner each may change its contact person at any time and will so advise the other.

**2. Cooperation**

SEI and Partner acknowledge Fellow's success in the Program depends in large part on the effectiveness of collaboration between the parties. Both parties will provide timely access to data, information, and personnel, ensure the accuracy and

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completeness of data and information provided, and promptly notify one another about challenges, concerns, and successes.

**3. Fellow Performance**

SEI cannot guarantee specific performance results for any Fellow. Partner will notify SEI immediately of any significant problems with Fellow's professional performance or conduct, including, without limitation, failure to report to a site or unprofessional behavior. SEI will work with Partner to provide assistance or discuss an appropriate response.

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**Exhibit B**  
**Schedule of Performance**

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

<b>Task</b>	<b>Begin</b>	<b>Complete</b>
1. Fellow Interview and Recruitment	May 2022	August 2022
2. Fellowship Cycle	September 2022	June 2023

**Exhibit C**  
**Compensation**

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of one hundred and thirty-nine thousand dollars and no/100 (\$139,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

<b>Task</b>	<b>Estimated Budget</b>
1. Fellow Position Fee – Fellow 1	\$ 46,500
2. Fellow Living Stipend – Fellow 1	\$20,000
3. SEI Administrative Costs – Fellow 1	\$3,000
4. Fellow Position Fee – Fellow 2	\$46,500
5. Fellow Living Stipend – Fellow 2	\$20,000
6. SEI Administrative Costs – Fellow 2	\$3,000
<b>Total</b>	<b>\$139,000</b>

**Invoices**

Authority will pay the Consultant fee in two installments:

- \$69,500 due October 15, 2022
- \$69,500 due February 15, 2023

Authority shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Authority does not pay interest on past due amounts.

**Reimbursable Expenses**

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority.

**Additional Services**

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

**Exhibit D**  
**Insurance Requirements and Proof of Insurance**

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**  
Statutory coverage as required by the State of California.
- (2) **Liability:**  
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**  
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**  
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.
- (5) **Privacy and Cybersecurity Liability**  
Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least \$2,000,000 US per occurrence.

## **Climate Corps Description – Community Outreach Fellow**

Do you want to be a part of an organization that is fighting climate change, accelerating electric innovation and reinvesting locally? Silicon Valley Clean Energy (SVCE) is the community choice electricity provider for 13 communities in Santa Clara County. By providing carbon-free electricity, SVCE has reduced local, energy-related emissions by 35% from the 2015 baseline and is continuing to reduce emissions through innovative community programs focused on building and transportation electrification.

Under staff direction, the fellow's main tasks will be to develop, coordinate and plan SVCE's youth climate engagement initiatives and DIY Energy Savings Toolkits. Other tasks include supporting the community relations team by engaging in community outreach to inform and engage residents and businesses to build awareness of Silicon Valley Clean Energy and available offers and services. This position also requires research and analytical tasks for projects and assignments that utilize specific and acquired academic skills and knowledge for a variety of outreach and marketing-related activities.

The work performed for this fellowship requires strong communication, public speaking, creative and independent research skills. Under the direction and guidance of staff, fellows will research opportunities to support outreach and business development.

### **Essential Duties**

The successful fellow will:

- Develop and coordinate youth climate engagement initiatives;
- Perform tasks of an analytical or research nature for suitable projects or ongoing assignments which call for specific acquired academic skills and knowledge;
- Locate sources of information and collect and organize data, as directed;
- Assist with the development of written, graphic and/or oral reports and material;
- Create messaging and graphics for social media, write news releases, staff reports, newsletter articles, and other presentation materials;
- Attend virtual and in-person community events where SVCE is present; and
- Gain knowledge of community choice energy providers and of the energy industry as a whole.

### **Qualifications**

Qualified candidates should be a recent graduate from an academic institution with a degree that will provide the specific skills and knowledge that will contribute to available work assignments.

Additionally, we are looking for someone who is passionate about learning, not afraid to be challenged and excited by the opportunity to apply acquired academic knowledge to real world business endeavors.

The following skills are also highly desired:

- Exceptional writing skills
- Detail-oriented and organized
- Understanding and passion for the traditional and social media landscape
- Strong interviewing, public speaking and presentation skills
- Working with youth
- Graphic or web design and editing skills
- Ability to work with a team, as well as independently motivated
- Passion to help build our brand while building your career
- Knowledge of Santa Clara County and its communities

- Bilingual Spanish or Chinese languages is strongly desired
- Applicants must be able to perform the essential job functions with or without a reasonable accommodation

## **Climate Corps Description – Fleet Electrification Fellow**

Do you want to be a part of an organization that is fighting climate change, accelerating electric innovation and reinvesting locally? Silicon Valley Clean Energy (SVCE), the community choice electricity provider for 13 communities in Santa Clara County. By providing carbon-free electricity, SVCE has reduced local, energy-related emissions by 35% from the 2015 baseline and is continuing to reduce emissions through innovative community programs focused on building and transportation electrification.

Under staff direction, the fellow will play a pivotal role in encouraging and supporting the electrification of public sector and private sector fleets across Silicon Valley. With transportation emissions accounting for the majority of greenhouse gas emissions in the area, electrifying fleets will result in direct, significant decreases in emissions. In addition, fleet electric vehicle use can demonstrate the practicality of electric vehicles for everyday use and will catalyze additional electric vehicle adoption.

The fellow will research successful fleet electrification efforts and interface with local government representatives and private sector fleet managers on opportunities to invest in both vehicle and charging infrastructure. The research performed during this fellowship will directly inform current and near-term program design and budgetary allocations.

The fellow will work under the direction of SVCE staff to research, assess and analyze funding and finance opportunities for fleet electrification. The work performed for this fellowship requires strong research skills, organization, and a self-starter attitude.

### **Essential Duties**

The successful fellow will:

- Assess the baseline state of fleet electrification efforts in the SVCE service territory;
- Research fleet electrification projects completed by public agencies and private sector companies;
- Explore fleet electrification support programs initiated by other community choice energy agencies and other funders;
- Contact fleet managers in member agencies, other governmental/educational agencies and private sector companies to gauge interest in advancing fleet electrification;
- Pursue opportunities to match SVCE resources and other resources with fleet managers ready to engage in a fleet electrification planning and implementation efforts;
- Begin program implementation; and
- Evaluate and chronicle program successes, lessons learned, and future opportunities.

### **Qualifications**

Qualified candidates should be a recent graduate from an academic institution with a degree that will provide the specific skills and knowledge that will contribute to available work assignments.

Additionally, we are looking for someone who is passionate about learning, not afraid to be challenged and excited by the opportunity to apply acquired academic knowledge to real world business endeavors.

The following skills are also highly desired:

- Basic understanding of principles of transportation and building decarbonization

- Excel and PowerPoint experience
- Exceptional research skills
- Ability to run cost-benefit analysis, Net Present Value calculations, and risk analyses
- Develop other qualitative and quantitative metrics to compare and prioritize opportunities
- Knowledge of California regulatory and legislative bodies and processes governing energy, transportation, and climate change
- Educational focus of finance, economics, public policy, business administration or related field



**Staff Report – Item 1g**

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**Item 1g: Executive Committee Report**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/11/2022

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No report as the Executive Committee has not met since March 25, 2022.

The next meeting of the Executive Committee will be May 27, 2022 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.



**Staff Report – Item 1h**

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**Item 1h: Finance and Administration Committee Report**

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 5/11/2022

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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 scheduled for May 26, 2022 at 3:30p.m.; materials will be posted no later than 72 hours in advance of the meeting.



**Staff Report – Item 1i**

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**Item 1i:      **Audit Committee Report****

To:               Silicon Valley Clean Energy Board of Directors

Prepared by:   Andrea Pizano, Board Clerk/Executive Assistant

Date:             5/11/2022

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No report as the Audit Committee has not met since March 3, 2022.

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 1j**

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

To:                   Silicon Valley Clean Energy Board of Directors

Prepared by:    Andrea Pizano, Board Clerk/Executive Assistant

Date:               5/11/2022

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No report as the Legislative and Regulatory Ad Hoc Committee has not met since March 3, 2022.

The next meeting of the Legislative and Regulatory Ad Hoc Committee is to be determined based on member availability and legislative needs.



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**Staff Report – Item 1k**

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**Item 1k: California Community Power Report**

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 5/11/2022

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Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held its regular board meeting on Wednesday, April 20, 2022.

Attached is a summary report from Interim General Manager Timothy Haines; materials from the regular board meeting can be found here on the CC Power website: [CC Power Meeting, 4/20/22](#)

The next meeting of the board will be May 18, 2022 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

**ATTACHMENTS:**

CA Community Power Board Meeting Summary from Interim General Manager Timothy Haines, April 20, 2022

# California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | [cacommunitypower.org](https://cacommunitypower.org)

**TO:** CC Power Board of Directors **DATE:** 4/20/2022  
**FROM:** Tim Haines – Interim General Manager  
**SUBJECT:** **Report on CC Power Board of Directors Meeting – April 20, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, April 20, 2022, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: <https://cacommunitypower.org>

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Calendar** - The Board unanimously approved the following items:
  - Minutes of the Regular Board Meeting held on March 16, 2022
  - Resolution 22-04-01 Reconsideration Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency
- **General Manager's Report.**
  - **Update on LDS/FCR Projects:** Interim GM Haines encouraged the Board to remain engaged with their POC representatives as Long Duration Storage contracts are being executed and Firm Clean Resource agreements are being finalized.
  - **Update on FPPC Conflict of Interest Code:** Interim GM Haines informed the Board that CC Power General Counsel is reviewing FPPC feedback to the proposed code and expects to have a 45-day public review version available at the next Board meeting.
- **Resolution 22-04-02 Approval of CC Power Conflict of Interest Code and Authorizing the Initiation of Procedures for Adopting the Code by Written Comment Period:** General Counsel Iles presented the Fair Political Practices Commission Conflict of Interest Code. The Board approved the resolution.
- **Individual Member Items**

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A Joint Powers Agency whose members are:

[Central Coast Community Energy](#) | [CleanPowerSF](#) | [East Bay Community Energy](#) | [MCE](#) | [Peninsula Clean Energy](#) | [Redwood Coast Energy Authority](#) | [San José Clean Energy](#) | [Silicon Valley Clean Energy](#) | [Sonoma Clean Power](#) | [Valley Clean Energy](#)



## Staff Report – Item 2

### Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 5/11/2022

## **REPORT**

### **SVCE Staff Update**

Demarie Weber joined the SVCE team on April 28, 2022 as Regulatory and Compliance Manager. She will be leading the development of compliance processes and helping the Power Supply Team and the entire agency with required compliance filings with various regulatory bodies, including the CPUC and CEC. Demarie has over nine years of experience in the energy industry serving in various roles of increasing responsibility. Immediately prior to SVCE, she worked for PG&E's energy procurement division as a Senior Risk and Compliance Analyst where she helped to streamline and mature compliance programs, notably the guidance documentation program. Demarie has also worked on regulatory and compliance management for the City and County of San Francisco. Demarie holds a Master of Public Affairs from USF, BA in Economics with a minor in Politics from UCSC, and Product Management Certificate from Product School, Inc.

Beth Trenchard joined SVCE on May 2<sup>nd</sup> to assist the Energy Services and Community Relations team while Pamela Leonard goes out on leave in June. Beth previously supported the communications team in 2020 to develop and launch eHub. Prior to SVCE, Beth was part of the start-up team at Monterey Bay Community Power (now Central Coast Community Power) focused on programs, ran operations for a small company financing renewables for nonprofits, was the executive director for a small health services nonprofit, served on two school boards, and worked at Apple, Oracle and GE primarily in product marketing and finance roles.

### **Personnel Officer Update**

During the past month, SVCE has onboarded its new Regulatory and Compliance manager, Demarie Weber, who comes to us from PG&E. In addition, SVCE has offered a full-time position to Owen Milligan, a current intern on the Power Supply team. After graduating from university in Mid-May, Owen will be starting full-time with SVCE right after Memorial Day. On the recruitment front, the ESCR team has been interviewing candidates for a new Marketing Specialist, and hopes to make an offer soon, and in addition, recruitment has begun to fill the very large shoes of our current Director of Account Services and Customer Relations, Don Bray, in advance of him taking on a new role with SVCE. Finally, staff is updating job descriptions affected by the re-organization, and will be opening recruitments for several additional positions in the coming weeks.

### **CEO Agreements Executed**

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

- 1) Bliss Point Productions, Amendment: Providing a solar stage, April 23, 2022, not to exceed \$5,000
- 2) Silicon Valley Independent Living Center, Agreement: The Portable Battery Program for Medical Baseline Customer, not to exceed \$76,674
- 3) Camus, Amendment: Software as a Service, change to scope of work
- 4) Kitchens to Life, Agreement: Induction Cooking Event Demonstrations, \$3,500, 4/23/22

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**Agenda Item: 2****Agenda Date: 5/11/2022**

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- 5) Joint Venture Silicon Valley, Amendment: Convening Support for Silicon Valley Transportation Electrification Clearinghouse and Regional Electric Vehicle Leadership Recognition Programs Services, not to exceed \$138,000, 11/1/20 – 3/31/23. Approved at the April 13, 2022 Board of Directors meeting.
- 6) Utility API, Agreement: Energy Data Exchange Platform Pilot, not to exceed \$405,000, 4/14/22 – 4/14/25. Approved at the April 13, 2022 Board of Directors meeting.
- 7) Community Resilience Program – Capital Projects Grant Agreement – City of Sunnyvale: Civic Center Modernization Project, not to exceed \$1,000,000, 4/13/22 – 12/31/23

**CEO Power Supply Agreements Executed**

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
Resi-Station	4/2/2022	Purchase	Resource Adequacy	6/1/2022	9/30/2022	\$576,840
Central Coast Community Energy	4/25/2022	Purchase	Resource Adequacy	7/1/2022	7/31/2022	\$146,250
Powerex	3/25/2022	Purchase	Renewable Energy PCC-1	4/1/2022	12/31/2022	\$320,000
Morgan Stanley	3/17/2022	Purchase	Renewable Energy PCC-1	4/1/2022	12/31/2022	\$1,788,619.26

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;
- Participated in California Community Choice Financing Authority Board of Directors Meeting, April 8<sup>th</sup>
- Presentation to the City Manager's Association, April 13<sup>th</sup>
- Presentation to Cities Association, April 14<sup>th</sup>
- CC Power Board Meeting, April 20<sup>th</sup>, report included on the Consent Calendar

**ATTACHMENTS**

1. Clean Power Update, May 2022
2. Decarb & Grid Innovation Programs Update, May 2022
3. Energy Services & Community Relations Update, May 2022
4. Legislative and Regulatory Update, May 2022
5. Agenda Look Ahead, May – September 2022
6. Board Action Requested, May 2022 Update

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# CEO Report Clean Power Update

SVCE Board Meeting  
May 11, 2022

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# Topics

- PPA Updates



# Signed Power Purchase Agreements

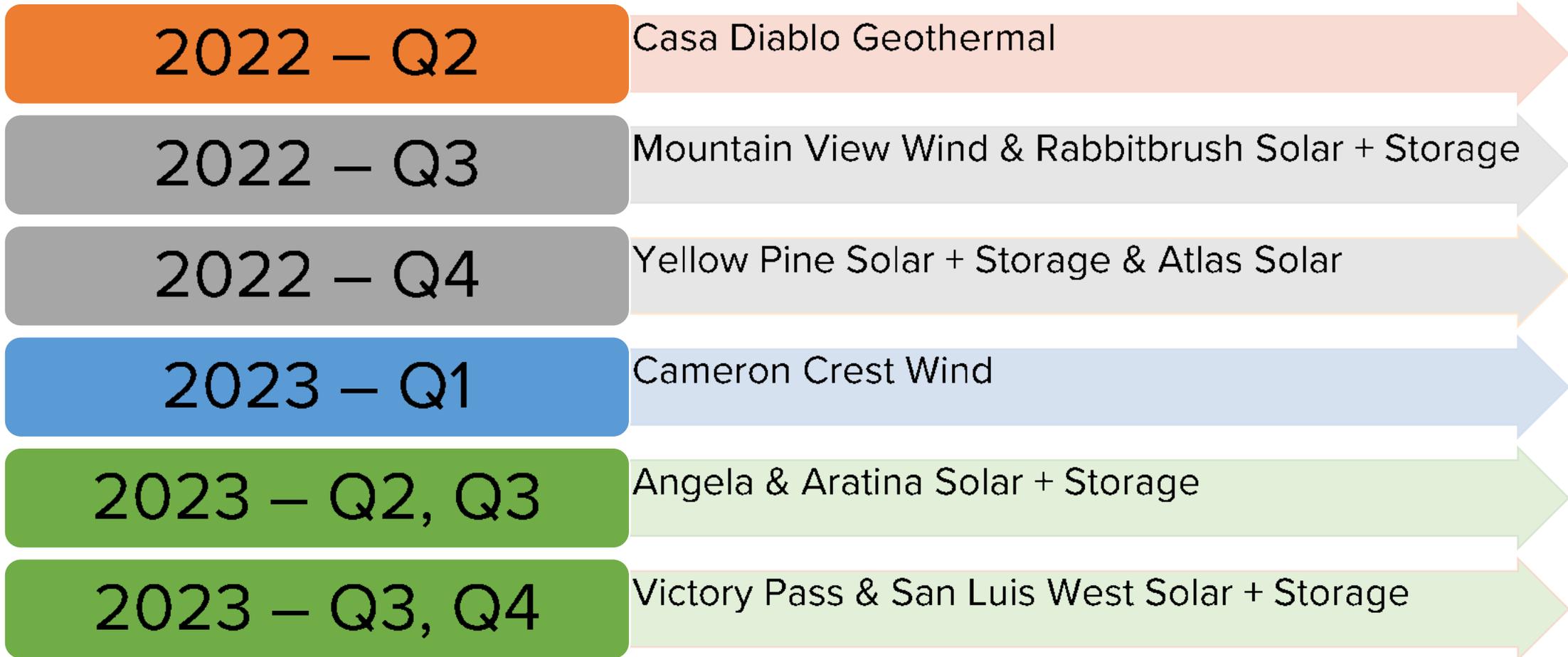


- \$1.6B in commitments
- 13 PPAs signed
- 10 new build projects
- ~725 MW in total
- 173 MW lithium-ion storage paired with 516 MW of Solar PV
- 2 Projects now delivering to SVCE

12 Projects to be operated with Central Coast Community Energy



# PPA Expected Commercial On-line Dates over the next 8 quarters





## *Projects are coming on-line but face interconnection and other challenges*

- Online
  - **Coso's** existing Geothermal project started delivery on January 1, 2022
  - Recurrent's **Slate** solar plus energy storage plant achieved PPA and CAISO COD in Q1 2022
  - EDF's **Big Beau** is partially online with solar PV testing and CAISO grid synchronization started in November 2021. Storage system delayed.
- Under Construction / Pre-COD
  - Ormat's **Casa Diablo** geothermal expected to COD in Q2 2022.
  - AES's **Mountain View Wind** project expected to be completed 6 months early and start delivery in July 2022
  - Leeward's **Rabbitbrush** solar plus storage project expected to sync to CAISO grid in June 2022 before September 2022 COD
  - NextEra's **Yellow Pine** solar plus storage project started construction in Q1 2022 and is expected to achieve CAISO COD by December 2022
- Pre-Construction
  - Other projects continue to face delays due to COVID-19, labor shortages and/or supply-chain delivery issues



# Project Construction



**Ormat's CD4 New Geothermal 7 MW  
COD June 15, 2022**

**Mountain View Wind – Repowered 33.5 MW  
PPA COD January 2023  
Expected COD July 2022**



**THANK YOU!**

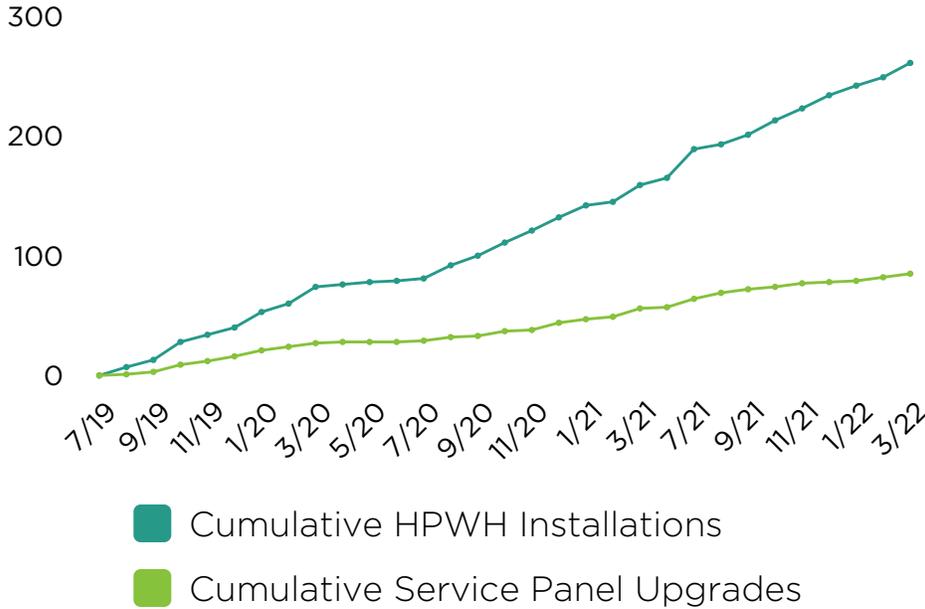


# ONGOING METRICS

MAY 2022

## Heat Pump Water Heater

Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters



**Funding:** \$1.15M  
**Goal:** 220 HPWH by 2022

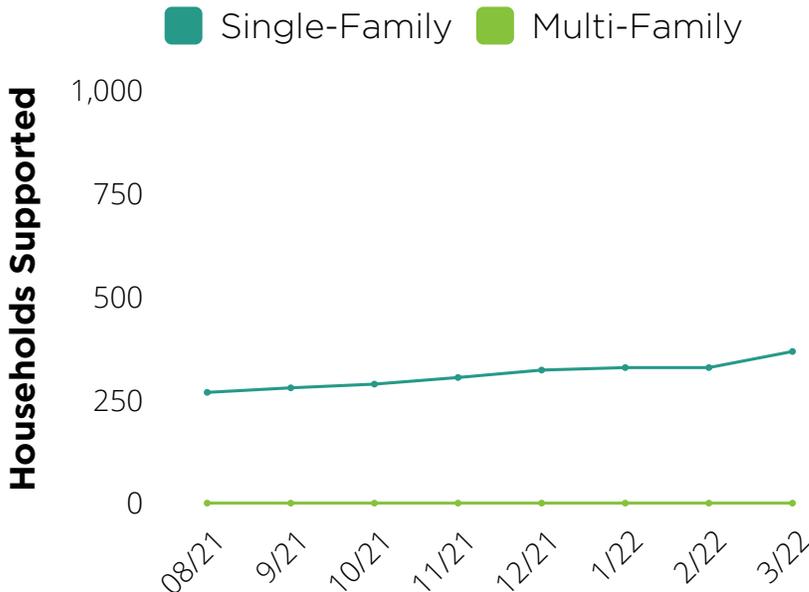
Visual representation of metrics using icons:

- Water drop icon = 10 Completed Installations
- Water drop icon with a white outline = 10 Completed Installations Above the Initial Goal
- Plus sign icon = 1 CARE/FERA Installation

Based on the chart data, there are 260 HPWH installations (26 water drop icons) and 85 service panel upgrades (8.5 plus sign icons). There are 4 water drop icons with white outlines, representing 40 installations above the goal.

## 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

Visual representation of metrics using icons:

- House icon = 25 Single-Family Projects
- Building icon = 1 Multi-Family Property Project (Number of households varies)

Based on the chart data, there are 380 single-family households supported (15.2 house icons) and 0 multi-family households supported (0 building icons).

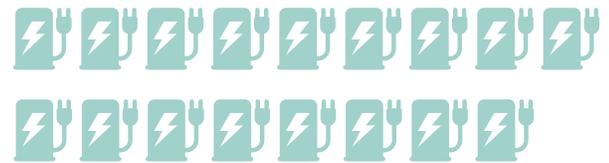
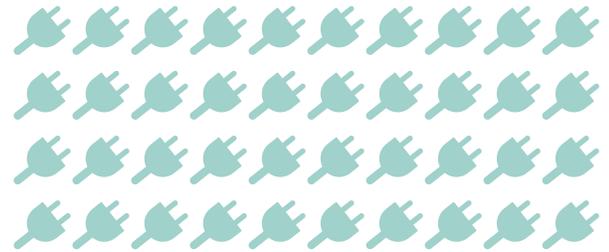
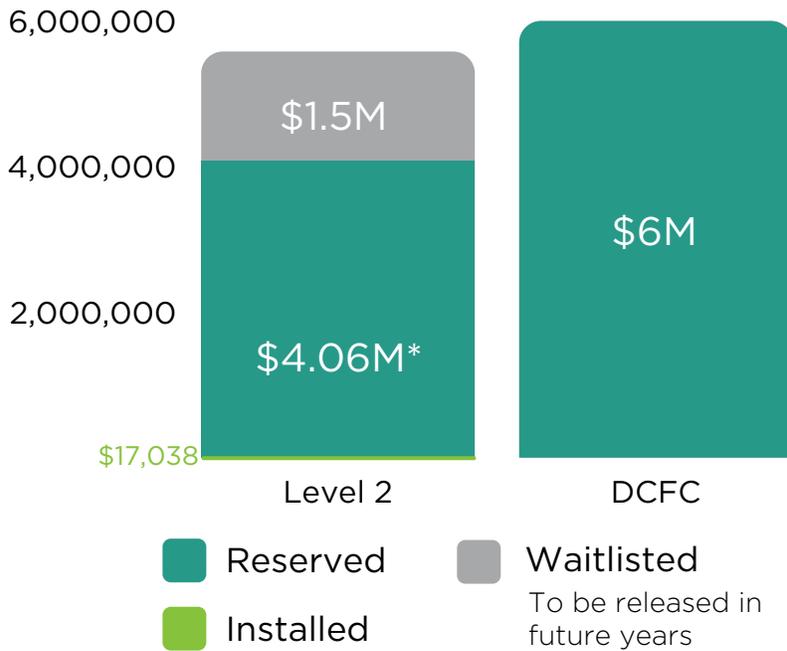
# ONGOING METRICS

MAY 2022

## CALeVIP

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

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

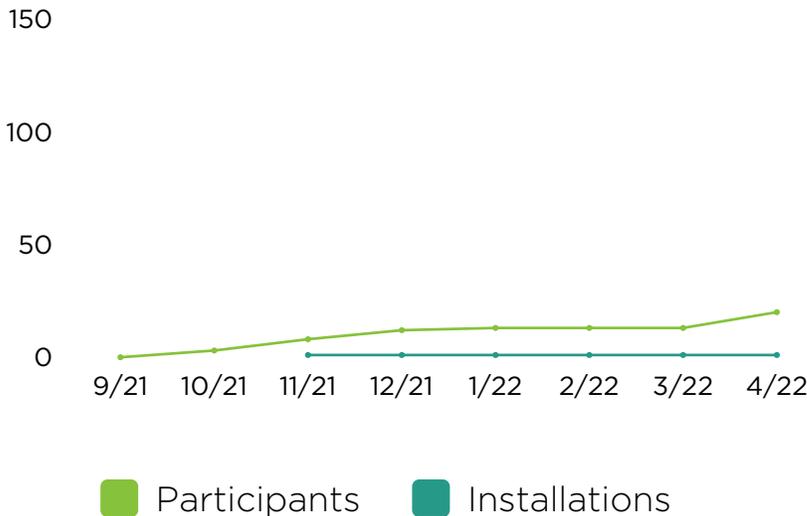


= 25 Level 2 Installations  
 = 5 DCFC Installations

## FutureFit Fundamentals

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

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



= 5 Participants Complete Course

# PROGRAMS AT A GLANCE

MAY 2022

[Click for More Information](#)



Active



In Development



Complete

## POWER SUPPLY

**C&I Clean Power Offerings**

## BUILT ENVIRONMENT

- FutureFit Fundamentals**
- FutureFit Heat Pump Water Heater**
- Streamlining Community-Wide Electrification**
- Resilience at Community Facilities**
- CRCR Bill Relief**
- Reach Codes**
- All-Electric Showcase Grants**
- Building Decarb Joint Action Plan**
- Accessible Financing**
- Feasibility Assessment - Natural Gas Phase Out By 2045**
- FutureFit Homes & Buildings**
- Local Policy to Decarbonize Existing Buildings**
- Regional Coordination**

## MOBILITY

- CA Electric Vehicle Infrastructure Project (CALeVIP)**
- MUD Technical Assistance & Incentives**
- Priority Zone DCFC**
- SV Transportation Electrification Clearinghouse (SVTEC)**
- EV Infrastructure Strategy & Plan**
- Regional Recognition**
- Fleet Electrification Grants**

## GRID INTEGRATION

- GridShift EV Charging**
- Lights On Silicon Valley**
- Other Virtual Power Plant**

## EDUCATION & OUTREACH

- Customer Resource Center (eHub)**
- Data Hive**
- Community Engagement Grants**

## INNOVATION

- Innovation Onramp Pilots**
- Innovation Partners**



# 1. Outreach Events & Sponsorships

Throughout the month of April, SVCE was back in the community for Earth Day. Here are some highlights!



Cupertino Earth & Arbor Day and SVCE 5 Year Anniversary Celebration

# 1. Outreach Events & Sponsorships Continued



Los Gatos Spring Into Green



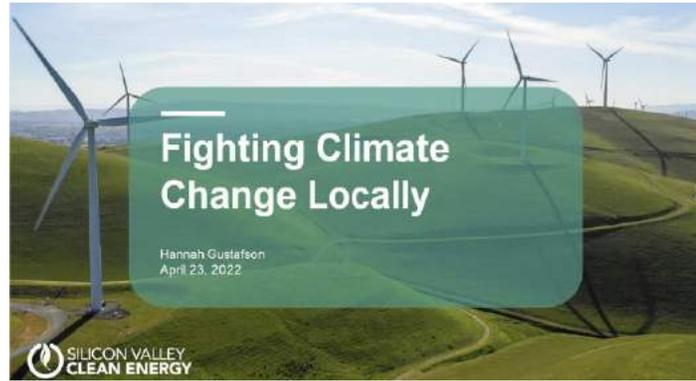
Morgan Hill Earth Day



Milpitas Earth Day & Ribbon Cutting



BayREN Earth Day Virtual Event



Mountain View Earth Day Presentation



Saratoga Earth & Arbor Day

# 1. Outreach Events & Sponsorships Continued

Silicon Valley Clean Energy will be connecting with customers at upcoming events and supports community events as a sponsor.

Date	Time	Description	Location
May 28 & 29	10 AM – 7 PM	Morgan Hill Mushroom Mardi Gras – <i>sponsorship</i>	Community Cultural Center
Month of June	6 – 7:30 PM	Mountain View Concerts on the Plaza– <i>sponsoring and tabling</i>	Civic Center Plaza
June 16	11 AM – 3 PM	Silicon Valley Leadership Group ESG to Carbon Free Summit– <i>sponsoring</i>	TBD



# 2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.38%	96.39%
Commercial	96.47%	

# 3. Customer Credit Updates

## CARE and FERA Rate Relief Bill

- SVCE began crediting customer bills in April, and as of May 2, 2022 has applied over 29,000 bill credits of \$12.50, totaling \$362,500. These credits will continue monthly for income-qualified CARE and FERA customers through November 2022.

## Net Energy Metering (NEM) Excess Solar Generation

- Annually, SVCE pays rooftop solar customers for excess solar they produce and put back on the grid. Through May 2, SVCE has provided \$925,000 in NEM cash out checks and \$270,000 in bill credits to customers. (Customers with a balance greater than \$100 were sent a check and customers with a balance less than \$100 were provided with a bill credit in accordance with SVCE's new NEM policy.)

# 4. Member Agency Working Group March Update

**The recent MAWG meeting was held virtually on April 28, 2022 and was attended by 11 different agencies and organizations with a total of 23 participants.**

The following agenda items were presented and discussed:

- FutureFit Fundamentals Contractor Training Introduction
- Community-Based Organization Contacts for Equity
- Reach Code 1.0 EM&V
- Reach Codes Update
- Research & Analysis Page on SVCE Website
- Battery Program for Medical Baseline Customers

# 5. Press Releases & Media

## Press Releases

- [Local Communities Celebrate Five Years of Clean Energy](#), *Press Release*, 04-28-22

## Media

- [Stanford Now Runs On 100% Renewable Energy](#), *Patch.com*, 03-29-22
- [Los Gatos community briefs for the week of April 8](#), *The Mercury News*, 04-03-22
- [Utilidata Launches Grid Edge Advisory Board with NVIDIA, AITHORITY](#), 04-07-22
- [Where to celebrate Earth Day along the Peninsula](#), *The Almanac*, 04-14-22
- [San Mateo exploring ban on natural gas](#), *San Mateo Daily Journal*, 04-15-22
- [Implemented Correctly, Community Choice Energy Can Support Colorado Communities in Their Goals](#), *Institute for local self-resilience*, 04-20-22
- [Gilroy To Discuss Building Efficiency 'Reach Codes'](#), *Patch.com*, 04-21-22
- [Spring Into Green celebrates Los Gatos' 42nd year as Tree City](#), *The Mercury News*, 04-25-22
- [Monte Sereno considers future of former city hall](#), *The Mercury News*, 05-01-22

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# SVCE Legislative and Regulatory Update

May 11, 2022



## Regulatory Update:

1. Provider of Last Resort (POLR)
2. Resource Adequacy Reform (RA Reform)
3. Integrated Resource Planning (IRP)
4. Voluntary Allocation Market Offer (VAMO)

## Legislative Update:

1. Bill Position Matrix
2. Reviewing Legislation
  1. SB 1158 (Becker)
  2. AB 2061 (Ting)
  3. SB 1020 (Atkins, Laird)
3. Legislative Timeline



# Regulatory Update



# Key Regulatory Proceedings

Proceeding	Purpose	Status
Provider of Last Resort (POLR)	Pro-actively develop rules and regulations for a POLR should a CCA fail. Key issues include CCA financial monitoring and Financial Security Requirements (FSR).	Working with CalCCA to develop proposal to adjust FSR and counter PG&E's insurance pool proposal.
Resource Adequacy Reform	Update resource adequacy rules and accounting methodology to ensure system reliability. Key proposals include 24-slice and 2-slice methods.	Awaiting proposed decision from CPUC.
Integrated Resource Plan (IRP)	Ensure long-term system planning is on track to meet state's climate and reliability goals.	SVCE has received its share of the two GHG-target for this cycle (38 and 30 MMT). Awaiting further filing requirements in June.
Voluntary Allocation and Market Offer (VAMO)	Voluntary allocation of legacy IOU Renewable Portfolio Standard resources to CCAs.	SVCE assessing contract structure and portfolio fit.



# Legislative Update



# SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status	Impact to SVCE
AB 1814 (Grayson)	Adds CCAs as eligible program administrators for CPUC's Transportation Electrification Program	Support (Climate Mitigation/Clean Energy Funding)	Died	
SB 833 (Dodd)	Creates grant program for local government community resiliency plans and to expedite permitting for distributed energy resources.	Support (Climate Mitigation/Clean Energy Funding)	Senate Appropriations Committee	
SB 1112 (Becker)	Ensures notification to tenants and property owners for tariff on bill decarbonization charges.	Support (Fuel Switching and Electrification)	Senate Appropriations Committee	
SB 1100 (Cortese)	Establishes a process for removing individuals who are willfully interrupting meetings	Support (per Board direction)	Senate Floor	
AB 1944 (Lee)	Allows legislative body members to participate in meetings from private locations and without publishing private addresses on meeting notices.	Support (per Board direction)	Assembly Local Government Committee	



# SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status	Impact to SVCE
SB 881 (Min)	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.	Oppose Unless Amended (CCA Procurement Authority)	Senate Appropriations Committee	
SB 1393 (Archuleta)	Would require CEC approval for electrification upon retrofit ordinances if the jurisdiction does not have exemptions for 1) technical infeasibility, 2) cost effectiveness, 3) negative impacts on low/moderate income consumers, 4) adverse impacts on skilled and trained workforce, and 5) increases in costs for electricity ratepayers.	Oppose (Fuel Switching and Electrification)	Senate Appropriations Committee	



# Additional Legislation

SVCE is actively reviewing the following bills:

Bill	Summary	SVCE Position	Status
SB 1158 (Becker)	Requires load serving entities to report hourly electricity purchases. Requires the CPUC to assess whether reporting demonstrates "adequate progress" towards GHG targets.	Reviewing	Senate Appropriations Committee
AB 2061 (Ting)	Would require entities to report EV reliability data by sharing information on EV station "uptime" (the amount of time the station is functioning at expected energy levels) as a condition of receiving state or ratepayer funding.	Reviewing	Assembly Appropriations Committee
SB 1020 (Atkins, Laird)	Sets interim targets for SB 100's 100% renewable energy by 2045 goal. Creates Climate and Equity Trust Fund to invest in affordability, transportation/building electrification, wildfire mitigation, and public purpose programs.	Reviewing	Senate Appropriations Committee



# Key State Legislative Milestones

- ~~1/3: Legislature reconvenes~~
- ~~1/10: Governor submits budget~~
- ~~1/31: Deadline to move 2-year bills out of first house~~
- ~~2/18: Bill introduction deadline~~
- ~~4/29: Deadline for policy committees to move fiscal bills to fiscal committees~~
- 5/6: Deadline for nonfiscal bills to move to the floor
- 5/20: Deadline for fiscal committees to move bills to floor
- 5/27: Last day for bills to pass out of first house
- 6/15: Budget deadline
- 8/12: Fiscal Committees to move bills to floor
- 8/31: Last day for each house to pass bills
- 9/30: Governor deadline to sign bills

MAY 2022	JUNE 2022	JULY 2022	AUGUST 2022	SEPTEMBER 2022
<p><b>Board of Directors, May 11:</b></p>	<p><b>Board of Directors, June 8:</b>                      Consent:                      Minutes                      March 2022 Treasurer Report                      Committee Reports</p> <p>Regular Calendar:                      eHub Year 1 Recap &amp; Survey Results                      Strategic Plan/Budget Kick-off                      Stress Test                      BPO Contract                      PPA Agreement</p> <p>Closed Session:                      CEO Review discussion</p>	<p>No meeting</p>	<p><b>Board of Directors, August 10:</b>                      Consent:                      Minutes                      April 2022 Treasurer Report                      PCL Attestation                      Committee Reports</p> <p>Regular Calendar:                      Investment Policy                      Strategic Plan                      Budget Preview</p> <p>Closed Session:                      CEO Review discussion</p>	<p><b>Board of Directors, September 14:</b>                      Consent:                      Minutes                      May 2022 Treasurer Report                      Committee Reports</p> <p>Regular Calendar:                      FY 22-23 Budget Adoption                      Strategic Plan Adoption                      IRP Update</p> <p>Closed Session:                      CEO Review discussion</p>
<p><b>Executive Committee, May 27:</b>                      eHub Year 1 Recap &amp; Survey Results                      Stress Test                      BPO Contract                      Strategic Plan Update</p>	<p><b>Executive Committee, June 24:</b>                      Investment Policy                      Budget Intro</p>	<p>No meeting</p>	<p><b>Executive Committee, August 26:</b>                      TBD</p>	<p><b>Executive Committee, September 23:</b>                      TBD</p>
<p><b>Finance &amp; Administration Committee - May 26</b>                      Chair/Vice Chair Selection                      Investment Policy                      Stress Test Intro</p>			<p><b>Audit Committee - TBD</b>                      Independent Auditor Selection</p>	<p><b>Audit Committee - TBD</b>                      Audit Kick-off</p>

SVCE Board Action Requested - May Update

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



### Staff Report – Item 3

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**Item 3: Delegate Authority to the Chief Executive Officer to Participate in PG&E’s Voluntary Allocation Market Offer Renewable Energy Credit Solicitation and Transact For a Portion of SVCE’s Load Ratio Share Allocation**

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Chief Operating Officer  
Charles Grinstead, Senior Manager of Power Resources

Date: 5/11/2022

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#### **RECOMMENDATION**

Staff recommends that the Silicon Valley Clean Energy Authority’s (SVCE) Board of Directors authorize SVCE’s Chief Executive Officer (CEO) to participate in Pacific Gas and Electric’s (PG&E) Voluntary Allocation Market Offer (VAMO) for a portion of its load ratio share and execute necessary agreements including the Voluntary Allocation Confirmation under Pacific Gas and Electric (PG&E) and SVCE Master Power Purchase and Sale Agreement.

Approval of this authorization is necessary to help meet SVCE’s Renewable Portfolio Standard (RPS) goals, state-mandated long-term procurement requirements for RPS. The CEO will only exercise the delegated authority should he deem it necessary to meet long-term procurement directives in an amount not to exceed four increments of VAMO allocation and will report back to the Board in a timely fashion.

#### **BACKGROUND**

##### ***Long-term RPS Procurement***

SVCE has established a goal of meeting 100 percent of its power supply with clean energy resources from a mix of RPS eligible resources and other sources of carbon-free energy such as large hydroelectricity. California’s RPS mandates a certain percent of energy be met via eligible renewables and that starting in 2021 at least 65 percent of the RPS be met through contracts of at least ten years in term.

To procure long-term RPS resources, SVCE has participated in four joint Request for Proposals (RFP). The first three RFPs resulted in 13 long-term Power Purchase Agreements for RPS eligible resources including ten new build solar photovoltaic with lithium-ion storage. The last RFP was issued at the end of 2021 and SVCE is in the process of negotiating at least one new long-term PPA for RPS resource. Table 1 is a summary of SVCE’s progress towards meeting the long-term RPS goals and mandates.

**Table 1: RPS Under SB100 and SB350 Long-term Contracting Requirement per Compliance Period**

	<b>2021-2024</b>	<b>2025-2027</b>	<b>2028-2030</b>
1. State Mandated RPS per Compliance Period - % of Retail Sales	40%	50%	60%
2. State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS Long-term Contracts	65%	65%	65%
3. State Mandated % of Retail Sales with RPS Long-term Contracts (Row 2* Row 1)	26%	33%	39%
<b>4. SVCE: Current Compliance with Row #3: Existing RPS Achieved with Long-term Contracts</b>	<b>37.6%</b>	<b>60.6%</b>	<b>57.7%</b>

The SVCE Board approved a five-percent over procurement margin above the state’s mandate per compliance period to allow for delays and even termination of one or more of the PPAs.

**VAMO**

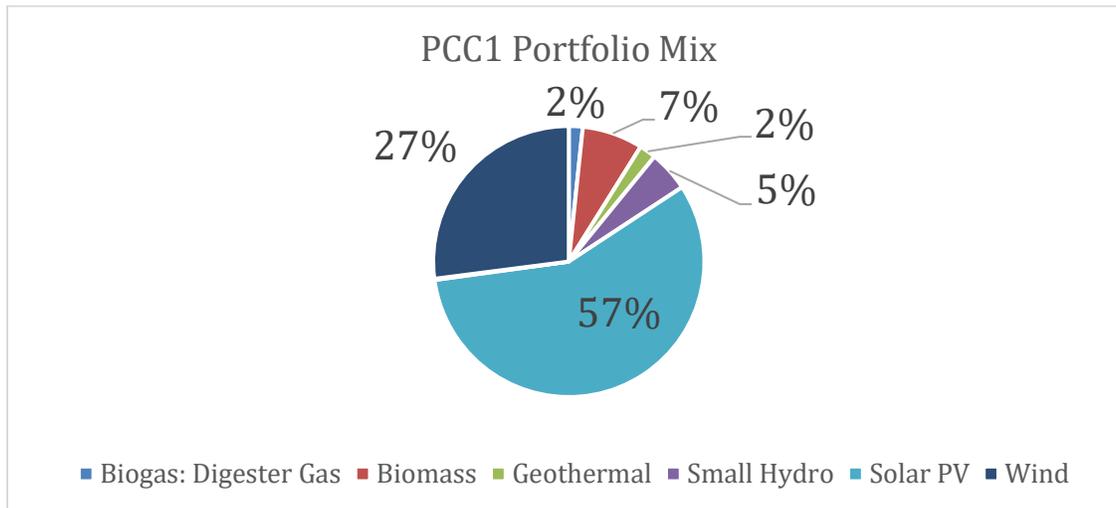
The California Public Utilities Commission (“CPUC”) opened Rulemaking (“R.”)17-06-026 on June 26, 2017, to review, revise and consider alternatives to the Power Cost Indifference Adjustor (“PCIA”). Among other things, D.18-10-019 opened a second phase of the proceeding with a working group process resulting in four decisions to address three specific topic areas: (1) the market price benchmarks, (2) a voluntary prepayment option, and (3) portfolio optimization and cost reduction of the investor-owned utilities’ (“IOUs”) PCIA portfolios. D.21-05-030 was issued on May 24, 2021, as part of Phase 2 of the PCIA proceeding. Specifically, D.21-05-030 addresses portfolio optimization activities associated with RPS resources subject to PCIA cost recovery. A Voluntary Allocation and Market Offer (“VAMO”) mechanism was adopted, including authorizing a process for the IOUs to allocate a “slice” of an IOU’s entire PCIA-eligible RPS portfolio to eligible load serving entities (“LSEs”) in proportion to their vintaged, forecasted annual load share.

Under VAMO, LSEs have the option to contract for a long-term allocation, short-term allocation, bid to procure a short-term portion of the PCIA portfolio, or decline all or a portion of their allocation. Due to the contract term requirements of SB350, the long-term allocation would be the only contract that would contribute to the compliance requirement.

**DISCUSSION**

SVCE’s PPAs face significant delay and termination risk, especially new build projects for solar and solar with storage. Conditions beyond SVCE’s control including the COVID pandemic, global supply chain issues, interconnection backlogs and recent investigation by the Department of Commerce on panel imports from certain Asian countries have resulted in major delays of many of the new build projects. Staff expects to meet the RPS long-term procurement mandates, however, if multiple PPAs are terminated, SVCE is at risk of not meeting long-term RPS requirements and therefore will need to procure additional long-term resources and have them deliver as soon as 2023.

PG&E’s PCIA-eligible RPS portfolio is quite significant at approximately 18,000 GWhs a year representing four and half times SVCE’s entire load. A large share of PG&E’s portfolio is from Portfolio Content Category One (“PCC1”) resources with 84% coming from solar PV and wind as shown below.



Participation in VAMO will enable SVCE to receive an allocation of these long-term RPS resources starting in 2023 from projects which already exist and therefore have no development risk. These resources are made

available at a variable price, unlike the pricing structure of SVCE's negotiated fixed-price contracts. These variable price contracts are made available at an energy index price plus a Renewable Energy Certificate ("REC") adder based on an annual Market Price Benchmark ("MPB").

Participation in VAMO also carries uncertainty around resource types, quantity, REC price and term. Additionally, PG&E's portfolio consists of pre-2009 vintaged resources referred to as PCC0 which may include out-of-state RPS resources ("PCC2") and un-bundled RECs ("PCC3") which are both limited from an annual compliance standpoint and carry reportable greenhouse gas emissions.

The following is a description of the major VAMO elements and concerns.

### **Voluntary Allocations**

#### **1. Slice Elections, Costs based on Market Price Benchmarks**

Voluntary Allocations comprise a "slice" of an IOU's entire PCIA-eligible RPS portfolio. LSEs will be offered allocations of the PCIA-eligible RPS portfolio in proportion to their vintaged, forecasted annual load share. Each election shall be made in 10 percent increments of the LSE's vintaged, forecasted annual load share.

LSEs electing to accept allocations shall be required to pay the applicable year's market price benchmark (MPB) for RPS attributes received and may be required to meet certain credit or collateral requirements, netting agreement, or other commercial arrangements. For reference the 2021 published MPB and 2022 forecasted MPB is in the table below, as well a long-term projection of PCC1 prices.

**Table 2 2021 Final MPB Adders and 2022 Forecast MPB Adders for California RPS**

<b>2021 Final Adders</b>	
RPS Adder	\$14.23
<b>2022 Forecast Adders</b>	
RPS Adder	\$13.70

**Table 3 Long Term REC Forecast**

Years	2023	2024	2025	2026	2027	2028	2029	2030
Rec Forecast	\$ 13.75	\$ 14.00	\$ 18.24	\$ 16.44	\$ 14.23	\$ 11.98	\$ 11.28	\$ 10.99

#### **2. Term and Energy Forecasts**

Long-term allocations shall last through the end of the term of the longest contract in the PCIA vintage, with the exclusion of evergreen contracts and utility-owned generation resources. Once accepted, the LSE may not decline its long-term allocation election in future years.

An LSE's long-term allocation election shall be set at a fixed percentage of its forecasted, vintaged, annual load share. Both the LSE's forecasted vintaged, annual load shares and the RPS energy deliveries will change from year to year based on the updated forecasts of vintaged, annual loads and the actual RPS energy volumes realized in each year of the allocation term.

#### **3. Resource Pool Changes to Voluntary Allocation**

Certain contracts may terminate, and new contracts may start deliveries during an allocation year; each IOU will provide notice of any anticipated changes to LSEs in information on their Voluntary Allocations. Due to this shifting of the underlying resource pool, SVCE will have less certainty in the resource mix it has under contract than it typically would with standard REC purchases.

**Agenda Item: 3****Agenda Date: 5/11/2022****4. PCC0 Classification Issue**

The IOUs recommended that RECs eligible for PCC0 classification that are allocated from the IOUs' PCIA eligible RPS portfolios to eligible LSEs through the Voluntary Allocation process retain their PCC0 classification eligibility, with the same benefits and limitations that apply to the IOUs' use of PCC0 RECs. Unfortunately, the Commission and other agencies has yet to rule on this matter in R.18-07-003. PG&E makes no representation or warranty concerning PCC categorization of allocated product in its VA Contract. Further, the VA Contract provides the LSE the right to account for or report the allocated products to a governmental entity. Thus, any CPUC resolution of the IOU's proposal will not impact the terms and conditions of the VA Contract. This remains as a large regulatory concern for VAMO, as a reclassifications of PCC0s to PCC2 or PCC3 would have negative power content label impacts.

**5. Resource Mix of the PG&E PCIA Resource Pools**

Staff has analyzed the resource mix of PG&E's PCIA RPS portfolio. As discussed above, PCC0 resources have been categorized as they may have certain policy/compliance impacts should SVCE receive those energy deliveries. In Table 4, Eligible Voluntary Allocation Volumes, staff estimates PCC0 and PCC1 deliveries for the 2023-2030 delivery period.

**Table 4 Illustration of Eligible Voluntary Allocation Volumes (MWhs)**

	2023	2024	2025	2026	2027	2028	2029	2030
<b>Est. PCC0 Portfolio</b>	<b>10,939,028</b>	<b>10,708,643</b>	<b>10,581,805</b>	<b>10,071,244</b>	<b>9,795,777</b>	<b>9,739,669</b>	<b>9,153,950</b>	<b>9,101,261</b>
<b>Est. PCC1 Portfolio</b>	<b>7,048,344</b>	<b>7,068,000</b>	<b>7,091,589</b>	<b>7,169,889</b>	<b>7,226,926</b>	<b>7,434,485</b>	<b>7,596,384</b>	<b>7,735,959</b>
SVCE Share %	5.6%	5.6%	5.6%	5.6%	5.6%	5.6%	5.6%	5.6%
Est. SVCE Share PCC0	612,586	599,684	592,581	563,990	548,564	545,421	512,621	509,671
Est. SVCE Share PCC1	394,707	395,808	397,129	401,514	404,708	416,331	425,398	433,214
<b>Est. SVCE Share</b>	<b>1,007,292</b>	<b>995,492</b>	<b>989,710</b>	<b>965,503</b>	<b>953,271</b>	<b>961,752</b>	<b>938,018</b>	<b>942,884</b>

**Participation and Commitment**

PG&E is required to administer the Voluntary Allocation process no more than once for every RPS compliance period. The first opportunity to commit is expected to be late May 2022. SVCE can elect to participate in the Voluntary Allocation portion of VAMO for a share of its allocation in increments of ten percent. SVCE's share of PG&E's portfolio is 5.6% or approximately 1,000,000 MWhs annually. Should SVCE take its full allocation, this would provide for an additional 25% RPS resources, which is significantly more than what SVCE needs to meet long-term RPS mandates. Instead SVCE will consider a minimum increment or 2.5% of SVCE's RPS or 100,000 MWhs up to four increments equivalent to approximately a 10% RPS. aStaff will continue to monitor development delays in its PPAs and assess termination risk. The CEO will exercise his authority to participate in VAMO only if deemed necessary to ensure compliance with long-term RPS mandates and to meet the Board-approved over-procurement target of five percent.

Commitment will be memorialized through PG&E's Voluntary Allocation Confirmation and subject to the terms and conditions under the Board-approved PG&E and SVCE Master Power Purchase and Sale Agreement.

**ALTERNATIVES**

While participation in VAMO will help SVCE meet its long-term RPS procurement mandate through a set of existing renewable resources, there are many unfavorable aspects of VAMO including SVCE's inability to specify the type of resource it desires and the commitment term. Nine percent of PG&E's RPS PCC1 portfolio is comprised of biomass and biogas resources which carry reportable greenhouse gas emissions. Additionally, the REC adder will change annually with the PCIA MPB and the actual volume delivered will be determined based on other portfolio optimization efforts carried out by PG&E.

In addition to evaluating participation in VAMO, staff will issue a new RFP for long-term PCC1 resources sourced from existing eligible renewable projects to meet a portion of the long-term RPS as needed. If the

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**Agenda Item: 3****Agenda Date: 5/11/2022**

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RFP results in insufficient eligible resources and SVCE elects not to participate in VAMO, SVCE may be subject to non-compliance penalties assessed by the CPUC.

**STRATEGIC PLAN**

SVCE's Strategic Plan, Goal #5: Acquire clean and reliable electricity in a cost effective, equitable and sustainable manner; Measure 1: Achieve SVCE 100% Clean goals; exceed long-term RPS mandate of 65%; meet RA obligations; meet IRP procurement mandates.

**FISCAL IMPACT**

The PG&E Confirmation, if executed, will begin delivery in January 2023 and funds will be budgeted to cover the cost as part of the fiscal year 2023 budget.

**ATTACHMENTS**

1. PG&E's Voluntary Allocation Confirmation



**Sidney Bob Dietz II**  
Director  
Regulatory Relations

Pacific Gas and Electric Company  
77 Beale St., Mail Code B13U  
P.O. Box 770000  
San Francisco, CA 94177

Fax: 415-973-3582

April 11, 2022

**Advice 6517-E-A**  
(Pacific Gas and Electric Company U 39 E)

Public Utilities Commission of the State of California

**Subject: Supplemental: Tier 2 Advice Letter of Pacific Gas and Electric Company Requesting Approval of Voluntary Allocation Contract for Power Charge Indifference Adjustment Eligible Renewables Portfolio Standard Resources**

**Purpose**

Pacific Gas and Electric Company ("PG&E") submits this supplemental advice letter to provide changes to the Voluntary Allocation contract ("VA Contract") as originally submitted in Advice Letter ("AL") 6517-E submitted on February 28, 2022 in compliance with Decision ("D.") 22-01-004. The proposed changes are made to address the California Community Choice Association ("CalCCA") protest to AL 6517-E filed on March 21, 2022.

While the VA Contract is being changed in this supplemental advice letter, the rest of AL 6517-E remains unchanged.

**Background**

On February 28, 2022, PG&E submitted AL 6517-E in compliance with Ordering Paragraph 6 of D.22-01-004, which required PG&E to submit a Tier 2 advice letter proposing a Voluntary Allocation of Power Charge Indifference Adjustment ("PCIA") eligible renewables portfolio standard ("RPS") resource pro forma contract within 10 days of submission of its Final 2021 RPS Procurement Plan ("RPS Plan"). On March 21, 2022, the Alliance for Retail Energy Markets ("AReM") and the CalCCA each protested PG&E's AL. CalCCA's protest included several recommendations for changes to the VA Contract. On March 28, 2022, PG&E replied to the AReM and CalCCA protests, indicating that PG&E can accommodate certain of the CalCCA recommendations through revisions to its proposed VA Contract.

**Voluntary Allocation Contract**

PG&E’s proposed updated VA Contract is provided as Attachment 1 to this AL. A redline of the updated VA Contract to the contract filed on February 28, 2022 is included as Attachment 2. Below is a summary of the changes:

<b>CalCCA Recommendation</b>	<b>Updated VA Contract</b>
Permit Load Serving Entities (“LSEs”) to take an entire slice of the portfolio, including the ability to take short-term volumes from long-term resources.	Product definition has been redefined to incorporate Energy and Renewable Energy Credits from both the short-term and long-term resource pools. LSEs may elect to take short-term deliveries from the short-term resource pool and/or long-term resource pool, and long-term deliveries from the long-term resource pool.
Require notice provisions for changes to resource pools.	PG&E will provide notice of any changes to the resource pool as soon as reasonably practicable, provided that expiry of a power purchase agreement already identified in the VA Contract will not require such notice.
Limit PG&E’s ability to remove a resource from the resource pool if it is no longer PCIA eligible.	Include clarification that PG&E can remove the resource from the resource pool if it is no longer PCIA eligible due to an order or direction from a governmental authority or governmental entity.

**Protest**

PG&E asks that the Commission, pursuant to GO 96-B, General Rule 7.5.1, maintain the original protest and comment period designated in AL 6517-E and not reopen the protest period.

**Effective Date**

Pursuant to General Order (GO) 96-B, Rule 5.2, and OP 6 of D.22-01-004, this AL is submitted with a Tier 2 designation which is the same tier designation of the original AL 6517-E. AL 6517-E was suspended for a period up to 120 days, therefore there is no need to extend the effective date. The effective date of AL 6517-E remains suspended until disposition by Energy Division.

**Notice**

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically to parties shown on the attached list and the parties on the service list





# ADVICE LETTER SUMMARY



## ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Pacific Gas and Electric Company (ID U39 E)

Utility type:

- ELC       GAS       WATER  
 PLC       HEAT

Contact Person: Kimberly Loo

Phone #: (415)973-4587

E-mail: PGETariffs@pge.com

E-mail Disposition Notice to: KELM@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric      GAS = Gas      WATER = Water  
 PLC = Pipeline      HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 6517-E-A

Tier Designation: 2

Subject of AL: Supplemental: Tier 2 Advice Letter of Pacific Gas and Electric Company Requesting Approval of Voluntary Allocation Contract for Power Charge Indifference Adjustment Eligible Renewables Portfolio Standard Resources

Keywords (choose from CPUC listing): Compliance

AL Type:  Monthly  Quarterly  Annual  One-Time  Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: D.22-01-004

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested?  Yes  No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required?  Yes  No

Requested effective date: 3/30/22

No. of tariff sheets: 0

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed<sup>1</sup>: N/A

Pending advice letters that revise the same tariff sheets: N/A

<sup>1</sup>Discuss in AL if more space is needed.

**Protests and correspondence regarding this AL are to be sent via email and are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:**

California Public Utilities Commission  
Energy Division Tariff Unit Email:  
[EDTariffUnit@cpuc.ca.gov](mailto:EDTariffUnit@cpuc.ca.gov)

Contact Name: Sidnev Bob Dietz II. c/o Megan Lawson  
Title: Director, Regulatory Relations  
Utility/Entity Name: Pacific Gas and Electric Company  
  
Telephone (xxx) xxx-xxxx:  
Facsimile (xxx) xxx-xxxx:  
Email: PGETariffs@pge.com

Contact Name:  
Title:  
Utility/Entity Name:  
  
Telephone (xxx) xxx-xxxx:  
Facsimile (xxx) xxx-xxxx:  
Email:

CPUC  
Energy Division Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102

Advice 6517-E-A  
April 11, 2022

## **Attachment 1**

**VA Contract - CLEAN**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
RENEWABLES PORTFOLIO STANDARD ENERGY ALLOCATION  
CONFIRMATION LETTER  
BETWEEN  
[NAME] (“PARTY A”)  
AND  
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between [Name, place of formation, and type of entity] (“Party A” or “Buyer”), and Pacific Gas and Electric Company, a California corporation, (“Party B” or “Seller”), each individually a “Party” and together the “Parties”, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement, the RPS (defined herein) or the Tariff (defined herein), as applicable. If there is a conflict between the terms in this Confirmation and those in the Master Agreement, this Confirmation shall control. Section references herein are to this Confirmation unless otherwise noted.

**[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.]**

**ARTICLE 1  
PRODUCT**

1.1 Product. “Product” means (a) all RPS Energy and Green Attributes generated and associated with the non-Greengate Resources in the Resource Pools, and (b) all Green Attributes associated with the Greengate Resources in the Resource Pools. During the Delivery Period, Seller shall provide Buyer Product equal to the Total Allocation Amount.

1.2 Buyer’s Exclusive Right. Buyer has exclusive right to Product for the Total Allocation Amount, including the right to account for or report Product equal to the Total Allocation Amount to a Governmental Entity.

**ARTICLE 2  
TOTAL ALLOCATION AMOUNT**

2.1 Total Allocation Amount. “Total Allocation Amount” means the sum of the Total Short-Term Allocation Amount and the Total Long-Term Allocation Amount.

2.2 Total Short-Term Allocation Amount. The “Total Short-Term Allocation Amount” is the sum of all Monthly Short-Term Allocation Amounts in the Delivery Period. For every month in the Delivery Period, the “Monthly Short-Term Allocation Amount” will be the sum of all PCIA Short-Term Allocation Amounts in the month, where a “PCIA Short-Term Allocation Amount” will be calculated for every PCIA vintage applicable to Buyer as the sum of (a) the product of (i) Short-Term A Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Short-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales, plus (b) the product of (i) Short-Term B Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Long-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales.

2.3 Total Long-Term Allocation Amount. The “Total Long-Term Allocation Amount” is the sum of all Monthly Long-Term Allocation Amounts in the Delivery Period. For every month in the Delivery Period, the “Monthly Long-Term Allocation Amount” for a month will be the sum of all PCIA Long-Term Allocation Amounts in the month, where a “PCIA Long-Term Allocation Amount” will be calculated for every PCIA vintage applicable to Buyer as the product of (i) Long-Term Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Long-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales.

2.4 Allocation Election. The “Short-Term A Allocation Election,” “Short-Term B Allocation Election,” and “Long-Term Allocation Election” are the percentages specified in the table below and must be denoted in ten (10) percent increments. The sum of the Short-Term B Allocation Election and Long-Term Allocation Election must be equal to or less than one hundred percent (100%).

<b>Product</b>	<b>Allocation Election</b>
Short-Term A	[Buyer to fill in] %
Short-Term B	[Buyer to fill in] %
Long-Term	[Buyer to fill in] %

2.5 Change in Resource Pools. Seller may remove a Resource from the Resource Pools for the following reasons: (i) if Seller’s power purchase agreement corresponding to the Resource has expired or is terminated, (ii) if the Resource is no longer in Seller’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority or Governmental Entity, or (iii) if the Resource is owned by Seller but ceases operation for Seller. Seller may add Resources to the Resource Pools in the following ways: (a) Seller may add Resources with PCIA vintages corresponding to the PCIA vintages where Buyer has an Allocation Share, or (b) Seller may add Resources from Customer Programs listed in Appendix D. With the exception of expirations of Seller’s power purchase agreements listed in Appendix B, Appendix C, and Appendix D, Seller will provide Notice to Buyer identifying the facility or facilities that constitute the Resources being removed or added to the Resource Pools as soon as reasonably practicable. Seller shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase

agreements for Resources during the Delivery Period. Buyer shall not have any right to or discretion to request changes to the Resources or the Resource Pools during the Delivery Period.

2.6 Third Party Sales. From the Confirmation Effective Date throughout the Delivery Period, Seller shall have the right to sell all or any portion of Product to a third party (“Third Party Sale”). The amount of Third Party Sales will be incorporated in the calculation of the Monthly Short-Term Allocation Amount and Monthly Long-Term Allocation Amount for the applicable month in accordance with Article 2.

### **ARTICLE 3** **DELIVERY**

3.1 Delivery. Throughout the Delivery Period, Seller shall deliver, and Buyer shall receive, Product in accordance with the Confirmation. Seller, or a qualified third party designated by Seller, will act as Scheduling Coordinator to deliver Product in each hour to the CAISO at the Delivery Point. Buyer shall take title and risk of loss of Product at the applicable Delivery Point selected by Seller.

3.2 Delivery Point. The “Delivery Point” is and shall mean where Seller, or a qualified third party designated by Seller, shall deliver to, and Buyer shall take possession of, Product, which shall be NP 15, SP 15, and/or ZP 26, as selected by Seller, except for Product from Greengate Resources, which will be conveyed in accordance with Article 4.

3.3 Delivery Period. The “Delivery Period” shall commence on January 1, 2023 and last through and until (a) December 31, 2024 for deliveries of the Short-Term Allocation Amount and/or (b) the Long-Term End Date for deliveries of the Long-Term Allocation Amount; provided that with regards to the Green Attributes portion of Product, the Delivery Period shall last through and until that date upon which the amount of Green Attributes conveyed to Buyer meets the Total Allocation Amount. The Long-Term End Date will be determined by comparing the end dates of all power purchase agreements for Resources in the Long-Term Resource Pool with a PCIA vintage applicable to Buyer, and the latest end date will be the “Long-Term End Date.”

### **ARTICLE 4** **CONVEYANCE OF GREEN ATTRIBUTES**

4.1 Green Attributes. Seller represents and warrants that Seller holds the rights to such Green Attributes from the Resources in the Resource Pools and Seller agrees to convey such Green Attributes to Buyer as included in the delivery of Product from the Resources in the Resource Pools subject to the terms and conditions of this Agreement.

4.2 Conveyance of Green Attributes. Seller shall convey to Buyer the Green Attributes associated with Product no later than twenty-five (25) Business Days once the following have occurred: (a) Seller has obtained the WREGIS Certificates for the Green Attributes for the applicable Calculation Period or calendar year and (b) Seller has received Buyer’s payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein. Since WREGIS Certificates will only be created for whole MWh amounts of RPS Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. During the Delivery Period, Seller shall

transfer all right, title, and interest in and to the WREGIS Certificates to Buyer's WREGIS account in an aggregate amount equivalent to the Total Allocation Amount.

4.3 WREGIS Certificate True-Up. A "WREGIS Certificate True-Up" means any deficit or surplus in WREGIS Certificates delivered to Buyer for a calendar month as compared to the sum of the (a) Monthly Short-Term Allocation Amount, plus (b) the Monthly Long-Term Allocation Amount for the same calendar month ("True-Up Month"). Any adjustments to resolve a WREGIS Certificate True-Up will be made as an adjustment on Seller's monthly invoice to Buyer in accordance with Article 5, provided that no adjustments will be made for any WREGIS Certificate True-Up after twenty-four (24) months from the True-Up Month.

## **ARTICLE 5** **COMPENSATION**

5.1 Calculation Period. The "Calculation Period" shall be each calendar month or portion thereof that Delivery was conveyed to Buyer.

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 (a) plus (b) minus (c), where:

(a) equals the product of the (i) Index Price multiplied by (ii) the sum of (x) Monthly Short-Term Allocation Amount, plus (y) Monthly Long-Term Allocation Amount; and

(b) equals the product of (i) either (x) the forecasted RPS MPB for the applicable year, or (y) if available, the final RPS MPB for the applicable year, multiplied by (ii) the sum of (a) Monthly Short-Term Allocation Amount, plus (b) Monthly Long-Term Allocation Amount; and

(c) equals the product of the (i) Index Price multiplied by (ii) the sum of (x) Monthly Short-Term Allocation Amount, plus (y) Monthly Long-Term Allocation Amount.

5.3 Annual Cash Settlement Amount. By March 31 of each calendar year, Seller will perform a true-up process for every Monthly Cash Settlement Amount from the previous year ("Annual Cash Settlement Amount"), where Seller will recalculate every Monthly Cash Settlement Amount from the prior calendar year that used the forecasted RPS MPB to instead use the final RPS MPB in congruence with Section 5.2.

(a) If, after determination of the Annual Cash Settlement Amount, Buyer owes Seller, Seller will invoice Buyer on the next monthly invoice.

(b) If, after determination of the Annual Cash Settlement Amount, Seller owes Buyer, Seller shall credit Buyer within each future monthly invoice until the Annual Cash Settlement Amount is paid. If Seller owes Buyer and there are no remaining Calculation

Periods, Seller shall pay Buyer the remaining Annual Cash Settlement Amount balance on the last monthly invoice.

5.4 Payment. Notwithstanding anything to the contrary in Article Six of the Master Agreement, Buyer shall pay Seller the Monthly Cash Settlement Amount four (4) calendar months following the applicable Calculation Period and on or before the later of: (a) the twenty-fifth (25th) day of the month in which Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or (b) within fifteen (15) days following 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. This provision shall survive termination or expiration of the Agreement for all amounts due prior to such termination or expiration.

## **ARTICLE 6** **CREDIT TERMS**

The credit and collateral terms set forth in the Master Agreement shall not apply to either Party to this Confirmation.

## **ARTICLE 7** **SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS**

7.1 Seller 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.

(a) For the avoidance of doubt, the term "Project" as used in the immediately preceding paragraph means Resources in the Resource Pool, and the phrase "Delivery Term" means the Delivery Period.

7.2 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.

(a) For the avoidance of doubt, the phrase "Delivery Term" as used in the immediately preceding paragraph means the Delivery Period.

7.3 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.

(a) For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Confirmation, and the phrase “first delivery” means the first date of the Delivery Period.

7.4 In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

(a) Seller has the contractual rights to sell all right, title, and interest in Product required to be delivered hereunder;

(b) at the time of delivery, all rights, title, and interest in Product required to be delivered hereunder are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;

(c) Seller shall not substitute or purchase any Product from any generating resource other than the Resources in the Resource Pools hereunder; and

(d) the facility(s) designated by Seller as the Resources in the Resource Pools and all electrical output from the facility(s) designated as the Resources in the Resource Pools are, or will be, by the first date of the Delivery Period, registered with WREGIS as RPS-eligible.

## **ARTICLE 8**

### **TERMINATION AND CALCULATION OF TERMINATION PAYMENT**

In the event this Transaction becomes a Terminated Transaction pursuant to Section 5.2 of the Master Agreement, then the Settlement Amount with respect to this Transaction shall not be calculated in accordance with the Master 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. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Transaction, the Settlement Amount for this Transaction will be zero.

## **ARTICLE 9** **GENERAL PROVISIONS**

9.1 Buyer Audit Rights. In addition to any audit rights provided under the Master Agreement, Seller shall, upon the Confirmation Effective Date and continuing until the end of the Delivery Period, provide documentation (which may include, for example, WREGIS reports) sufficient to demonstrate that Product has been conveyed and delivered to Buyer.

9.2 Governing Law.

(a) Notwithstanding any provision to the contrary in the Master Agreement, the Governing Law applicable to this Agreement shall be as set forth herein. This Section 9.2 does not change the Governing Law applicable to any other confirmation or transaction entered into between the Parties under the Master 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.

**ACKNOWLEDGED AND AGREED TO:**

**Buyer, or Party A:**  
[NAME, place of formation, and type of  
entity]

**Seller, or Party B:**  
**PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A

### DEFINED TERMS

Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“Allocation Share” means Buyer’s most recent PCIA-vintaged share of RPS Energy, as determined by Seller, through Seller’s load forecasting processes to establish energy procurement revenue requirements for rate-setting purposes, within Energy Resource Recovery Account and/or Resource Adequacy proceedings, or successor proceedings. As of the Confirmation Effective Date, Buyer’s Allocation Share is listed in Appendix E.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Product, or the terms of the Agreement.

“Annual Cash Settlement Amount” has the meaning set forth in Section 5.3.

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

“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 written communications or payment or delivery is being sent and by whom written communications or payment or delivery is to be received.

“Buyer” means Party A.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“Confirmation Effective Date” means the date in which the Confirmation is fully executed by both Parties.

“CPUC” means the California Public Utilities Commission.

“California Renewables Portfolio Standard” or “RPS” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified

by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“CEC” means the California Energy Commission.

“CPUC” means the California Public Utilities Commission.

“Customer Programs” means Green Tariff Shared Renewables (GTSR) and Disadvantaged Communities (DAC) programs.

“Disadvantaged Communities” or “DAC” means the DAC-Green Tariff program, as set forth in CPUC Decision 18-06-027, as such decision may be amended from time to time or as further defined or supplemented by any law, rule, regulation, or other legal or regulatory determination by a court or Governmental Authority.

“Delivery Period” has the meaning set forth in Section 3.3.

“Delivery Point” has the meaning set forth in Section 3.2.

“Energy” means electrical energy, measured in MWh.

“Energy Resource Recovery Account” means the balancing account where utilities, including Seller, record and track energy procurement costs, as described in CPUC Decision D.02-10-062 and subsequent CPUC decisions addressing Energy Resource Recovery Account issues, as those obligations may be altered from time to time.

“FERC” means the Federal Energy Regulatory Commission.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Resource, 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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 Resource, (ii) production tax credits associated with the construction or operation of the Resource and other financial incentives in the form of credits, reductions, or

allowances associated with the Resource 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 Resource for compliance with local, state, or federal operating and/or air quality permits. If the Resource 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 Resource.

“Green Tariff Shared Renewables” or “GTSR” means the Green Tariff Shared Renewables Program implemented per Senate Bill (SB) 43 (Stats. 2013, ch. 413 (Wolk)) and CPUC Decision 15-01-051.

“Greengate Resources” means the Halkirk I Wind Project, Blackspring Ridge IA Wind Project, and Blackspring Ridge IB Wind Project (all affiliates of Greengate Power Corporation).

“Governmental Authority” or “Governmental Entity” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Index Price” means the Trading Hub price (as defined in the Tariff) measured in \$/MWh, for each MWh of Product, and associated with the Product to the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

“Long-Term Allocation Election” is the percentage specified in Section 2.4.

“Long-Term End Date” has the meaning set forth in Section 3.3.

“Long-Term Resource Pool” means Seller’s Resources in Appendix C reflecting power purchase agreements with terms that have 10 years or more remaining from the start of the Delivery Period.

“MWh” means megawatt-hour.

“Monthly Cash Settlement Amount” has the meaning set forth in Section 6.2.

“Monthly Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“Monthly Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“PCIA” or “Power Charge Indifference Adjustment” is a charge to ensure that both PG&E customers and those who have left PG&E service to purchase electricity from other providers pay for the above-market costs for electric generation resources that were procured by PG&E on their

behalf. “Above market” refers to expenditures for generation resources that cannot be fully recovered through sales of these resources at current market prices.

“PCIA Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“PCIA Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“Product” has the meaning set forth in Section 1.1.

“Renewable Energy Credits” 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.

“Resource(s)” means generation units owned by Seller or contracted by Seller, which corresponding costs are recovered through the PCIA.

“Resource Adequacy” or “RA” means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

“Resource Pools” means the Short-Term Resource Pool (Appendix B) and Long-Term Resource Pool (Appendix C).

“RPS Energy” means the Energy generated from Resources from the applicable Resource Pool(s).

“RPS Market Price Benchmark” or “RPS MPB” means the estimated incremental value of each unit of RPS-eligible energy that is attributable to the fact of that eligibility, in \$/MWh, as defined in CPUC D.19-10-001 or subsequent CPUC Decisions defining calculations of the RPS MPB for PCIA purposes.

“Scheduling Coordinator (SC)” means an entity certified by the CAISO to perform the functions as described in the Tariff.

“Seller” means Party B.

“Short-Term A Allocation Election” is the percentage specified Section 2.4.

“Short-Term B Allocation Election” is the percentage specified in Section 2.4.

“Short-Term Resource Pool” means Seller’s Resources in Appendix B reflecting power purchase agreements with terms that have less than 10 years remaining from the start of the Delivery Period.

“Tariff” means the FERC-approved California Independent System Operator Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as may be amended, supplemented or replaced from time to time.

“Third Party Sale” has the meaning set forth in Section 2.6.

“Total Allocation Amount” has the meaning set forth in Section 2.1.

“Total Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“Total Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“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.

**APPENDIX B  
LIST OF RESOURCES IN SHORT-TERM RESOURCE POOL**

<b>Resource Name</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Olsen Power Partners	Small Hydro	60175	Non-Vintaged	12/31/2026
El Nido Biomass Facility	Biomass	60473	2005	2/8/2031
Chowchilla Biomass Facility	Biomass	60471	2005	2/8/2031
Klondike Wind Power III Project	Wind	60602	2007	3/31/2023
CalRenew-1	Solar PV	60475	2015	4/29/2030
Shiloh II Wind Project	Wind	60639	2007	1/31/2029
Rattlesnake Road Wind Power Project	Wind	60553	2008	1/4/2024
Hatchet Ridge	Wind	60741	2008	12/13/2025
CM10	Solar PV	60713	2008	12/31/2028
CM48	Solar PV	60786	2009	1/31/2031
Mt. Poso	Biomass	60695	2009	2/20/2027
Vantage Wind Energy Center	Wind	60712	2009	10/3/2025
Big Creek Waterworks	Small Hydro	60900	2009	6/22/2030
Norman Ross Burgess - Three Forks Water Power Project	Small Hydro	60502	2010	10/31/2031
Avenal Park	Solar PV	60912	2009	8/4/2031
Sun City Project	Solar PV	60913	2009	8/4/2031
Sand Drag	Solar PV	60914	2009	8/4/2031
Halkirk I Wind Project	Wind	60989	2010	12/18/2032
Coram Brodie	Wind	60973	2010	6/5/2032
Shiloh III Wind Project	Wind	61069	2010	3/8/2032
Wind Resource II	Wind	61468	2012	9/30/2023
ABEC Bidart-Old River	Digester Gas	62369	2012	3/9/2029
ABEC Bidart-Stockdale	Digester Gas	60886	2012	9/11/2023
Diablo Winds	Wind	60030	2013	6/30/2031

**APPENDIX C**  
**LIST OF RESOURCES IN LONG-TERM RESOURCE POOL**

<b>Resource Name</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Montezuma Wind Energy Center	Wind	60543	2010	1/27/2036
High Plains Ranch II	Solar PV	60603	2008	10/30/2038
Topaz Solar Farm	Solar PV	61698	2008	10/26/2039
Ivanpah Unit 1	Solar Thermal	62273	2009	1/20/2039
Ivanpah Unit 3	Solar Thermal	62275	2009	1/26/2039
AV Solar Ranch One	Solar PV	60790	2009	11/20/2039
Alpine Solar Project	Solar PV	60755	2010	1/17/2033
Agua Caliente Solar Project	Solar PV	60894	2009	6/22/2039
High Plains Ranch III	Solar PV	60603	2010	9/30/2038
Mojave Solar Project	Solar Thermal	60848	2009	12/3/2039
Genesis Solar Energy Project	Solar Thermal	60605	2009	3/6/2039
DTE Stockton	Biomass	60964	2009	2/20/2039
Alpaugh 50	Solar PV	60945	2010	3/7/2038
Alpaugh North	Solar PV	60946	2010	3/7/2038
Atwell Island	Solar PV	60947	2010	3/11/2038
Corcoran	Solar PV	60948	2010	8/14/2038
White River	Solar PV	60949	2010	6/26/2038
Sunshine Landfill	Landfill Gas	60815	2010	8/31/2034
Potrero Hills Landfill	Landfill Gas	63116	2010	4/12/2041
Blackspring Ridge IA	Wind	60987	2010	5/11/2034
Blackspring Ridge IB	Wind	60988	2010	5/11/2034
Desert Center Solar Farm	Solar PV	61068	2010	12/16/2039
Mesquite Solar 1	Solar PV	60875	2010	3/7/2033
North Star Solar	Solar PV	61198	2010	6/18/2035
Vasco Wind Energy Center	Wind	61344	2010	3/12/2037
Montezuma II Wind Energy Center	Wind	61345	2010	3/13/2037
Kansas South	Solar PV	61264	2011	6/24/2033
Westlands Solar Farms	Solar PV	61755	2011	4/30/2034
Orion Solar	Solar PV	61570	2011	6/25/2034
North Sky River Energy Center	Wind	61385	2011	12/20/2037
Copper Mountain Solar 2	Solar PV	60990	2011	5/12/2040
Shiloh IV Wind Project	Wind	61617	2011	1/27/2038
Mammoth G3	Geothermal	60315	2012	3/31/2033
West Antelope	Solar PV	61850	2012	2/8/2035

Western Antelope Blue Sky Ranch A	Solar PV	61517	2012	2/16/2035
Nevada Irrigation District (NID) - Dutch Flat / Rollins / Bowman	Small Hydro	60264 / 60265 / 60171	2012	6/30/2033
SPI Biomass Portfolio – Anderson 2 / Burney / Lincoln / Sonora / Quincy	Biomass	61146 / 60087 / 60088 / 60576 / 60089	2012	9/8/2035
Kansas	Solar PV	61263	2012	12/31/2037
Lost Hills Solar	Solar PV	61893	2012	12/31/2043
Cuyama Solar Array	Solar PV	61891	2012	12/31/2043
Blackwell Solar	Solar PV	61892	2012	12/31/2043
Henrietta Solar	Solar PV	61841	2012	9/30/2036
Kent South	Solar PV	61262	2012	2/18/2035
Algonquin SKIC 20 Solar	Solar PV	61558	2012	5/14/2035
White River Solar 2	Solar PV	62045	2012	10/1/2034
Mammoth G1	Geothermal	60306	2012	12/25/2033
Alamo Solar, LLC	Solar PV	61453	2012	6/29/2035
CID Solar PV Project	Solar PV	62285	2012	3/19/2035
Old River One	Solar PV	60853	2013	2/8/2035
Shafter Solar	Solar PV	62325	2013	7/15/2035
Rising Tree Wind Farm II	Wind	62426	2013	8/6/2035
Kekawaka Creek Hydroelectric Facility	Small Hydro	60186	2013	5/31/2035
RE Astoria	Solar PV	62284	2013	1/2/2034
Midway Solar Farm I	Solar PV	61295	2013	5/31/2040
California Flats Solar Project	Solar PV	62552	2013	4/9/2034
Portal Ridge Solar C Project	Solar PV	61684	2014	4/20/2037
Sunray 2	Solar PV	62694	2014	8/24/2037
Bayshore Solar A	Solar PV	63133	2015	1/22/2038
Bayshore Solar B	Solar PV	63134	2015	1/22/2038
Bayshore Solar C	Solar PV	63135	2015	1/22/2038
Java Solar	Solar PV	63137	2016	12/31/2039
RE Gaskell West 3	Solar PV	63619	2017	1/14/2038
RE Gaskell West 4	Solar PV	63617	2017	1/14/2038
RE Gaskell West 5	Solar PV	63618	2017	1/14/2038
PGE Alta	Small Hydro	60033	Pre-2002	N/A
PGE Coleman	Small Hydro	60037	Pre-2002	N/A
PGE Cow Creek	Small Hydro	60038	Pre-2002	N/A
PGE Crane Valley	Small Hydro	60039	Pre-2002	N/A
PGE Deer Creek	Small Hydro	60040	Pre-2002	N/A
PGE De Sabla	Small Hydro	60041	Pre-2002	N/A
PGE Dutch Flat 1	Small Hydro	60042	Pre-2002	N/A

PGE Halsey	Small Hydro	60043	Pre-2002	N/A
PGE Hat 1	Small Hydro	60045	Pre-2002	N/A
PGE Hat 2	Small Hydro	60046	Pre-2002	N/A
PGE Newcastle	Small Hydro	60053	Pre-2002	N/A
PGE Oak Flat	Small Hydro	60276	Pre-2002	N/A
PGE Phoenix	Small Hydro	60054	Pre-2002	N/A
PGE Potter Valley	Small Hydro	60055	Pre-2002	N/A
PGE Five Points	Solar PV	61432	2010	N/A
PGE Stroud	Solar PV	61434	2010	N/A
PGE Westside	Solar PV	61433	2010	N/A
PGE Cantua	Solar PV	61823	2011	N/A
PGE Giffen	Solar PV	61822	2011	N/A
PGE Huron	Solar PV	61821	2011	N/A
PGE Gates	Solar PV	62353	2012	N/A
PGE Guernsey	Solar PV	62354	2012	N/A
PGE West Gates	Solar PV	62352	2012	N/A
PGE Rock Creek RPS	Small Hydro	62269	Pre-2002	N/A
PGE San Joaquin 1A	Small Hydro	60056	Pre-2002	N/A
PGE San Joaquin 2	Small Hydro	60057	Pre-2002	N/A
PGE South	Small Hydro	60059	Pre-2002	N/A
PGE Spaulding 1	Small Hydro	60060	Pre-2002	N/A
PGE Spaulding 2	Small Hydro	60061	Pre-2002	N/A
PGE Spaulding 3	Small Hydro	60062	Pre-2002	N/A
PGE Spring Gap	Small Hydro	60063	Pre-2002	N/A
PGE Toadtown	Small Hydro	60064	Pre-2002	N/A
Vaca-Dixon Solar (PG&E)	Solar PV	60966	2010	N/A
PGE Volta 1	Small Hydro	60066	Pre-2002	N/A
PGE Volta 2	Small Hydro	60067	Pre-2002	N/A
PGE West Point	Small Hydro	60068	Pre-2002	N/A
PGE Wise 1	Small Hydro	60069	Pre-2002	N/A
PGE Wise 2	Small Hydro	60070	Pre-2002	N/A
PGE A.G.Wishon	Small Hydro	60032	Pre-2002	N/A

**APPENDIX D  
LIST OF PCIA-ELIGIBLE RESOURCES IN TEMPORARY RESOURCE POOLS**

<b>Resource Name</b>	<b>Resource Pool</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Shafter Solar	GTSR	Solar PV	62325	2013	7/15/2035
Columbia Solar Energy	GTSR	Solar PV	62051	2012	12/13/2035
Morelos del Sol	GTSR	Solar PV	62272	2013	2/29/2036
Woodmere Solar Farm	GTSR, DAC	Solar PV	62429	2013	2/24/2036
CED Corcoran Solar 3	GTSR	Solar PV	62783	2015	11/30/2036
CED Oro Loma Solar Project A	GTSR	Solar PV	62841	2014	2/23/2037
Avenal Solar Project A	GTSR	Solar PV	62840	2014	3/9/2037
CED Oro Loma Solar Project B	GTSR	Solar PV	62841	2014	3/9/2037
Avenal Solar Project B	GTSR	Solar PV	62840	2014	3/9/2037
Westside Solar	GTSR	Solar PV	61185	2015	5/1/2037
Aspiration Solar G	GTSR	Solar PV	61486	2015	10/26/2037
Summer Wheat	GTSR, DAC	Solar PV	61837	2015	12/9/2038
White River Solar 2	GTSR	Solar PV	62045	2012	10/1/2034

**APPENDIX E**  
**BUYER'S ALLOCATION SHARE**

PCIA Vintage	Buyer's Allocation Share (%)
2009	
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	

Advice 6517-E-A  
April 11, 2022

## **Attachment 2**

**VA Contract - REDLINE**

**-MASTER POWER PURCHASE AND SALE AGREEMENT  
RENEWABLES PORTFOLIO STANDARD ENERGY ALLOCATION  
CONFIRMATION LETTER  
BETWEEN  
[NAME] (“PARTY A”)  
AND  
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between [Name, place of formation, and type of entity] (“Party A” or “Buyer”), and Pacific Gas and Electric Company, a California corporation, (“Party B” or “Seller”), each individually a “Party” and together the “Parties”, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer ~~the Products~~**Product**, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement, the RPS (defined herein) or the Tariff (defined herein), as applicable. If there is a conflict between the terms in this Confirmation and those in the Master Agreement, this Confirmation shall control. Section references herein are to this Confirmation unless otherwise noted.

**[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.]**

**ARTICLE 1**  
**PRODUCT**

~~1.1 — Product. “Products” means collectively, Short-Term Product and Long-Term Product. During the Delivery Period, Seller shall provide Buyer the Products equal to the Total Allocation Amount.~~

~~1.21.1 Short-Term Product. “Short-Term-“Product” means (a) all RPS Energy and Green Attributes generated and associated with the non-Greengate Resources in the Short-Term Resource PoolPools, and (b) all Green Attributes associated with the Greengate Resources in the Short-Term Resource Pool. Pools. During the Delivery Period, Seller shall provide Buyer Product equal to the Total Allocation Amount.~~

~~1.3 — Long-Term Product. “Long-Term Product” means (a) all RPS Energy and Green Attributes generated and associated with the non-Greengate Resources in the Long-Term Resource Pool, and (b) all Green Attributes associated with the Greengate Resources in the Long-Term Resource Pool.~~

1.41.2 Buyer’s Exclusive Right. Buyer has exclusive right to ~~Products~~Product for the Total Allocation Amount, including the right to account for or report ~~Products~~Product equal to the Total Allocation Amount to a Governmental Entity.

**ARTICLE 2**  
**TOTAL ALLOCATION AMOUNT**

2.1 Total Allocation Amount. “Total Allocation Amount” means the sum of the Total Short-Term Allocation Amount and the Total Long-Term Allocation Amount.

2.2 Total Short-Term Allocation Amount. The “Total Short-Term Allocation Amount” is the sum of all Monthly Short-Term Allocation Amounts in the Delivery Period. For every month in the Delivery Period, the “Monthly Short-Term Allocation Amount” will be the sum of all PCIA Short-Term Allocation Amounts in the month, where a “PCIA Short-Term Allocation Amount” will be calculated for every PCIA vintage applicable to Buyer as the sum of (a) the product of (i) Short-Term A Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Short-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales, plus (b) the product of (i) Short-Term B Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Long-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales.

2.3 Total Long-Term Allocation Amount. The “Total Long-Term Allocation Amount” is the sum of all Monthly Long-Term Allocation Amounts in the Delivery Period. For every month in the Delivery Period, the “Monthly Long-Term Allocation Amount” for a month will be the sum of all PCIA Long-Term Allocation Amounts in the month, where a “PCIA Long-Term Allocation Amount” will be calculated for every PCIA vintage applicable to Buyer as the product of (i) Long-Term Allocation Election, multiplied by (ii) Allocation Share for the applicable PCIA vintage, multiplied by (iii) the difference between (x) total RPS Energy for that month for every Resource in the Long-Term Resource Pool with the corresponding PCIA vintage, minus (y) any applicable Third Party Sales.

2.4 Allocation Election. The “Short-Term A Allocation Election<sup>2</sup>,” “Short-Term B Allocation Election,” and “Long-Term Allocation Election” are the percentages specified in the table below and must be denoted in ten (10) percent increments: The sum of the Short-Term B Allocation Election and Long-Term Allocation Election must be equal to or less than one hundred percent (100%).

<b>Product</b>	<b>Allocation Election</b>
Short-Term <u>A</u>	[Buyer to fill in] %
<u>Short-Term B</u>	[Buyer to fill in] %
Long-Term	[Buyer to fill in] %

2.5 Change in Resource Pools. Seller may remove a Resource from the Resource Pools for the following reasons: (i) if Seller’s power purchase agreement corresponding to the Resource has expired or is terminated, (ii) if the Resource is no longer in Seller’s PCIA-eligible portfolio

~~for any other reason~~ due to an order or direction from a Governmental Authority or Governmental Entity, or (iii) if the Resource is owned by Seller but ceases operation for Seller. Seller may add Resources to the Resource Pools in the following ways: (a) Seller may add Resources with PCIA vintages corresponding to the PCIA vintages where Buyer has an Allocation Share, or (b) Seller may add Resources from Customer Programs listed in Appendix D. With the exception of expirations of Seller's power purchase agreements listed in Appendix B, Appendix C, and Appendix D, Seller will provide Notice to Buyer identifying the facility or facilities that constitute the Resources being ~~removed or~~ added to the Resource Pools ~~at least three (3) Business Days prior to the delivery of RPS Energy from such facility or facilities~~ as soon as reasonably practicable. Seller shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements for Resources during the Delivery Period. Buyer shall not have any right to or discretion to request changes to the Resources or the Resource Pools during the Delivery Period.

2.6 Third Party Sales. From the Confirmation Effective Date throughout the Delivery Period, Seller shall have the right to sell all or any portion of ~~Products~~ Product to a third party ("Third Party Sale"). The amount of Third Party Sales will be incorporated in the calculation of the Monthly Short-Term Allocation Amount and Monthly Long-Term Allocation Amount for the applicable month in accordance with Article 2.

### **ARTICLE 3** **DELIVERY**

3.1 Delivery. Throughout the Delivery Period, Seller shall deliver, and Buyer shall receive, ~~the Products~~ Product in accordance with the Confirmation. Seller, or a qualified third party designated by Seller, will act as Scheduling Coordinator to deliver ~~the Products~~ Product in each hour to the CAISO at the Delivery Point. Buyer shall take title and risk of loss of ~~the Products~~ Product at the applicable Delivery Point selected by Seller.

3.2 Delivery Point. The "Delivery Point" is and shall mean where Seller, or a qualified third party designated by Seller, shall deliver to, and Buyer shall take possession of, ~~the Products~~ Product, which shall be NP 15, SP 15, and/or ZP 26, as selected by Seller, except for ~~the Products~~ Product from Greengate Resources, which will be conveyed in accordance with Article 4.

3.3 Delivery Period. The "Delivery Period" shall commence on January 1, 2023 ~~for the Products~~ and last through and until (a) December 31, 2024 for deliveries of the Short-Term ~~Product~~ Allocation Amount and/or (b) the Long-Term ~~Product~~ End Date for deliveries of the Long-Term Product Allocation Amount; provided that with regards to the Green Attributes portion of ~~the Products~~ Product, the Delivery Period shall last through and until that date upon which the amount of Green Attributes conveyed to Buyer meets the Total Allocation Amount. The Long-Term ~~Product~~ End Date will be determined by comparing the end dates of all power purchase agreements for Resources in the Long-Term Resource Pool with a PCIA vintage applicable to Buyer, and the latest end date will be the "Long-Term ~~Product~~ End Date."

### **ARTICLE 4** **CONVEYANCE OF GREEN ATTRIBUTES**

4.1 Green Attributes. Seller represents and warrants that Seller holds the rights to such Green Attributes from the Resources in the Resource Pools and Seller agrees to convey such Green Attributes to Buyer as included in the delivery of ~~the Products~~Product from the Resources in the Resource Pools subject to the terms and conditions of this Agreement.

4.2 Conveyance of Green Attributes. Seller shall convey to Buyer the Green Attributes associated with ~~the Products~~Product no later than twenty-five (25) Business Days once the following have occurred: (a) Seller has obtained the WREGIS Certificates for the Green Attributes for the applicable Calculation Period or calendar year and (b) Seller has received Buyer's payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein. Since WREGIS Certificates will only be created for whole MWh amounts of RPS Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. During the Delivery Period, Seller shall transfer all right, title, and interest in and to the WREGIS Certificates to Buyer's WREGIS account in an aggregate amount equivalent to the Total Allocation Amount.

4.3 WREGIS Certificate True-Up. A "WREGIS Certificate True-Up" means any deficit or surplus in WREGIS Certificates delivered to Buyer for a calendar month as compared to the sum of the (a) Monthly Short-Term Allocation Amount, plus (b) the Monthly Long-Term Allocation Amount for the same calendar month ("True-Up Month"). Any adjustments to resolve a WREGIS Certificate True-Up will be made as an adjustment on Seller's monthly invoice to Buyer in accordance with Article 5, provided that no adjustments will be made for any WREGIS Certificate True-Up after twenty-four (24) months from the True-Up Month.

## **ARTICLE 5** **COMPENSATION**

5.1 Calculation Period. The "Calculation Period" shall be each calendar month or portion thereof that Delivery was conveyed to Buyer.

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 (a) plus (b) minus (c), where:

(a) equals the product of the (i) Index Price multiplied by (ii) the sum of (x) Monthly Short-Term Allocation Amount, plus (y) Monthly Long-Term Allocation Amount; and

(b) equals the product of (i) either (x) the forecasted RPS MPB for the applicable year, or (y) if available, the final RPS MPB for the applicable year, multiplied by (ii) the sum of (a) Monthly Short-Term Allocation Amount, plus (b) Monthly Long-Term Allocation Amount; and

(c) equals the product of the (i) Index Price multiplied by (ii) the sum of (x) Monthly Short-Term Allocation Amount, plus (y) Monthly Long-Term Allocation Amount.

5.3 Annual Cash Settlement Amount. By March 31 of each calendar year, Seller will perform a true-up process for every Monthly Cash Settlement Amount from the previous year (“Annual Cash Settlement Amount”), where Seller will recalculate every Monthly Cash Settlement Amount from the prior calendar year that used the forecasted RPS MPB to instead use the final RPS MPB in congruence with Section 5.2.

(a) If, after determination of the Annual Cash Settlement Amount, Buyer owes Seller, Seller will invoice Buyer on the next monthly invoice.

(b) If, after determination of the Annual Cash Settlement Amount, Seller owes Buyer, Seller shall credit Buyer within each future monthly invoice until the Annual Cash Settlement Amount is paid. If Seller owes Buyer and there are no remaining Calculation Periods, Seller shall pay Buyer the remaining Annual Cash Settlement Amount balance on the last monthly invoice.

5.4 Payment. Notwithstanding anything to the contrary in Article Six of the Master Agreement, Buyer shall pay Seller the Monthly Cash Settlement Amount four (4) calendar months following the applicable Calculation Period and on or before the later of: (a) the twenty-fifth (25th) day of the month in which Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or (b) within fifteen (15) days following 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. This provision shall survive termination or expiration of the Agreement for all amounts due prior to such termination or expiration.

## **ARTICLE 6** **CREDIT TERMS**

The credit and collateral terms set forth in the Master Agreement shall not apply to either Party to this Confirmation.

## **ARTICLE 7** **SELLER’S REPRESENTATIONS, WARRANTIES, AND COVENANTS**

7.1 Seller 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.

(a) For the avoidance of doubt, the term “Project” as used in the immediately preceding paragraph means Resources in the Resource Pool, and the phrase “Delivery Term” means the Delivery Period.

7.2 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.

(a) For the avoidance of doubt, the phrase “Delivery Term” as used in the immediately preceding paragraph means the Delivery Period.

7.3 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.

(a) For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Confirmation, and the phrase “first delivery” means the first date of the Delivery Period.

7.4 In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

(a) Seller has the contractual rights to sell all right, title, and interest in ~~the Products~~Product required to be delivered hereunder;

(b) at the time of delivery, all rights, title, and interest in ~~the Products~~Product required to be delivered hereunder are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;

(c) Seller shall not substitute or purchase any ~~Products~~Product from any generating resource other than the Resources in the Resource Pools hereunder; and

(d) the facility(s) designated by Seller as the Resources in the Resource Pools and all electrical output from the facility(s) designated as the Resources in the Resource Pools are, or will be, by the first date of the Delivery Period, registered with WREGIS as RPS-eligible.

## **ARTICLE 8**

### **TERMINATION AND CALCULATION OF TERMINATION PAYMENT**

In the event this Transaction becomes a Terminated Transaction pursuant to Section 5.2 of the Master Agreement, then the Settlement Amount with respect to this Transaction shall not be calculated in accordance with the Master 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. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Transaction, the Settlement Amount for this Transaction will be zero.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

9.1 Buyer Audit Rights. In addition to any audit rights provided under the Master Agreement, Seller shall, upon the Confirmation Effective Date and continuing until the end of the Delivery Period, provide documentation (which may include, for example, WREGIS reports) sufficient to demonstrate that ~~the Products have~~Product has been conveyed and delivered to Buyer.

9.2 Governing Law.

(a) Notwithstanding any provision to the contrary in the Master Agreement, the Governing Law applicable to this Agreement shall be as set forth herein. This Section 9.2 does not change the Governing Law applicable to any other confirmation or transaction entered into between the Parties under the Master 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.

**ACKNOWLEDGED AND AGREED TO:**

**Buyer, or Party A:**  
[NAME, place of formation, and type of  
entity]

**Seller, or Party B:**  
**PACIFIC GAS AND ELECTRIC  
COMPANY, a California corporation**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A

### DEFINED TERMS

Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“Allocation Share” means Buyer’s most recent PCIA-vintaged share of RPS Energy, as determined by Seller, through Seller’s load forecasting processes to establish energy procurement revenue requirements for rate-setting purposes, within Energy Resource Recovery Account and/or Resource Adequacy proceedings, or successor proceedings. As of the Confirmation Effective Date, Buyer’s Allocation Share is listed in Appendix E.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Product, or the terms of the Agreement.

“Annual Cash Settlement Amount” has the meaning set forth in Section 5.3.

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

“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 written communications or payment or delivery is being sent and by whom written communications or payment or delivery is to be received.

“Buyer” means Party A.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“Confirmation Effective Date” means the date in which the Confirmation is fully executed by both Parties.

“CPUC” means the California Public Utilities Commission.

“California Renewables Portfolio Standard” or “RPS” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified

by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“CEC” means the California Energy Commission.

“CPUC” means the California Public Utilities Commission.

“Customer Programs” means Green Tariff Shared Renewables (GTSR) and Disadvantaged Communities (DAC) programs.

“Disadvantaged Communities” or “DAC” means the DAC-Green Tariff program, as set forth in CPUC Decision 18-06-027, as such decision may be amended from time to time or as further defined or supplemented by any law, rule, regulation, or other legal or regulatory determination by a court or Governmental Authority.

“Delivery Period” has the meaning set forth in Section 3.3.

“Delivery Point” has the meaning set forth in Section 3.2.

“Energy” means electrical energy, measured in MWh.

“Energy Resource Recovery Account” means the balancing account where utilities, including Seller, record and track energy procurement costs, as described in CPUC Decision D.02-10-062 and subsequent CPUC decisions addressing Energy Resource Recovery Account issues, as those obligations may be altered from time to time.

“FERC” means the Federal Energy Regulatory Commission.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Resource, 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 Resource, (ii) production tax credits associated with the construction or operation of the Resource and other financial incentives in the form of credits, reductions, or

allowances associated with the Resource 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 Resource for compliance with local, state, or federal operating and/or air quality permits. If the Resource 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 Resource.

“Green Tariff Shared Renewables” or “GTSR” means the Green Tariff Shared Renewables Program implemented per Senate Bill (SB) 43 (Stats. 2013, ch. 413 (Wolk)) and CPUC Decision 15-01-051.

“Greengate Resources” means the Halkirk I Wind Project, Blackspring Ridge IA Wind Project, and Blackspring Ridge IB Wind Project (all affiliates of Greengate Power Corporation).

“Governmental Authority” or “Governmental Entity” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Index Price” means the Trading Hub price (as defined in the Tariff) measured in \$/MWh, for each MWh of Product, and associated with the Product to the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

“Long-Term ~~Product~~ has Allocation Election” is the ~~meaning set forth~~ percentage specified in Section ~~1.3.2.4~~.

“Long-Term ~~Product~~ End Date” has the meaning set forth in Section 3.3.

“Long-Term Resource Pool” means Seller’s Resources in Appendix C reflecting power purchase agreements with terms that have 10 years or more remaining from the start of the Delivery Period.

“MWh” means megawatt-hour.

“Monthly Cash Settlement Amount” has the meaning set forth in Section 6.2.

“Monthly Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“Monthly Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“PCIA” or “Power Charge Indifference Adjustment” is a charge to ensure that both PG&E customers and those who have left PG&E service to purchase electricity from other providers pay

for the above-market costs for electric generation resources that were procured by PG&E on their behalf. “Above market” refers to expenditures for generation resources that cannot be fully recovered through sales of these resources at current market prices.

“PCIA Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“PCIA Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“ProductsProduct” has the meaning set forth in Section 1.1.

“Renewable Energy Credits” 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.

“Resource(s)” means generation units owned by Seller or contracted by Seller, which corresponding costs are recovered through the PCIA.

“Resource Adequacy” or “RA” means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

“Resource Pools” means the Short-Term Resource Pool (Appendix B) and Long-Term Resource Pool (Appendix C).

“RPS Energy” means the Energy generated from Resources from the applicable Resource Pool(s).

“RPS Market Price Benchmark” or “RPS MPB” means the estimated incremental value of each unit of RPS-eligible energy that is attributable to the fact of that eligibility, in \$/MWh, as defined in CPUC D.19-10-001 or subsequent CPUC Decisions defining calculations of the RPS MPB for PCIA purposes.

“Scheduling Coordinator (SC)” means an entity certified by the CAISO to perform the functions as described in the Tariff.

“Seller” means Party B.

“Short-Term ~~Product~~ Allocation Election” is the ~~meaning set forth~~percentage specified Section 2.4.

“Short-Term B Allocation Election” is the percentage specified in Section ~~1-2.4~~.

“Short-Term Resource Pool” means Seller’s Resources in Appendix B reflecting power purchase agreements with terms that have less than 10 years remaining from the start of the Delivery Period.

“Tariff” means the FERC-approved California Independent System Operator Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as may be amended, supplemented or replaced from time to time.

“Third Party Sale” has the meaning set forth in Section 2.6.

“Total Allocation Amount” has the meaning set forth in Section 2.1.

“Total Long-Term Allocation Amount” has the meaning set forth in Section 2.3.

“Total Short-Term Allocation Amount” has the meaning set forth in Section 2.2.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“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.

**APPENDIX B  
LIST OF RESOURCES IN SHORT-TERM RESOURCE POOL**

<b>Resource Name</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Olsen Power Partners	Small Hydro	60175	Non-Vintaged	12/31/2026
El Nido Biomass Facility	Biomass	60473	2005	2/8/2031
Chowchilla Biomass Facility	Biomass	60471	2005	2/8/2031
Klondike Wind Power III Project	Wind	60602	2007	3/31/2023
CalRenew-1	Solar PV	60475	2015	4/29/2030
Shiloh II Wind Project	Wind	60639	2007	1/31/2029
Rattlesnake Road Wind Power Project	Wind	60553	2008	1/4/2024
Hatchet Ridge	Wind	60741	2008	12/13/2025
CM10	Solar PV	60713	2008	12/31/2028
CM48	Solar PV	60786	2009	1/31/2031
Mt. Poso	Biomass	60695	2009	2/20/2027
Vantage Wind Energy Center	Wind	60712	2009	10/3/2025
Big Creek Waterworks	Small Hydro	60900	2009	6/22/2030
Norman Ross Burgess - Three Forks Water Power Project	Small Hydro	60502	2010	10/31/2031
Avenal Park	Solar PV	60912	2009	8/4/2031
Sun City Project	Solar PV	60913	2009	8/4/2031
Sand Drag	Solar PV	60914	2009	8/4/2031
Halkirk I Wind Project	Wind	60989	2010	12/18/2032
Coram Brodie	Wind	60973	2010	6/5/2032
Shiloh III Wind Project	Wind	61069	2010	3/8/2032
Wind Resource II	Wind	61468	2012	9/30/2023
ABEC Bidart-Old River	Digester Gas	62369	2012	3/9/2029
ABEC Bidart-Stockdale	Digester Gas	60886	2012	9/11/2023
Diablo Winds	Wind	60030	2013	6/30/2031

**APPENDIX C**  
**LIST OF RESOURCES IN LONG-TERM RESOURCE POOL**

<b>Resource Name</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Montezuma Wind Energy Center	Wind	60543	2010	1/27/2036
High Plains Ranch II	Solar PV	60603	2008	10/30/2038
Topaz Solar Farm	Solar PV	61698	2008	10/26/2039
Ivanpah Unit 1	Solar Thermal	62273	2009	1/20/2039
Ivanpah Unit 3	Solar Thermal	62275	2009	1/26/2039
AV Solar Ranch One	Solar PV	60790	2009	11/20/2039
Alpine Solar Project	Solar PV	60755	2010	1/17/2033
Agua Caliente Solar Project	Solar PV	60894	2009	6/22/2039
High Plains Ranch III	Solar PV	60603	2010	9/30/2038
Mojave Solar Project	Solar Thermal	60848	2009	12/3/2039
Genesis Solar Energy Project	Solar Thermal	60605	2009	3/6/2039
DTE Stockton	Biomass	60964	2009	2/20/2039
Alpaugh 50	Solar PV	60945	2010	3/7/2038
Alpaugh North	Solar PV	60946	2010	3/7/2038
Atwell Island	Solar PV	60947	2010	3/11/2038
Corcoran	Solar PV	60948	2010	8/14/2038
White River	Solar PV	60949	2010	6/26/2038
Sunshine Landfill	Landfill Gas	60815	2010	8/31/2034
Potrero Hills Landfill	Landfill Gas	63116	2010	4/12/2041
Blackspring Ridge IA	Wind	60987	2010	5/11/2034
Blackspring Ridge IB	Wind	60988	2010	5/11/2034
Desert Center Solar Farm	Solar PV	61068	2010	12/16/2039
Mesquite Solar 1	Solar PV	60875	2010	3/7/2033
North Star Solar	Solar PV	61198	2010	6/18/2035
Vasco Wind Energy Center	Wind	61344	2010	3/12/2037
Montezuma II Wind Energy Center	Wind	61345	2010	3/13/2037
Kansas South	Solar PV	61264	2011	6/24/2033
Westlands Solar Farms	Solar PV	61755	2011	4/30/2034
Orion Solar	Solar PV	61570	2011	6/25/2034
North Sky River Energy Center	Wind	61385	2011	12/20/2037
Copper Mountain Solar 2	Solar PV	60990	2011	5/12/2040
Shiloh IV Wind Project	Wind	61617	2011	1/27/2038
Mammoth G3	Geothermal	60315	2012	3/31/2033
West Antelope	Solar PV	61850	2012	2/8/2035

Western Antelope Blue Sky Ranch A	Solar PV	61517	2012	2/16/2035
Nevada Irrigation District (NID) - Dutch Flat / Rollins / Bowman	Small Hydro	60264 / 60265 / 60171	2012	6/30/2033
SPI Biomass Portfolio – Anderson 2 / Burney / Lincoln / Sonora / Quincy	Biomass	61146 / 60087 / 60088 / 60576 / 60089	2012	9/8/2035
Kansas	Solar PV	61263	2012	12/31/2037
Lost Hills Solar	Solar PV	61893	2012	12/31/2043
Cuyama Solar Array	Solar PV	61891	2012	12/31/2043
Blackwell Solar	Solar PV	61892	2012	12/31/2043
Henrietta Solar	Solar PV	61841	2012	9/30/2036
Kent South	Solar PV	61262	2012	2/18/2035
Algonquin SKIC 20 Solar	Solar PV	61558	2012	5/14/2035
White River Solar 2	Solar PV	62045	2012	10/1/2034
Mammoth G1	Geothermal	60306	2012	12/25/2033
Alamo Solar, LLC	Solar PV	61453	2012	6/29/2035
CID Solar PV Project	Solar PV	62285	2012	3/19/2035
Old River One	Solar PV	60853	2013	2/8/2035
Shafter Solar	Solar PV	62325	2013	7/15/2035
Rising Tree Wind Farm II	Wind	62426	2013	8/6/2035
Kekawaka Creek Hydroelectric Facility	Small Hydro	60186	2013	5/31/2035
RE Astoria	Solar PV	62284	2013	1/2/2034
Midway Solar Farm I	Solar PV	61295	2013	5/31/2040
California Flats Solar Project	Solar PV	62552	2013	4/9/2034
Portal Ridge Solar C Project	Solar PV	61684	2014	4/20/2037
Sunray 2	Solar PV	62694	2014	8/24/2037
Bayshore Solar A	Solar PV	63133	2015	1/22/2038
Bayshore Solar B	Solar PV	63134	2015	1/22/2038
Bayshore Solar C	Solar PV	63135	2015	1/22/2038
Java Solar	Solar PV	63137	2016	12/31/2039
RE Gaskell West 3	Solar PV	63619	2017	1/14/2038
RE Gaskell West 4	Solar PV	63617	2017	1/14/2038
RE Gaskell West 5	Solar PV	63618	2017	1/14/2038
PGE Alta	Small Hydro	60033	Pre-2002	N/A
<del>PGE Centerville</del>	<del>Small Hydro</del>	<del>60034</del>	<del>Pre-2002</del>	<del>N/A</del>
PGE Coleman	Small Hydro	60037	Pre-2002	N/A
PGE Cow Creek	Small Hydro	60038	Pre-2002	N/A
PGE Crane Valley	Small Hydro	60039	Pre-2002	N/A
PGE Deer Creek	Small Hydro	60040	Pre-2002	N/A
PGE De Sabla	Small Hydro	60041	Pre-2002	N/A

PGE Dutch Flat 1	Small Hydro	60042	Pre-2002	N/A
PGE Halsey	Small Hydro	60043	Pre-2002	N/A
<del>PGE Hamilton Branch</del>	<del>Small Hydro</del>	<del>60044</del>	<del>Pre-2002</del>	<del>N/A</del>
PGE Hat 1	Small Hydro	60045	Pre-2002	N/A
PGE Hat 2	Small Hydro	60046	Pre-2002	N/A
<del>PGE Inskip</del>	<del>Small Hydro</del>	<del>60047</del>	<del>Pre-2002</del>	<del>N/A</del>
<del>PGE Kerekhoff 1</del>	<del>Small Hydro</del>	<del>62360</del>	<del>Pre-2002</del>	<del>N/A</del>
<del>PGE Kilare</del>	<del>Small Hydro</del>	<del>60049</del>	<del>Pre-2002</del>	<del>N/A</del>
<del>PGE Lime Saddle</del>	<del>Small Hydro</del>	<del>60050</del>	<del>Pre-2002</del>	<del>N/A</del>
PGE Newcastle	Small Hydro	60053	Pre-2002	N/A
PGE Oak Flat	Small Hydro	60276	Pre-2002	N/A
PGE Phoenix	Small Hydro	60054	Pre-2002	N/A
PGE Potter Valley	Small Hydro	60055	Pre-2002	N/A
PGE Five Points	Solar PV	61432	2010	N/A
PGE Stroud	Solar PV	61434	2010	N/A
PGE Westside	Solar PV	61433	2010	N/A
PGE Cantua	Solar PV	61823	2011	N/A
PGE Giffen	Solar PV	61822	2011	N/A
PGE Huron	Solar PV	61821	2011	N/A
PGE Gates	Solar PV	62353	2012	N/A
PGE Guernsey	Solar PV	62354	2012	N/A
PGE West Gates	Solar PV	62352	2012	N/A
PGE Rock Creek RPS	Small Hydro	62269	Pre-2002	N/A
PGE San Joaquin 1A	Small Hydro	60056	Pre-2002	N/A
PGE San Joaquin 2	Small Hydro	60057	Pre-2002	N/A
<del>PGE San Joaquin 3</del>	<del>Small Hydro</del>	<del>60058</del>	<del>Pre-2002</del>	<del>N/A</del>
PGE South	Small Hydro	60059	Pre-2002	N/A
PGE Spaulding 1	Small Hydro	60060	Pre-2002	N/A
PGE Spaulding 2	Small Hydro	60061	Pre-2002	N/A
PGE Spaulding 3	Small Hydro	60062	Pre-2002	N/A
PGE Spring Gap	Small Hydro	60063	Pre-2002	N/A
PGE Toadtown	Small Hydro	60064	Pre-2002	N/A
<del>PGE Tule River</del>	<del>Small Hydro</del>	<del>60065</del>	<del>Pre-2002</del>	<del>N/A</del>
Vaca-Dixon Solar (PG&E)	Solar PV	60966	2010	N/A
PGE Volta 1	Small Hydro	60066	Pre-2002	N/A
PGE Volta 2	Small Hydro	60067	Pre-2002	N/A
PGE West Point	Small Hydro	60068	Pre-2002	N/A
PGE Wise 1	Small Hydro	60069	Pre-2002	N/A
PGE Wise 2	Small Hydro	60070	Pre-2002	N/A
PGE A.G.Wishon	Small Hydro	60032	Pre-2002	N/A

**APPENDIX D  
LIST OF PCIA-ELIGIBLE RESOURCES IN TEMPORARY RESOURCE POOLS**

<b>Resource Name</b>	<b>Resource Pool</b>	<b>Technology</b>	<b>CEC RPS ID</b>	<b>PCIA Vintage</b>	<b>End Date</b>
Shafter Solar	GTSR	Solar PV	62325	2013	7/15/2035
Columbia Solar Energy	GTSR	Solar PV	62051	2012	12/13/2035
Morelos del Sol	GTSR	Solar PV	62272	2013	2/29/2036
Woodmere Solar Farm	GTSR, DAC	Solar PV	62429	2013	2/24/2036
CED Corcoran Solar 3	GTSR	Solar PV	62783	2015	11/30/2036
CED Oro Loma Solar Project A	GTSR	Solar PV	62841	2014	2/23/2037
Avenal Solar Project A	GTSR	Solar PV	62840	2014	3/9/2037
CED Oro Loma Solar Project B	GTSR	Solar PV	62841	2014	3/9/2037
Avenal Solar Project B	GTSR	Solar PV	62840	2014	3/9/2037
Westside Solar	GTSR	Solar PV	61185	2015	5/1/2037
Aspiration Solar G	GTSR	Solar PV	61486	2015	10/26/2037
Summer Wheat	GTSR, DAC	Solar PV	61837	2015	12/9/2038
White River Solar 2	GTSR	Solar PV	62045	2012	10/1/2034

**APPENDIX E**  
**BUYER'S ALLOCATION SHARE**

PCIA Vintage	Buyer's Allocation Share (%)
2009	
2010	
2011	
2012	
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	

**PG&E Gas and Electric  
Advice Submittal List  
General Order 96-B, Section IV**

AT&T Albion Power Company	East Bay Community Energy Ellison Schneider & Harris LLP Engineers and Scientists of California	Pioneer Community Energy  Public Advocates Office
Alta Power Group, LLC Anderson & Poole	GenOn Energy, Inc. Goodin, MacBride, Squeri, Schlotz & Ritchie Green Power Institute Hanna & Morton ICF International Power Technology	Redwood Coast Energy Authority Regulatory & Cogeneration Service, Inc. SCD Energy Solutions San Diego Gas & Electric Company
Atlas ReFuel BART		SPURR San Francisco Water Power and Sewer Sempra Utilities
Barkovich & Yap, Inc. Braun Blasing Smith Wynne, P.C. California Cotton Ginners & Growers Assn California Energy Commission	Intertie	Sierra Telephone Company, Inc. Southern California Edison Company Southern California Gas Company Spark Energy Sun Light & Power Sunshine Design Tecogen, Inc. TerraVerde Renewable Partners Tiger Natural Gas, Inc.
California Hub for Energy Efficiency Financing	Intestate Gas Services, Inc. Kelly Group Ken Bohn Consulting Keyes & Fox LLP Leviton Manufacturing Co., Inc.	TransCanada Utility Cost Management Utility Power Solutions Uplight Water and Energy Consulting Wellhead Electric Company Western Manufactured Housing Communities Association (WMA) Yep Energy
California Alternative Energy and Advanced Transportation Financing Authority California Public Utilities Commission Calpine	Los Angeles County Integrated Waste Management Task Force MRW & Associates Manatt Phelps Phillips Marin Energy Authority McClintock IP McKenzie & Associates	
Cameron-Daniel, P.C. Casner, Steve Center for Biological Diversity	Modesto Irrigation District NLine Energy, Inc. NRG Solar	
Chevron Pipeline and Power City of Palo Alto	OnGrid Solar Pacific Gas and Electric Company Peninsula Clean Energy	
City of San Jose Clean Power Research Coast Economic Consulting Commercial Energy Crossborder Energy Crown Road Energy, LLC Davis Wright Tremaine LLP Day Carter Murphy		
Dept of General Services Don Pickett & Associates, Inc. Douglass & Liddell		



## Staff Report – Item 4

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### **Item 4: New Construction Reach Code Update**

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs and Policy  
Zoe Elizabeth, Deputy Director of Decarbonization Programs and Policy

Date: 5/11/2022

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### **RECOMMENDATION**

Staff requests that the Board of Directors receive an update from the Decarbonization Programs and Policy team on New Construction Reach Codes.

### **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.

An initial update was provided to the Board of Directors at the March 9, 2022 board meeting, and an update was included on the Consent Calendar at the April 13, 2022 meeting.

### **ANALYSIS & DISCUSSION**

In an effort to continue communications with the Board of Directors on reach codes, staff developed a summary of next steps for members of our board to adopt reach codes this year; these steps will be reviewed during the staff presentation.

### **STRATEGIC PLAN**

These efforts support 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**

1. This presentation is posted to the SVCE website.



Silicon Valley Clean Energy  
Board of Directors Meeting

May 11, 2022

Appendix A

Power Resource Contracts Executed by CEO

## WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between **Resi Station, LLC**, a Delaware limited liability company (“Seller”) and **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of April 4, 2022 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product as such term is defined in Article 1 of this Confirmation (the “Transaction”). This Transaction is governed by the Western Systems Power Pool Agreement dated August 12, 2021 (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 or the CPUC Filing Guide. To the extent the terms of this Confirmation conflict with the WSPP Agreement, the terms of this Confirmation shall control.

### 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 Contract Quantity (subject to any permitted reductions pursuant to Section 2.2) from the Unit 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.

**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 Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason except as excused by an express provision of this Agreement.
- (b) Seller shall deliver the 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 in the amount of the Expected Contract Quantity, 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.
- (d) Seller may sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, provided that a Replacement Unit may be from a different Resource Category than "DR". 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 Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.

## **2.2 Reductions in Contract Quantity**

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.

In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

## **2.3 Seller's Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for 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), provided that a Replacement Unit may be from a different Resource Category than "DR" (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 identify the 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 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 or, 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 replacement Product; and

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month.

## **2.4 Planned Outages**

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

## **2.5 Purchaser's Remedies for Seller's Failure to Deliver the Contract Quantity**

- (a) If Seller fails to deliver any part of the 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,

finer 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) or require Seller to have any obligation to a Subsequent Purchaser. For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.

## **ARTICLE 3** **PAYMENTS**

### **3.1 Payment**

Purchaser shall make a monthly payment to Seller for Product delivered hereunder 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 (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) 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 amount of Contract Quantity of Product actually delivered by Seller to Purchaser pursuant to and consistent with Section 2.1 and, if applicable, Section 2.3 for the applicable Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places). Seller shall deliver invoices to the address(es) specified in Appendix C herein; provided, however, that changes to invoice, payment, wire transfer and other banking information must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes.

### **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) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

## **ARTICLE 4** **OTHER PURCHASER AND SELLER COVENANTS**

### **4.1 CAISO Requirements**

Seller shall schedule or cause the Shown Unit's SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown

Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance.

#### **4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser's rights to the Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the 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. Seller's reasonable and documented third party costs associated with taking commercially reasonable actions under this Section 4.2 for the benefit of Subsequent Purchaser shall be reimbursed by Purchaser.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

#### **4.3 Seller's Representations and Warranties**

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

#### **4.4 Market Based Rate Authority**

Upon Purchaser's written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Purchaser as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

### **ARTICLE 5**

#### **ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS**

#### **5.1 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 Contract Quantity in a Compliance Showing due to Seller's Event of Default, then Purchaser may, in good faith and with commercially reasonable practices, 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."

#### **5.2 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 information as necessary to a Shown Unit's SC or as necessary for Supply Plans;
- (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and
- (iv) Purchaser may disclose information to any Subsequent Purchaser.

- (b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant 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). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information and Purchaser notifies Seller ahead of such release.

### **5.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

### **5.4 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.

### **5.5 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.

### **5.6 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.

### **5.7 No Recourse to Members of Purchaser**

Purchaser is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Purchaser will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser's constituent members, in connection with this Confirmation.

### **5.8 [Reserved]**

### **5.9 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(4) is amended by inserting “or requested” after the word “required” and by adding the following at the end of the first sentence: “; or (8) to the Party’s

and such Party's affiliates' lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential".

- (i) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (j) The phrase “arbitration or” is deleted from the first line of Section 34.4.
- (k) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY

CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (l) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (m) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. 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.”

## **5.10 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.

**5.11 Entire Agreement; No Oral Agreements or Modifications**

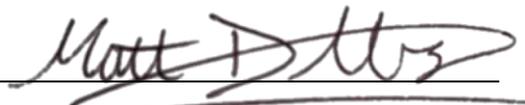
This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

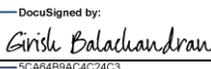
*[Signatures appear on the following page.]*

**AGREED AS OF THE EFFECTIVE DATE:**

**RESI STATION, LLC, a Delaware limited liability company**

**SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority**

By: 

By: DocuSigned by:   
5CA84B9AC4C24C3...

Name: Matt Duesterberg

Name: Girish Balachandran

Title: President

Title: CEO

## APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California Independent System Operator Corporation 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; the Shown Unit’s ability to generate at a given capacity level, reduce energy demand, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“Contract Quantity” has the meaning set forth in Appendix B.

“CPUC” means the California Public Utilities Commission.

“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) the Contract Quantity of Product less the Transmission Loss Factor (TLF) credit and Planning Reserve Margin (PRM) credit for demand response resources (9% in 2022) pursuant to the 2022 RA Guide and D.21-06-029 if the Shown Unit or Alternate Capacity is a Proxy Demand Resource since these credits are added by CPUC staff to the Monthly Supply Plan values entered into CIRA by the LSE, or (b) 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.

“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.

“Proxy Demand Resource” or “PDR” has the meaning set forth in the Tariff.

“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 any Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, Business Practice Manuals, Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

“Unit” means the resource described in Appendix B, as may be modified by Seller from time to time after the Effective Date to remove and/or replace Units with Replacement Units. 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.

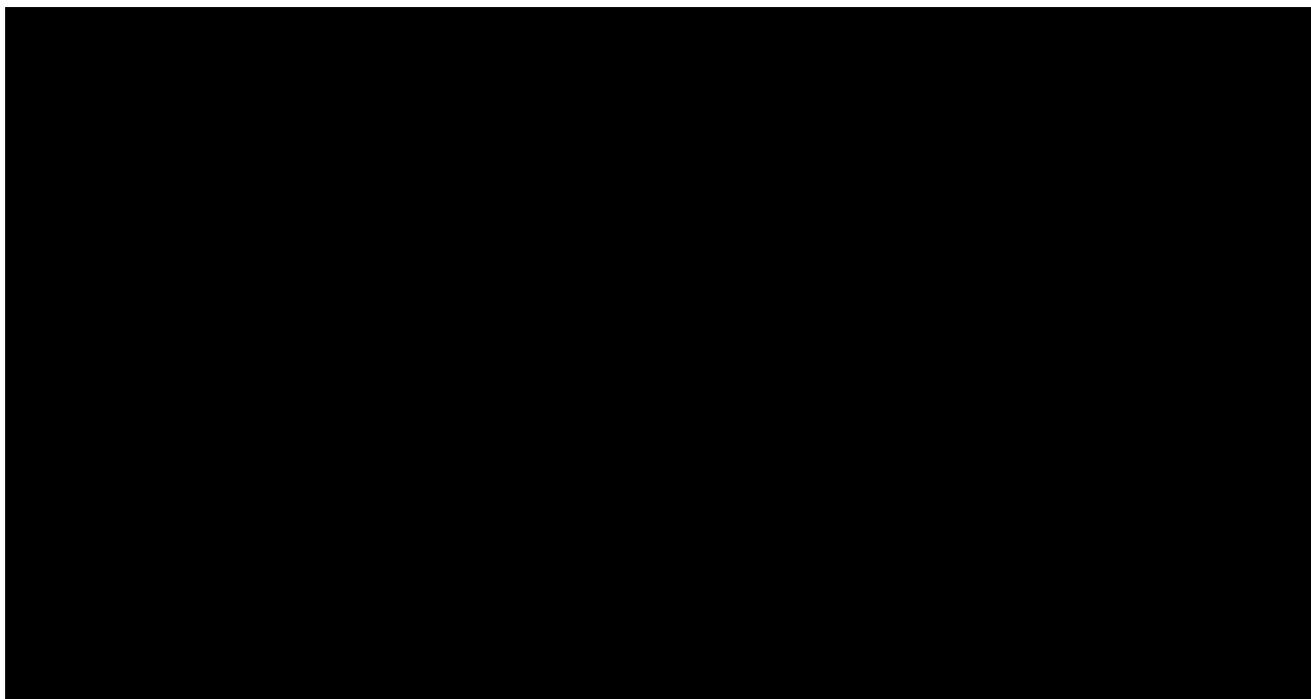
Additional Product Information (fill in all that apply):

CAISO Zone: System

Resource Category (MCC Bucket): DR

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A



**Unit 1**

<b>Unit Specific Information</b>	
Resource Name	
Physical Location	CAISO System
CAISO Resource ID	Resource IDs to be provided on monthly Supply Plans
SCID of Resource	OHM1
Unit NQC by month (e.g., Jan=50, Feb=65):	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Resource Type (e.g., gas, hydro, solar, etc.)	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	DR

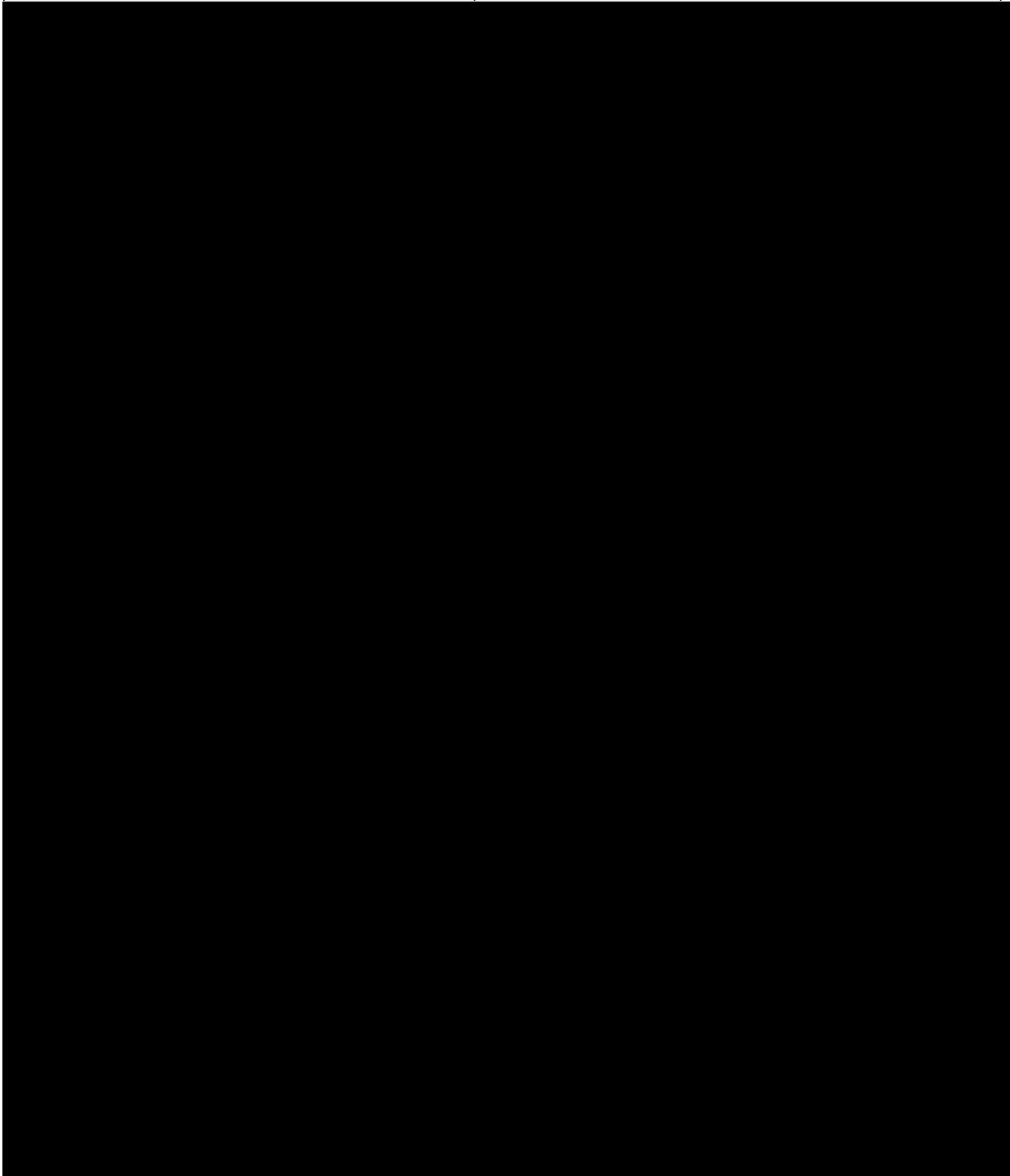
*(Repeat for additional Units)*

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C  
NOTICE INFORMATION**

**Seller:** Resi Station, LLC

**Purchaser:**



**APPENDIX D  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
N/A	N/A	N/A	N/A	N/A

**Joint CCA WSPP Standard RA Confirmation****WSPP RESOURCE ADEQUACY CONFIRMATION**

This Confirmation confirms the transaction between Central Coast Community Energy, a California joint powers authority (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of April 25, 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 August 12, 2021 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

**ARTICLE 1**  
**TRANSACTION TERMS**

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

 **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

 **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

**Joint CCA WSPP Standard RA Confirmation****ARTICLE 2**  
**DELIVERY OBLIGATIONS AND ADJUSTMENTS****2.1 Sale and Delivery of Product**

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

**Joint CCA WSPP Standard RA Confirmation**

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.<sup>1</sup>

**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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<sup>1</sup> For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

**Joint CCA WSPP Standard RA Confirmation****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

**Joint CCA WSPP Standard RA Confirmation**

provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. Within ten (10) Business Days after Purchaser's receipt of any Seller proposed changes, Purchaser shall notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Prudent Operating Practice, accommodate Purchaser's requests regarding the timing of any Seller proposed changes to the Planned Outage Schedule.

**2.5 Purchaser's Remedies for Seller's Failure to Deliver Expected Contract Quantity**

- (a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product or a Shown Unit's SC's failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

**2.6 Purchaser's Re-Sale of Product**

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller shall, and shall cause the Shown Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

**Joint CCA WSPP Standard RA Confirmation**

- (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 (20<sup>th</sup>) of the Showing Month, or if the twentieth (20<sup>th</sup>) 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.

**Joint CCA WSPP Standard RA Confirmation****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.

**Joint CCA WSPP Standard RA Confirmation****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 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

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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**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

**6.4 Change in Law**

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

**Joint CCA WSPP Standard RA Confirmation****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:

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- “(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

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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),

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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

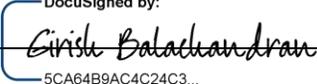
**Joint CCA WSPP Standard RA Confirmation**

or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

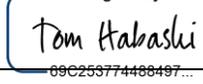
*[Signatures appear on the following page.]*

**AGREED AS OF THE EFFECTIVE DATE:**

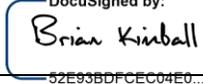
**SILICON VALLEY CLEAN ENERGY  
AUTHORITY, a California joint powers  
authority**

By:   
Name: Girish Balachandran  
Title: CEO, Silicon Valley Clean Energy

**CENTRAL COAST COMMUNITY  
ENERGY, a California joint powers  
authority**

By:   
Name: Tom Habashi  
Title: Chief Executive Officer

**Approved as to form:**

By:   
Name: Brian Kimball  
Title: General Counsel

## APPENDIX A DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable

environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“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”.

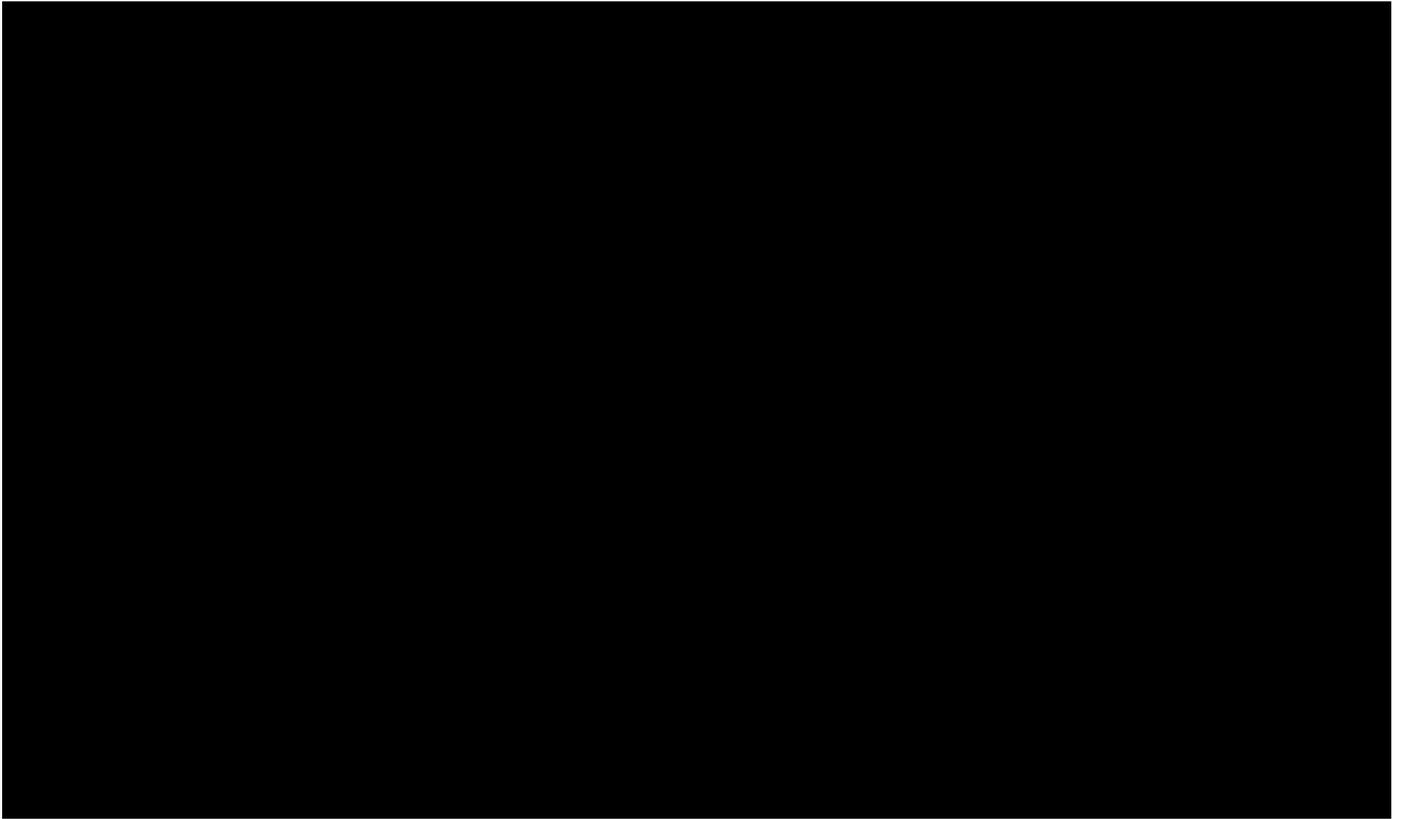
“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“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**



**Unit 1**

<b>Unit Specific Information</b>	
<b>Resource Name</b>	Cal Flats BESS
Physical Location	Monterey County, CA
CAISO Resource ID	CALFTN_2_CFSBT1
SCID of Resource	TS31
Unit NQC by month (e.g., Jan=50, Feb=65):	60
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	BESS
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	N/A
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4
Available 24/7?	N

**APPENDIX C  
RESERVED**

**APPENDIX D  
PLANNED OUTAGE SCHEDULE**

<b>Unit Name</b>	<b>CAISO Resource ID *</b>	<b>Outage (MW)</b>	<b>SLIC Outage Start Date</b>	<b>SLIC Outage End Date</b>
N/A	N/A	N/A	N/A	N/A

# Powerex

**AGREEMENT BETWEEN  
Powerex Corp. \* and Silicon Valley Clean Energy Authority  
Powerex Deal No. INO750**

This document (“**Confirmation**” or “**Agreement**”) confirms the agreement between Powerex Corp.\* (“**Powerex**” or “**Seller**”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“**SVCEA**” or “**Buyer**”) regarding the sale and purchase of the Product in accordance with the EEI Master Power Purchase and Sale Agreement dated as of November 28, 2016, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties and as amended and supplemented by this Confirmation (collectively, the “**Master Agreement**”) under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts. This Agreement supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

**Seller:** Powerex

**Buyer:** SVCEA

**Transaction:** This Transaction is for Buyer to procure Bundled Renewable Energy, all in accordance with the terms and conditions of this Confirmation.

**Generation Term:**

**Product:** “**Bundled Renewable Energy**”, which is comprised of energy generated by the Project(s) and the associated Green Attributes.

**Delivery:** The Parties recognize that a schedule of energy to the CAISO Balancing Authority is a delivery to the CAISO and not directly to Buyer. Scheduling Energy to the CAISO Balancing Authority shall constitute delivery of Bundled Renewable Energy to Buyer, provided the WREGIS Certificates evidencing the Green Attributes comprised in the Bundled Renewable Energy are delivered to Buyer as provided in this Confirmation.

Energy

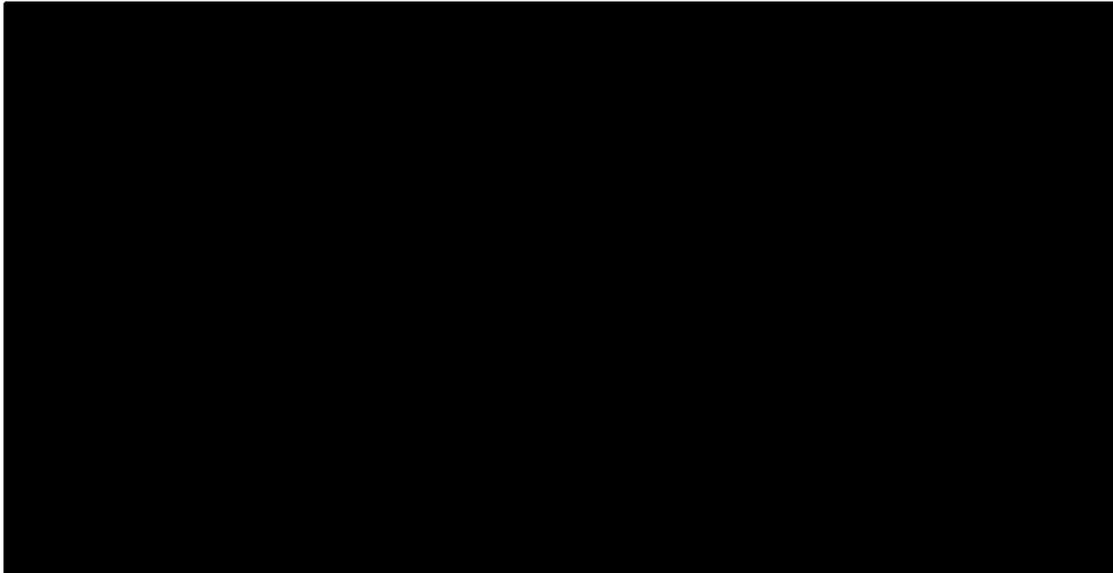
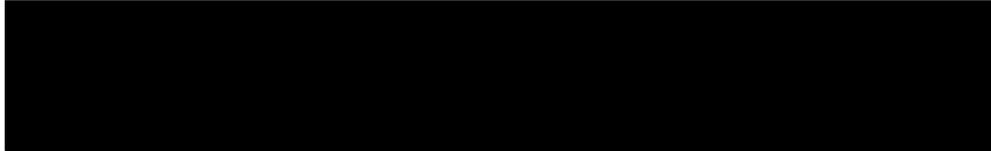
Buyer elects to take delivery of the energy by either Delivery Method 1 (Category 1 Product) or Delivery Method 2 (Category 2 Product), or both, as specified under the “Contract Quantity” section. The Parties intend that the Product as procured by Buyer and as delivered by Seller in accordance with (i) Delivery Method 1 will meet the Category 1 Product Eligibility Requirements and (ii) Delivery Method 2 will meet the Category 2 Product Eligibility Requirements.

Green Attributes

Green Attributes to be delivered to Buyer hereunder shall be represented by WREGIS Certificates. Seller shall use WREGIS to transfer title to the Green Attributes to Buyer. The transfer of WREGIS Certificates through WREGIS shall be deemed to transfer title to all of the Green Attributes associated with the Product.

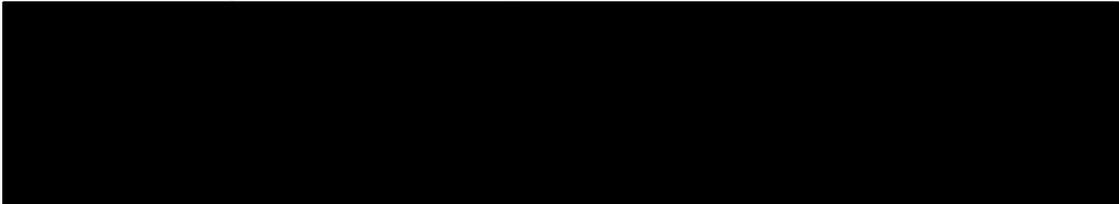
Due to WREGIS Timelines, completion of delivery of the Green Attributes may occur after the Generation Term or Generation Sub-term, as applicable, however such delay shall not constitute a failure to deliver the WREGIS Certificates by Seller. Seller will match WREGIS Certificates with e-Tags prior to transferring WREGIS Certificates to Buyer (unless there are no e-Tags associated with the Energy delivery).

**Contract Quantity:**



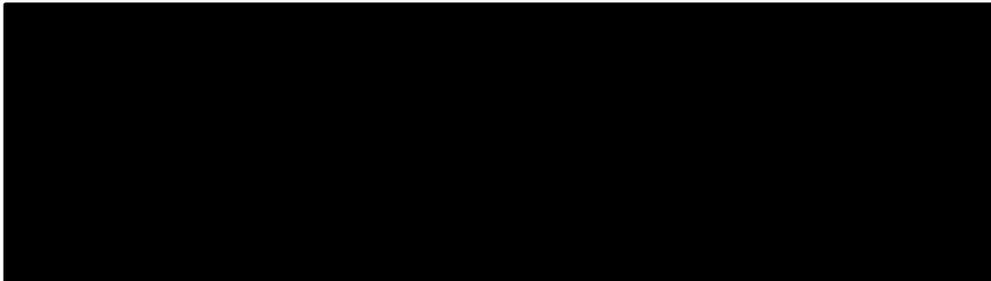
Energy Delivery Profile

The Energy shall be delivered by Seller in compliance with the applicable minimum and maximum amounts for each Generation Sub-term as set forth in the table below. For greater certainty, Seller's delivery obligations shall be based on delivery of the minimum amounts specified for each Generation Sub-term and delivery of the Contract Quantity for the Generation Term.



Seller may schedule or cause to be scheduled the Energy during any or all hours in the Generation Term.

**Contract Price:**



“**Energy Price**” means, for each MWh of Energy delivered, the applicable Locational Marginal Price, as defined in the CAISO Tariff and published by CAISO, at the CAISO Point where CAISO models the physical injection of such Energy.

“**GA Price**” means the Category 1 GA Price or the Category 2 GA Price, as applicable.

For each MWh of Category 1 Product or Category 2 Product delivered to Buyer, the **Contract Price** shall consist of the sum of the Energy Price and the applicable GA Price, less the CAISO Credit, calculated as follows:

$$\text{Contract Price} = (\text{Energy Price} + \text{applicable GA Price}) - \text{CAISO Credit}$$

**Facilities:**

Bundled Renewable Energy procured under this Confirmation will be generated by one or more of the facilities listed in Schedule “A”. For the purposes of delivering Category 1 Product, Seller may add additional facilities from time to time by providing Buyer with an updated Schedule “A” (with additional facilities listed in Part B) which shall replace the existing Schedule “A” to this Confirmation, *provided* such additional facilities are wind or solar generation facilities *and* a Green-e® Energy Tracking Attestation Form has been submitted to and processed by Center for Resource Solutions (CRS) for each such additional facility with a Tracking Attestation Start Date and Tracking Attestation Expiration Date covering the portion(s) of the Generation Term that Category 1 Product is delivered to Buyer from such additional facilities.

Seller hereby confirms that a Green-e® Energy Tracking Attestation Form has been submitted to and processed by CRS for each facility listed in Schedule “A” hereto as of the Reference Date and has a Tracking Attestation Start Date and Tracking Attestation Expiration Date covering the the Generation Term.

**Delivery Point:**

Seller may deliver Energy to any CAISO Point. For greater certainty, in the event an e-Tag includes more than one CAISO Point, the Delivery Point shall be the last point of delivery (POD) or “sink” CAISO Point on such e-Tag.

**Scheduling, Tagging and WREGIS Transfers:**

Scheduling

Seller shall schedule or cause to be scheduled, at its sole discretion, Energy to the CAISO Balancing Authority on a day-ahead, hour-ahead, sub-hourly and/or real-time basis.

All Energy shall be scheduled in accordance with Generally Accepted Utility Practice.

E-tagging

Seller shall generate all e-Tags required to schedule the Energy to the Delivery Point and such e-Tags will be in accordance with generally accepted e-tagging practices and standards in the WECC region. For greater certainty, no e-Tags will be generated for deliveries from a Project within the CAISO Balancing Authority. Each e-Tag will include the following, depending on the Category Product:

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<u>E-Tag Location</u>	<u>Category 1 Product</u>	<u>Category 2 Product</u>
Last CA (Control Area) under 'Physical Path'	CAISO Balancing Authority	N/A
First 'POR/ POD' under 'Physical Path'	A single Project	N/A
Last or 'sink' PSE (Purchasing Selling Entity) under 'Physical Path'	ZES001	N/A
Misc(Token/Value) field	RPS ID for that Project	N/A
Comment field	Silicon Valley Clean Energy	N/A

If a "sink" PSE is not specified above by Buyer, Seller may, and Buyer authorizes Seller to, use a sink PSE (including its own) consistent with generally accepted e-tagging practices and standards in the WECC region (including CAISO deliveries).

#### WREGIS Transfers

For Category 1 Product, WREGIS Certificates will be transferred to Buyer following applicable WREGIS Timelines. For Category 2 Product, WREGIS Certificates will be transferred to Buyer following the later of (i) applicable WREGIS Timelines and (ii) the month after delivery of associated Substitute Energy. WREGIS Certificates will be transferred to the WREGIS account named Silicon Valley Clean Energy Authority WREGIS #1214.

In the event WREGIS changes the WREGIS Operating Rules in effect on the Reference Date (or its application thereof) such that WREGIS Certificates cannot be transferred to Buyer as required this Confirmation, the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation to the extent possible to enable the transfer of WREGIS Certificates to Buyer.

#### **Invoicing and Payment:**

For the purposes of this Transaction, invoicing and payment for Energy and Green Attributes delivered to Buyer shall be in accordance with Article 6 of the Master Agreement. The CAISO Credit will be reflected in the Energy invoice. The Parties acknowledge that invoicing and payments for the Energy may not occur in the same month as invoicing and payments for the Green Attributes associated with such Energy due to the delivery of the Green Attributes following WREGIS Timelines. Seller shall be entitled to retain for its account all revenues received from the CAISO associated with the delivery of Energy to the CAISO Balancing Authority.

Seller's invoices may be delivered by email from Seller to Buyer.

**SPECIAL CONDITIONS**

1. **Definitions.** The defined terms in Schedule "B" shall apply to this Confirmation.
2. **Eligibility Requirements.** If, at any time, a Category Product does not meet the applicable Eligibility Requirements (a "**Failing Category Product**"), it shall not be an Event of Default for the purposes of the Master Agreement. If a Failing Category Product does not meet or satisfy the Eligibility Requirements for any reason other than a Buyer Eligibility Failure, a Seller Eligibility Failure or Force Majeure, the following shall apply:
  - (a) the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation as appropriate so that the Failing Category Product meets or satisfies the applicable Eligibility Requirements in a manner consistent with the intent of the Parties as set out in this Confirmation.
  - (b) If the Parties are unsuccessful in revising or amending the Confirmation as provided in (a) above:
    - (i) the Parties will have no liability to each other for any failure to schedule, deliver or purchase the Failing Category Product that is not then delivered (provided, for greater certainty, that Buyer shall remain liable for any Green Attributes associated with Energy already delivered to Buyer); and
    - (ii) either Party may, by written notice to the other, immediately terminate the Transaction, without penalty, termination payment or liability of either Party to the other except as provided in sub-paragraph (i) above.
3. **Failure to Deliver/Receive.** For purposes of this Transaction, the determination of the Replacement Price and Sales Price shall be based on the energy and Green Attributes components of the Product and damages will be calculated in a commercially reasonable manner consistent with Article 4 of the Master Agreement. For greater certainty: (i) any quantity of Category Product that does not meet or satisfy the applicable Eligibility Requirements as a result of a Seller Eligibility Failure shall be considered a failure to deliver by Seller, and (ii) Seller shall not be liable to Buyer for any quantity of Category Product that does not meet or satisfy the applicable Eligibility Requirements as a result of a Buyer Eligibility Failure. If WREGIS Certificate(s) are not transferred as required by this Confirmation solely as a result of an error or omission of WREGIS, it shall not be a failure to deliver or receive, however the Parties shall use commercially reasonable effort and cooperate in good faith to cause WREGIS to correct its error or omission to complete such transfer.
4. **Waived Shortfall – Category 2 Product.** If Seller reasonably anticipates that it will be unable to deliver the required quantity of Category 2 Product with respect to any Generation Sub-term or the Generation Term, Seller may provide written notice to Buyer on or before sixty (60) days prior to the end of the applicable Generation Sub-term and, upon Buyer's receipt of such notice, the Parties will negotiate in good faith using commercially reasonable efforts to determine whether Seller may deliver a product comparable to the Category 2 Product generated by or attributable to an Alternate Eligible Facility or Alternate Source ("Alternate Supply"). If the Parties mutually agree to such arrangements for Alternate Supply, they will enter into a separate agreement respecting same and Buyer will waive the shortfall and any related liquidated damages that may otherwise be payable pursuant to this Confirmation for the amount of such Alternate Supply.
5. **Force Majeure.** For purposes of this Transaction, the Products shall be subject to Force Majeure and Section 3.3 of the Master Agreement. For greater certainty, a change in law shall not be an event of Force Majeure for the purposes of this Transaction. The Master Agreement is hereby amended by editing paragraph (iii) of the definition of Force Majeure in Section 1.23 to read as follows:

“the loss or failure of Seller’s supply, except, with respect to the Green Attributes, to the extent Seller’s supply is itself subject to an event of Force Majeure;”

6. Events of Default; Remedies. For purposes of this Transaction:
- (a) For the purposes of determining payments under Section 5.2 of the Master Agreement, with respect to this Transaction, the economic benefits or losses of the Non-Defaulting Party resulting from termination of this Transaction shall be based on the energy and Green Attributes components of the Product.
  - (b) The remedies for failure to deliver the Product (including Green Attributes) provided for in the Master Agreement as amended by this Confirmation are the sole and exclusive remedies and all other remedies are waived.
7. Importer of Energy/Compliance Obligation. For any Energy imported into California, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation under the Cap and Trade Regulations associated with the energy which Seller shall schedule and import into the CAISO Balancing Authority as part of the Product to be delivered under this Confirmation and that Seller may and shall have the right to claim that any Energy that Seller has scheduled and imported into the CAISO Balancing Authority is from a Specified Source and claim the RPS Adjustment with respect to Substitute Energy. Buyer agrees to assist Seller in making the Specified Source and RPS Adjustment claims, including agreeing as follows:
- (a) Specified Source – Category 1 Product. Buyer agrees, by May 15 following the end of each calendar year in the Generation Term, to provide Seller with a written attestation providing a detailed breakdown of the total quantity of WREGIS Certificates transferred under this Confirmation associated with the Category 1 Product that have been placed in a WREGIS retirement subaccount and those that remain in a WREGIS active subaccount and the name of each such account.
  - (b) RPS Adjustment – Category 2 Product. Buyer agrees to provide Seller with the information required by Seller for the purpose of claiming the RPS Adjustment including, but not limited to, providing by May 15 following the end of each calendar year in the Generation Term a written attestation to Seller that the quantity of WREGIS Certificates transferred under this Confirmation associated with the immediately previous calendar year in the Generation Term as Category 2 Product have been placed in Buyer’s WREGIS retirement subaccount and that the RECs represented by such WREGIS Certificates have been designated for retirement for the purposes of Buyer’s compliance with the California RPS Program for the applicable year in the Generation Term in accordance with the Cap and Trade Regulation (and shall promptly notify Seller of any changes (e.g. subsequent withdrawal of WREGIS Certificates from Buyer’s WREGIS retirement subaccount) after delivery of the attestation with information as may be required by Seller to comply with Section 95111.g.1.M.2 of the Mandatory Reporting Rule (or any similar or successor provision)).
    - (i) In the event Buyer re-sells Category 2 Product, Buyer shall continue to provide the attestation provided in this Section 7(b) and references to “Buyer’s WREGIS retirement subaccount” and “Buyer’s compliance with the California RPS Program” shall be read to include the subsequent purchaser’s WREGIS retirement subaccount and compliance with the California RPS Program.
    - (ii) If Seller does not meet the conditions for the RPS Adjustment as a result of any act or omission of Buyer (including failure to place WREGIS Certificates in Buyer’s own WREGIS retirement subaccount and designate the RECs represented by the WREGIS Certificates for retirement for the purposes of Buyer’s own compliance

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with the California RPS Program), Buyer shall reimburse or pay Seller the cost of Allowances (as defined in Cap and Trade Regulation 95802(a)(8)) purchased or required by Seller as a result of Seller's inability to claim the RPS Adjustment, at the price established at the next succeeding auction of Allowances hosted by CARB or, failing which, prevailing market prices.

This Section 7 is based on the Cap and Trade Regulations and Mandatory Reporting Rule as of the Reference Date. In the event that the regulatory requirements for mitigating the Compliance Obligation change after the Reference Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements. This provision shall survive expiry or earlier termination of this Transaction until such time as the information contemplated herein in respect of the last year of the Generation Term is provided to Seller by Buyer.

8. Resale. Seller makes no representation or warranty that the Category 1 Product or Category 2 Product will satisfy applicable Eligibility Requirements if re-sold to a third party by Buyer. In the event all or any portion of the Category Product(s) purchased or to be purchased by Buyer hereunder is re-sold by Buyer, any such resale does not affect Buyer's obligations hereunder and Buyer remains primarily liable to Seller for all Buyer's obligations hereunder.
9. Standard/Non-Modifiable Terms and Conditions.
  - (a) This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]
  - (b) Seller shall be responsible for ensuring that: (i) each Project is certified as an eligible renewable energy resource for the California RPS Program prior to delivery of Category 1 Product or Category 2 Product hereunder from such Project; and (ii) the Green Attributes have been or will be transferred to Seller and will be transferrable to Buyer through or using WREGIS, or such similar generation information or attributes tracking system as may be approved by or other method of transfer acceptable to the Energy Commission;
  - (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 [STC REC-2];
  - (d) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project; and
  - (e) For the purposes of this Transaction:
    - (i) 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 [STC 6]; and

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- (ii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]

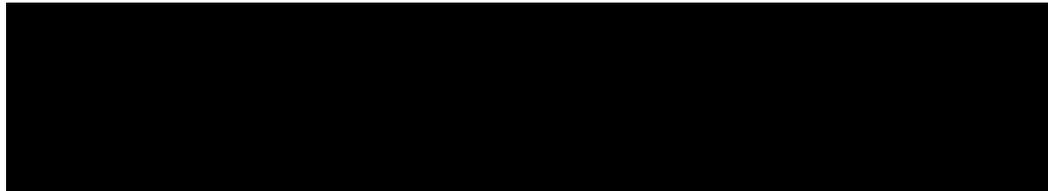
For the purposes of STC 6 above, for the Category 2 Product, the Parties acknowledge that Substitute Energy, in substitution for Project Energy, and Green Attributes are delivered to Buyer.

As used in Section 9(e) of this Confirmation, "Delivery Term" has the same meaning as "Generation Term" provided that, for the purposes of STC 6 above with respect to any facility listed in Schedule A, the Parties agree that the representation and warranty therein applies only to the portion of such Delivery Term that is after the eligibility date issued by the CEC and during which the output from that facility is being delivered to Buyer.

The Parties agree that, so long as the Seller has used commercially reasonable efforts to comply with a change in law resulting in either of the above representations and warranties becoming incorrect, Buyer shall receive and pay for any Product supplied hereunder notwithstanding any non-compliance with the California RPS Program resulting from the change in law.

10. Commercially Reasonable Efforts.

(a)



- (b) In the event an issue or circumstance requiring a Party to use or make commercially reasonable efforts similarly affects one or more other transactions between the Parties, the limit set forth in paragraph (a) above shall apply to all such transactions between the Parties and shall not be cumulative to any limits applicable to such other transactions.

11. Condition Precedent. This Confirmation (and the Transaction confirmed thereby) shall not be binding upon any Party until and unless both Powerex and SVCEA have executed and delivered this Confirmation to the other Party before 3:00 p.m. Pacific Prevailing Time on March 31, 2022. If either Party fails to satisfy the foregoing condition precedent, then this Confirmation (and the Transaction confirmed thereby) shall have no force and effect and all offers hereunder shall be deemed rescinded.

This Confirmation is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

**ACKNOWLEDGED AND AGREED TO:**

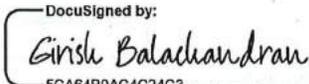
**POWEREX CORP.\***



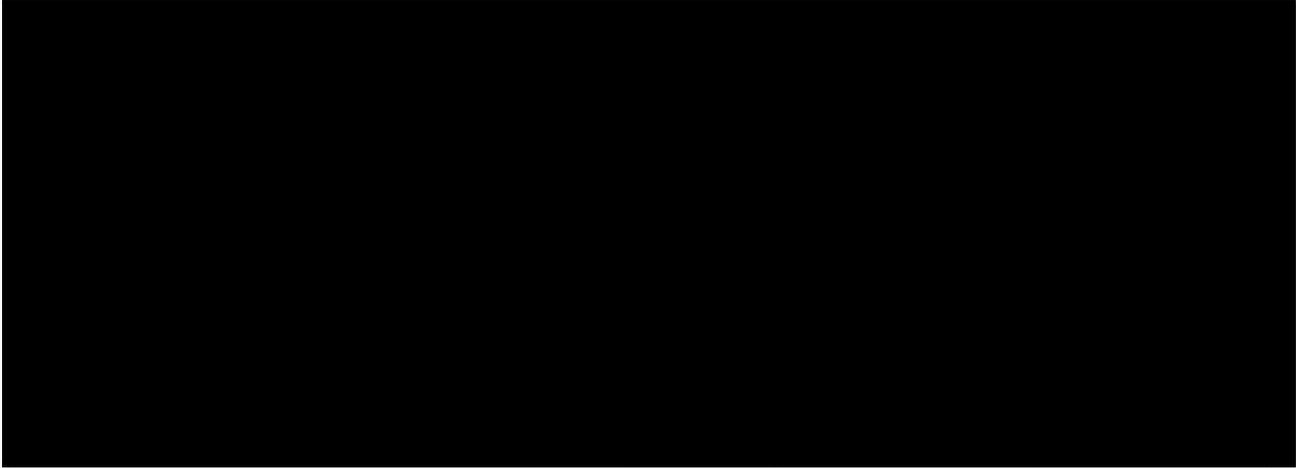
Mark Holman  
Managing Director

Name:  
Title:  
Date: *March 25, 2022*  
*\*doing business in California as Powerex Energy Corp*

**SILICON VALLEY CLEAN ENERGY  
AUTHORITY, a California joint powers  
authority**

DocuSigned by:  


5CA64B9AC4C24C3  
Name: Girish Balachandran  
Title: CEO  
Date: 3/23/2022



**SCHEDULE "A"**Project(s)**Part A – Initial Projects**

<u>Facility Name</u>	<u>State/ Province</u>	<u>Technology</u>	<u>RPS ID</u>	<u>Total Facility Nameplate (MW)</u>
Dokie Wind Energy Project	BC	Wind	61360A	144
Quality Wind Project	BC	Wind	62247A	142.2
Cape Scott Wind	BC	Wind	60600A	99
Meikle Wind Energy Project	BC	Wind	63268A	184.6
Shinish Creek Wind Farm	BC	Wind	64041A	15
Pennask Wind Farm	BC	Wind	64015A	15
Moose Lake Wind Project	BC	Wind	64287A	15

**Part B – Additional Projects for Category 1 Product**

[to be added under the terms of the section - "Facilities" as required]

11  
SCHEDULE "B"

Additional Definitions

For the purposes of this Confirmation, the following terms shall have the following meanings:

- (a) "Alternate Eligible Facility" means an alternate generation facility that is certified as an eligible renewable energy resource for the California RPS Program and from which Seller is entitled to energy and associated Green Attributes generated during the Generation Term (or portion thereof in respect of which bundled energy and associated Green Attributes to be delivered hereunder are generated by such facility).
- (b) "Alternate Source" means an alternate source of supply of energy and associated Green Attributes generated by the same facility as a Project during the Generation Term and which Seller is entitled to pursuant to its purchase agreements for output from the facility.
- (c) "Buyer Eligibility Failure" means a failure of a Category Product to meet or satisfy the applicable Eligibility Requirements or any element or component thereof which are in the direct control of Buyer to meet or satisfy as a result of or if caused by or attributable to an act or omission of Buyer, including use of the Product other than for its own California RPS Program compliance purposes, a failure by Buyer to accept an applicable transfer on WREGIS, to provide information and data available to Buyer (including as provided by Seller) as may be required to verify the Green Attributes comprised in the Products or failure to retire or designate for retirement the RECs for the purposes of compliance with the California RPS Program.
- (d) "CAISO Balancing Authority" means, as the context requires, CAISO as "Balancing Authority" or "CAISO Balancing Authority Area", as such terms are used in the CAISO Tariff.
- (e) "CAISO Point" means any Location in the CAISO Balancing Authority or CAISO Controlled Grid, including any Scheduling Point (as such terms are defined in the CAISO Tariff).
- (f) "CAISO Tariff" means the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time).
- (g) "California RPS Program" or "California Renewables Portfolio Standard" means the "California Renewables Portfolio Standard" program as set forth in Cal. Pub. Util. Code §§ 399.11 *et seq* and jointly administered by the CEC and the CPUC, as such program exists as of the Reference Date, including without limitation all applicable eligibility criteria and requirements thereof in force and effect as of the Reference Date.
- (h) "Cap and Trade Regulations" means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (i) "Category 1 Product" means the Product where Buyer has elected to have the energy delivered as Project Energy in accordance with Delivery Method 1.
- (j) "Category 1 Product Eligibility Requirements" means, with respect to the Category 1 Product only, any applicable criteria or requirements of the California RPS Program in force and effect as of the Reference Date regarding the eligibility or qualification of the Category 1 Product to meet the criteria of Section 399.16(b)(1) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.
- (k) "Category 2 Product" means the Product where Buyer has elected to have Substitute Energy delivered in substitution for Project Energy in accordance with Delivery Method 2.

- (l) “Category 2 Product Eligibility Requirements” means, with respect to Category 2 Product only, any applicable criteria or requirements of the California RPS Program in force and effect as of the Reference Date regarding the eligibility or qualification of the Category 2 Product to meet the criteria of Section 399.16(b)(2) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.
- (m) “Category Product” means Category 1 Product or Category 2 Product, as applicable.
- (n) “change in law” refers to any determination, decision, application of, or change in law or policy after the Reference Date by or of the CEC or the CPUC or other applicable legislative, governmental or regulatory authority or third party having authority or jurisdiction.
- (o) “Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.
- (p) “CPUC” means the California Public Utilities Commission.
- (q) “Eligibility Requirements” means Category 1 Product Eligibility Requirements or Category 2 Product Eligibility Requirements, as applicable.
- (r) “Energy” means Project Energy or Substitute Energy, as applicable.
- (s) “Energy Commission” or “CEC” means the California Energy Commission.
- (t) “Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.
- (u) “Generation Sub-term” means any sub-period within the Generation Term as specified in the Energy Delivery Profile Table under the heading “Delivery Method Quantity” (and for greater certainty means Generation Term if only one Generation Sub-term).
- (v) “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: (1) 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; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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;<sup>1</sup> (3) 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 Energy. Green Attributes do not include (i) any 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

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<sup>1</sup> 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.

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.

- (w) “Green Tag” and “Green Tag Reporting Rights” have the meanings set forth in the definition of “Green Attributes”, and for the purposes of this Transaction, “Green Tag Purchaser” means Buyer.
- (x) “Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (y) “Party” means Buyer or Seller, and “Parties” means both Buyer and Seller.
- (z) “Project” means a facility listed in Schedule “A” provided that, for the purposes of Sections 9(d) and 9(e) of this Confirmation and the definition of Green Attributes, the term “Project” shall be read to refer to all such facilities listed in Schedule “A” but only to the extent of Seller’s contractual rights to the energy and Green Attributes produced by such facilities. Seller must be contractually entitled to all or a portion of the bundled energy and associated Green Attributes generated by the facilities listed in Schedule “A” during the Generation Term (or portion thereof in which the Product is generated by or attributed to such facility). Buyer acknowledges that Seller (i) may deliver the Product from any or all Projects, and (ii) may not have a contractual right to the entire output of such facilities.
- (aa) “Reference Date” means the date that Powerex has executed this Confirmation (as reflected on the signature page hereto).
- (bb) “Renewable Energy Credit” or “REC” means a renewable energy credit as defined by and in accordance with the California Public Utilities Code.
- (cc) “RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.
- (dd) “RPS ID” means the “California Energy Commission RPS certification number”, the “identification number” and/or the “RPS ID”, as such terms are used by the CEC to describe the identification number for an eligible renewable energy resource that has been certified (or will be certified for the period of deliveries) as such by the CEC for the purposes of the RPS. The RPS ID for each Project is set out beside the applicable facility under the column “RPS ID” in the table attached hereto as Schedule “A”.
- (ee) “Scheduling Point” has the meaning set forth in the CAISO Tariff, including (without limitation) the SYLMARDC\_2\_N501 and MALIN\_5\_N101 Scheduling Points.
- (ff) “Seller Eligibility Failure” means a failure of (i) Category 1 Product or Category 2 Product to meet or satisfy the applicable Eligibility Requirements as a result of any requirements set forth in Section 9(b) of this Confirmation not being satisfied, or (ii) any other Eligibility Requirements or element or component thereof applicable to a Category Product which are in the direct control of Seller to meet or satisfy as a result of or if caused or attributable to an act or omission by Seller unless, in either the case of (i) or (ii), such failure is excused by Force Majeure.

- (gg) "Specified Source" means "specified source", as such term is defined in the Mandatory Reporting Rule.
- (hh) "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.
- (ii) "WREGIS Certificate" means a "Certificate" as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the Green Attributes associated with the Product.
- (jj) "WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS, as amended from time to time.
- (kk) "WREGIS Timelines" means the time line for WREGIS Certificate creation by WREGIS in accordance with WREGIS Operating Rules as applied by WREGIS.

**CONFIRMATION**

Reference:  
Master Power Purchase and Sale Agreement  
Between Morgan Stanley Capital Group Inc. (“Seller”)  
And  
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)  
dated: November 23, 2016  
Transaction Date: March 17, 2022 (the “Effective Date”)

**RECITALS:**

**WHEREAS**, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

**WHEREAS**, Buyer is a California joint powers authority, which has established Silicon Valley Clean Energy Authority for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

**WHEREAS**, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

**WHEREAS**, the CPUC certified the Implementation Plan on September 27, 2016;

**WHEREAS**, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **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:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“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 RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy generated by Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Santa Clara.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“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.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

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

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” has the meaning set forth in Section 2.1 hereof.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable 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, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource where the source of power is wind, solar or hydroelectric.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B. Such Renewable Energy Contract Quantity, shall be comprised of (i) Minimum Renewable Energy Quantity and (ii) Optional Incremental Renewable Energy Quantity, if any.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

## **2. PRODUCT.**

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

- (a) the quantity of Energy specified in Section 7.1;
- (b) the quantity of Renewable Energy (Category 1 Renewable) specified in Section 7.2; and
- (c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good

faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer's compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below.

### 2.3 RPS Standard Terms and Conditions.

#### **STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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.

#### **STC REC-1: Transfer of Renewable Energy Credits**

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

#### **STC REC-2: Tracking of RECs in WREGIS**

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 this contract.

### **STC 17: Applicable 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.

- 2.4 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit B & C respectively; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Renewable Energy and Carbon Free Source as defined herein. For other Energy deliveries hereunder, if any, Seller may use Unspecified Sources of Power; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.5 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the

applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.6 Retirement of RECs. Buyer agrees to retire the RECs purchased from Seller hereunder no later than four months after the year in which such RECs are produced in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.7. Additional Terms and Conditions

(1) Seller Representations and Warranties: Seller represents and warrants:

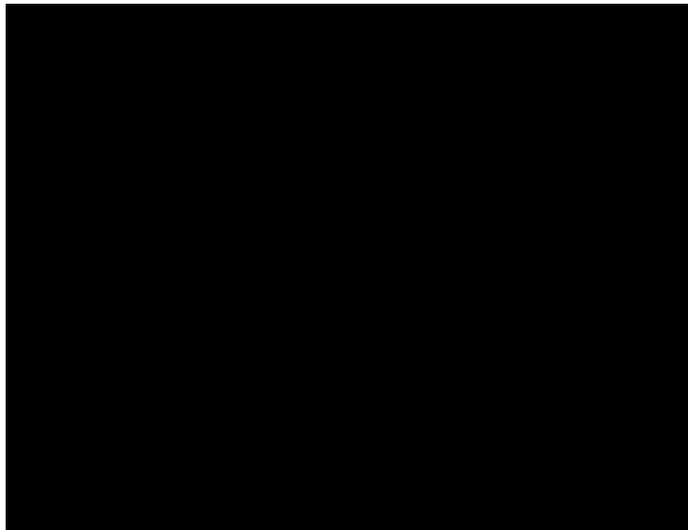
- (a) Seller has not sold the Product or any Program Attributes of the Product to be transferred to Buyer to any other person or entity;
- (b) For the sale of Renewable Energy and Carbon Free Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer's behalf; and
- (c) If and to the extent that the Renewable Energy sold by Seller is a resale of part or all of a contract 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 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 Renewable Energy that has not yet been generated prior to the later of the Effective Date or the Delivery Period;
  - iii. The 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.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.



4. **DELIVERY POINT.**



5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Carbon Free Energy and Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered

and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

- 6.2 Renewable Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity delivered by Seller as evidenced by the quantity of WREGIS Certificates in Seller's WREGIS account that are available for transfer to Buyer. Seller shall transfer RECs associated with the applicable Renewable Energy Contract Quantity to Buyer through WREGIS within five (5) days of receipt of payment from Buyer.
- 6.3 Carbon Free Energy Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

## 7. CONTRACT QUANTITIES.

- 7.1 Energy. Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
- 7.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy. Renewable Energy under this contract must be both (a) PCC1-eligible and (b) on the CRS attestation list for Green-E or produced by one or more renewable generating facilities that have a valid Green-E Energy Generator attestation on file (with an expiration date occurring on or after the final date of deliveries associated with the prospective transaction. Generators will be using fuel sources of either Wind or Solar as specified in Exhibit B.
- 7.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

## 8. MONTHLY BILLING SETTLEMENT.

- 8.1 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer no later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.
10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibits A, B and C.
11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.
12. **SECURITY PROVISIONS.**
- 12.1 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or the ongoing viability of the CCA.
- (a) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 23, 2016 (the "Master Agreement") between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

<b>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</b>
<b>Exhibit A – Energy Contract Quantity and Price Schedule</b>
<b>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</b>
<b>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</b>

**MORGAN STANLEY CAPITAL GROUP INC.**

Sign: Katie Martin

Print: Katie Martin

Title: Vice President

**SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority**

DocuSigned by:  
Sign: Girish Balachandran  
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Print: Girish Balachandran

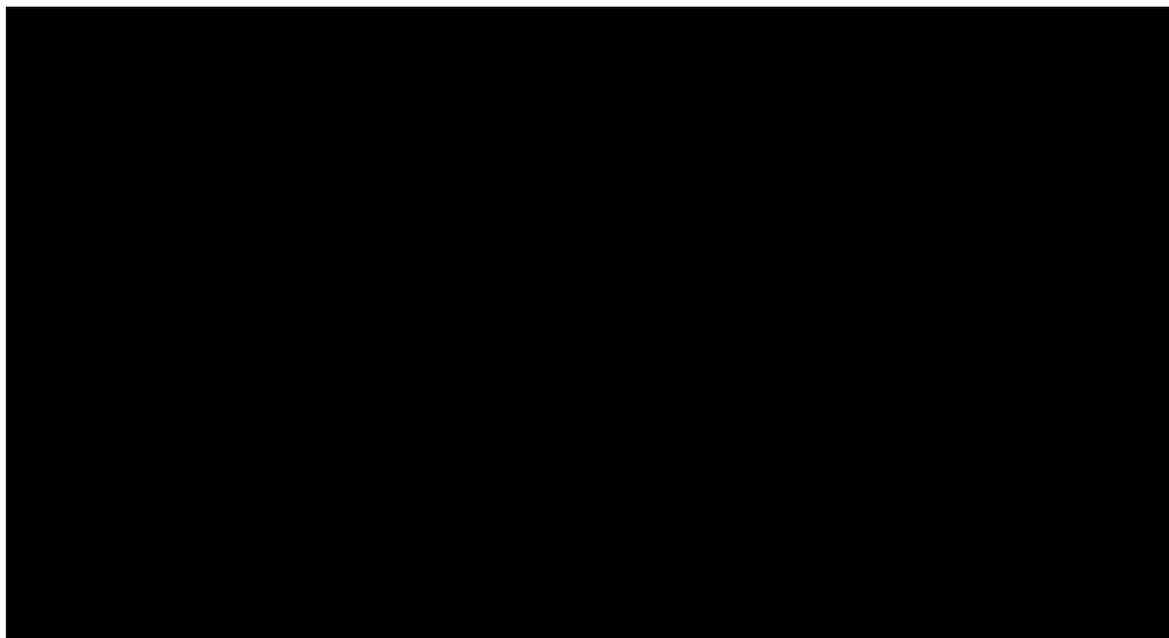
Title: CEO

**Exhibit A**

**Energy Contract Quantity and Price Schedule**

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## Exhibit B



**Exhibit C**

**Carbon Free Energy Contract Quantity and Price Schedule and Specified Sources**

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