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

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

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

Consent Calendar (Action)

1a) Approve Minutes of the June 8, 2022, Board of Directors Meeting

1b) Approve Minutes of the June 8, 2022, Board of Directors Special Meeting

1c) Approve Minutes of the June 10, 2022 Board of Directors Special Meeting

1d) Receive May and June 2022 Treasurer Report

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

1f) SVCE 2021 Annual Power Source Disclosure Report Attestation

1g) Establish Policy and Authorize Funding for SVCE Support of Electric Vehicle Charging in Affordable Housing Developments

1h) Authorize the Chief Executive Officer to Execute an Amendment to Agreement for FY21-22 with Keyes and Fox, LLP for Legal Services around Power Transactions

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
Regular Calendar

2) CEO Report (Discussion)

3) Provide Feedback on the FY 2022-23 Proposed Operating Budget and Updated Reserves Policy (Discussion)

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

Conference with Legal Counsel—Existing Litigation
(California Government Code Section 54956.9(d)(1))
Name of case: Central Coast Community Energy, a California joint powers authority; Silicon Valley Clean Energy Authority, a California joint powers authority v. Big Beau Solar, LLC, et al, Santa Clara County Superior Court Case No. 22CV398156

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

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

svcleanenergy.org
333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

Adjourn
Call to Order:
Chair Gibbons called the Regular Meeting to order at 7:05 p.m.

Roll Call
Present:
Liz Gibbons (Chair), Campbell
George Tyson (Vice Chair), Los Altos Hills
Jon Robert Willey, Cupertino
Zach Hilton, Gilroy
Neysa Fligor, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas (arrived at 7:11 p.m.)
Javed Ellahie, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill
Margaret Abe-Koga, Mountain View
Tina Walla, Saratoga
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County

Absent:
None.

Chair Gibbons, Vice Chair Tyson, Director Fligor and Director Willey attended in person; all other Directors attended via teleconference.

Adopt Resolution Commending Greg Stepanicich for His Dedicated Service to SVCE
Chair Gibbons introduced the resolution thanking General Counsel Greg Stepanicich for his service to SVCE since its inception. General Counsel Stepanicich thanked the SVCE Board of Directors, SVCE staff, and General Counsel Trisha Ortiz for their support during his time at SVCE.

Board members and CEO Girish Balachandran shared their gratitude to General Counsel Stepanicich for his service.

MOTION: Director Fligor moved and Vice Chair Tyson seconded the motion to adopt Resolution 2022-17 commending General Counsel Greg Stepanicich for his dedicated service supporting the Board of Directors of the Authority and staff.
The motion carried unanimously by verbal roll call vote.

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

Consent Calendar

1a) Approve Minutes of the May 11, 2022, Board of Directors Meeting
1b) Approve Minutes of the May 9, 2022, Board of Directors Special Meeting
1c) Receive April 2022 Treasurer Report
1d) Adopt Resolution Authorizing Public Meetings to Continue to Be Held Via Teleconferencing Pursuant to Government Code Section 54953(e) and Making Findings
1e) Authorize the Chief Executive Officer to Execute a First Amendment to the Agreement with HBT Energy Management LLC for Power Resource Management Services Amending the Term and Not-to-Exceed Amount
1f) Adopt Resolution to Implement SVCE Generation Rate Changes Effective June 202
1g) Authorize Funding Allocation for Community Electrification Engagement and Demonstration Programs
1h) Adopt Resolution Amending SVCE Conflict of Interest Code to Add Multiple Positions and Amend Position Titles
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 Fligor 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.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran addressed the following in his CEO report:
- Introductions of the following new employees: Raul Hernandez, Senior Marketing Specialist; Owen Milligan, Associate Power Analyst; and Ethan Wolff, Power Resources Sustainability Intern. All provided brief welcome comments.
- Communications Manager Pamela Leonard provided information on the results of the EmpowerSV Short Film Competition; one of the winning submissions was shown.
- CEO Balachandran called attention to the updates included in the Board packet’s CEO report, including a Summer Readiness presentation, Clean Power Update, Decarb Grid Innovation Programs update, and Community Outreach updates.

3) Amendment to Board Delegated Authority to Participate in the PG&E Voluntary Allocation Market Offer (VAMO) to Allow for the Resell of Excess Allocation to One or More Other CCAs (Action)
Senior Manager of Power Resources Charles Grinstead provided a presentation on the request to amend the delegated authority to participate in the PG&E Voluntary Allocation Market Officer (VAMP) to allow for the resell of excess allocation to one or more other CCAs, noting the CEO would only exercise the delegated authority should he deem it necessary to meet long-term procurement directives, or for any resales of the allocation, and will report back to the Board in a timely fashion.

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

MOTION: Director Abe-Koga moved and Director Lee seconded the motion to amend the previous authorization for SVCE’s Chief Executive Officer (CEO) to participate in Pacific Gas and Electric’s (PG&E) Voluntary Allocation Market Offer (VAMO) for SVCE’s portion of its load ratio share and execute necessary agreements including the Voluntary Allocation Confirmation under PG&E and SVCE Master Power Purchase and Sale Agreement and resell quantities not necessary to meet SVCE’s internal needs.

The motion carried unanimously by verbal roll call vote.

4) Authorize the Chief Executive Officer to Execute Necessary Agreements with California Community Power and Participating Community Choice Aggregators for Renewable Resources from Ormat Nevada Inc. and Open Mountain Energy, LLC (Action)

Monica Padilla, COO and Director of Power Resources, provided a presentation requesting the SVCE Board of Directors delegate authority to the CEO to execute necessary agreements with California Community Power for two new Geothermal Projects to meet SVCE’s mid-term reliability procurement obligations for firm clean resources:

**Ormat Nevada Inc. (Ormat) Portfolio of Geothermal Projects**

Expected Participation Share: 13.4% or 16.75 MW with quantity not to exceed 20.94 MW
Delivery term: 20 years starting on or about June 1, 2024
Dollar authority: not to exceed $256,000,000

**Open Mountain Energy LLC., Fish Lake Geothermal (OME)**

Expected Participation Share: 14.0% or 1.82 MW and quantity not to exceed 2.28 MW
Delivery term: 20 years starting on or about April 1, 2024
Dollar authority: not to exceed $30,000,000

COO and Director of Power Resources Padilla responded to board member questions regarding the projects.

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

MOTION: Director Fligor moved and Director Chua seconded the motion to authorize the Chief Executive Officer to execute necessary agreements with California Community Power and participating Community Choice Aggregators for renewable resources from Ormat Nevada Inc. and Open Mountain Energy, LLC.

The motion carried unanimously by verbal roll call vote.
5) SVCE Strategic Plan FY 23 Update (Discussion)

CEO Balachandran provided a presentation on an update to SVCE’s FY 23 Strategic Plan which included a timeline for the strategic plan and budget, an overview of the current Strategic Plan, an update on the development process, a summary of future five year goals, a recap of the FY 21-22 six focus areas, and next steps. CEO Balachandran addressed the following five focus areas: Employer of Choice, Supplier of Choice, Leverage Balance Sheet for Structured Financing, 24x7 clean energy delivery, and work electrification into SVCE’s value proposition to customers.

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

Chair Gibbons announced the Board of Directors would take a break and would return at 8:50 p.m.

The Board of Directors returned from a break at 8:57 p.m.

6) Results of Stress Test Analyses (Discussion)

Amrit Singh, CFO and Director of Administrative Services, provided a presentation on the findings of the stress test analyses which included construction of stress test cases, expectation versus results, risk mitigations and next steps in incorporating the recommendations into the proposed FY 22-23 budget.

CFO and Director of Administrative Services Singh responded to questions from the Board of Directors regarding reserves and risk assessment solutions.

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

7) Update on Digital Engagement Initiatives and Spring 2022 SVCE Electrification Awareness Survey Results (Presentation)

Don Bray, Director of Energy Services and Community Relations, and Pamela Leonard, Communications Manager, provided a presentation on digital engagement and customer awareness.

Staff responded to board member questions regarding the electrification awareness survey.

Director Fligor inquired if the unique user data from SVCE website visitors can identify location by city; staff noted they would check.

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

8) New Construction Reach Code Update (Presentation)

Zoe Elizabeth, Deputy Director of Decarbonization Programs & Policy, provided a presentation with a status update and information on SVCE’s 2022 all-electric model code.

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

Board Member Announcements and Future Agenda Items
Director Chua introduced a video created by students from UC Santa Cruz on Advanced Power Strips (APS) and announced a goal to distribute 8,000 APS to Milpitas residents as part of a grant program.
**Public Comment on Closed Session**
No speakers.

**Convene to Closed Session**
Chair Gibbons announced the Board of Directors would convene to Closed Session at 10:01 p.m. to discuss the following:

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: Amrit Singh, Chief Financial Officer and Director of Administrative Services, Kevin Armstrong, Deputy Director of Administrative Services, Nik Zanotto, Senior Management Analyst

**Report from Closed Session**
The Board of Directors returned from Closed Session at 10:24 p.m.; Chair Gibbons noted there was nothing to report.

Prior to adjournment, Chair Gibbons noted the regularly scheduled meeting would be adjourned and the special meeting of the Board of Directors would be called to order.

**Adjourn**
Chair Gibbons adjourned the meeting at 10:27 p.m.

Immediately following the adjournment of the regular Board of Directors Meeting, the Board of Directors called the Special Meeting of the Board of Directors to order.

**ATTEST:**

______________________________________
Andrea Pizano, Board Secretary
Silicon Valley Clean Energy Authority  
Board of Directors Special Meeting  
Wednesday, June 8, 2022  
7:00 pm  

Cupertino Community Hall  
10350 Torre Avenue  
Cupertino, CA

Pursuant to State of California Gov’t Code Section 54953 (e) the meeting was conducted via teleconference with an option for members of the Board of Directors and staff to participate in person.

DRAFT MINUTES

Call to Order:
Immediately following the adjournment of the regular Board of Directors meeting at 10:27 p.m., Chair Gibbons announced the special meeting and closed session would convene.

Roll Call

A roll call was not heard; the following Directors were in attendance:

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

Absent:
None.

Chair Gibbons, Vice Chair Tyson, Director Fligor and Director Willey attended in person; all other Directors attended via teleconference.

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

Public Comment on Closed Session
No speakers.
**Convene to Closed Session**
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 11:59 p.m.; Chair Gibbons confirmed with Board Clerk Andrea Pizano there was a quorum. Chair Gibbons noted there was nothing to report from Closed Session.

**Adjourn**
Chair Gibbons adjourned the meeting at 11:59 p.m.

**ATTEST:**

_____________________________
Andrea Pizano, Board Secretary
Silicon Valley Clean Energy Authority
Board of Directors Special Meeting
Friday, June 10, 2022
1:00 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 Special Meeting to order at 1:02 p.m.

Roll Call

Present:

Directors
Liz Gibbons (Chair), Campbell
George Tyson (Vice Chair), Los Altos Hills
Neysa Fligor, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Margaret Abe-Koga, Mountain View
Tina Walia, Saratoga
Larry Klein, Sunnyvale
Otto Lee, Santa Clara County

Alternate Directors
Hung Wei, Cupertino
Sally Meadows, Los Altos
Lisa Schmidt, Los Altos Hills
Lisa Matichak, Mountain View
Gustav Larsson, Sunnyvale

Absent:

Directors
Jon Robert Willey, Cupertino
Zach Hilton, Gilroy
Javed Ellahie, Monte Sereno
Yvonne Martinez Beltran, Morgan Hill

Alternate Directors
Sergio Lopez, Campbell
Rebeca Armendariz, Gilroy
Marico Sayoc, Los Gatos
Elaine Marshall, Milpitas
Bryan Mekechuk, Monte Sereno
John McKay, Morgan Hill
All present Board members participated via teleconference.

Chair Gibbons provided brief welcome comments and thanked board members for attending the workshop.

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

Regular Calendar
1) SVCE Policy and Strategy Workshops: The Next Chapter in Decarbonization

CEO Girish Balachandran introduced the workshop and addressed workshop goals which included:
- Educate the Board and SVCE Community on key trends in energy and climate;
- Identify SVCE’s role within the California energy policy and market ecosystem;
- Explore challenges and opportunities resulting from changing market and regulatory conditions; and,
- Prime the Board for future decisions on SVCE policies and priorities.


Staff responded to board member questions.

Vice Chair Tyson inquired the frequency and voltage changes required for reliability; CEO Balachandran noted staff would capture the question for a future deeper dive.

Director Chua requested additional information on small modular reactors (SMRs).

CEO Balachandran thanked Senior Manager of Energy Policy and Regulatory Analysis Wenzel and thanked/introduced Nick Pappas of NP Energy, who assisted in framing and developing the workshop.

Board Member Announcements and Direction on Future Agenda Items
None.

Adjourn
Chair Gibbons adjourned the meeting at 3:00 p.m.

ATTEST:

_____________________________
Andrea Pizano, Board Secretary
TREASURER REPORT

Fiscal Year to Date
As of June 30, 2022

(Preliminary & Unaudited)

Issue Date: August 10, 2022

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<td>Summary</td>
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<td>Statement of Net Position</td>
<td>4</td>
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<td>Statement of Revenues, Expenses &amp; Changes in Net Position</td>
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<td>Statement of Cash Flows</td>
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<td>Actuals to Budget Report</td>
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<td>Monthly Change in Net Position</td>
<td>11</td>
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<td>Investments Report</td>
<td>12</td>
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<td>Customer Accounts</td>
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<tr>
<td>Accounts Receivable Aging Report</td>
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Financial Highlights for the month of June 2022:

> SVCE operations resulted in a change in net position for the month of $13.1 million and fiscal-year-to-date (FYTD) change in net position of $15.2 million.

> Retail GWh sales for the month landed 4.5% below budget.

> FYTD operating margin of $29.6 million or ~13% is below budget expectations of 19.4% operating margin for the fiscal year to date.

> FYTD Power Supply costs are 5.5% above budget.

> SVCE is investing ~94.3% of available funds generating FYTD investment income of $0.17 million.

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<th>Change in Net Position</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
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<td>1,532</td>
<td>(4,526)</td>
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<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
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<td>(1,124)</td>
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<th>Other</th>
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<th>Jan</th>
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<th>Mar</th>
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<th>Jan</th>
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<td>322</td>
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</table>

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

- Power Supply: 93.6%
- Personnel: 1.5%
- Contract Services: 3.2%
- Depreciation: 0.0%

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<tr>
<th>Other Statistics and Ratios</th>
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<tbody>
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<td>Working Capital</td>
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<tr>
<td>$189,378,790</td>
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<td>Current Ratio</td>
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<td>Operating Margin</td>
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<tr>
<td>Opt-Out Accounts (Month)</td>
</tr>
<tr>
<td>53</td>
</tr>
<tr>
<td>Opt-Out Accounts (FYTD)</td>
</tr>
<tr>
<td>371</td>
</tr>
<tr>
<td>Opt-Up Accounts (Month)</td>
</tr>
<tr>
<td>(4)</td>
</tr>
<tr>
<td>Opt-Up Accounts (FYTD)</td>
</tr>
<tr>
<td>217</td>
</tr>
</tbody>
</table>

**Retail Sales - Month**

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Amended Budget</th>
<th>FY20/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>44.9</td>
<td>50.2</td>
<td>22.9</td>
</tr>
</tbody>
</table>

**Retail Sales - YTD**

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Amended Budget</th>
<th>FY20/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>224.0</td>
<td>230.1</td>
<td>167.0</td>
</tr>
</tbody>
</table>

**Controllable O&M - Month**

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Amended Budget</th>
<th>FY20/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>31.9</td>
<td>26.7</td>
<td>27.9</td>
</tr>
</tbody>
</table>

**Controllable O&M - YTD**

<table>
<thead>
<tr>
<th></th>
<th>Actual</th>
<th>Amended Budget</th>
<th>FY20/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Millions</td>
<td>208.9</td>
<td>201.7</td>
<td>184.8</td>
</tr>
</tbody>
</table>
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION
As of June 30, 2022

ASSETS

Current Assets
Cash & Cash Equivalents $151,713,064
Accounts Receivable, net of allowance 36,503,771
Accrued Revenue 27,756,817
Other Receivables 61,988
Prepaid Expenses 4,526,421
Deposits 3,846,882
Restricted cash 661,854
Total Current Assets 225,070,797

Noncurrent assets
Capital assets, net of depreciation 316,187
Deposits 45,330
Total Noncurrent Assets 361,517
Total Assets 225,432,314

LIABILITIES

Current Liabilities
Accounts Payable 690,354
Accrued Cost of Electricity 32,208,943
Other accrued liabilities 873,921
User Taxes and Energy Surcharges due to other gov'ts 1,181,935
Supplier securit deposits 75,000
Total Current Liabilities 35,030,153

Noncurrent Liabilities
Supplier security deposits 9,131,250
Total noncurrent liabilities 9,131,250
Total Liabilities 44,161,403

NET POSITION

Net investment in capital assets 316,187
Restricted for security collateral 661,854
Unrestricted (deficit) 180,292,870
Total Net Position $181,270,911
### OPERATING REVENUES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electricity Sales, Net</td>
<td>$220,449,907</td>
</tr>
<tr>
<td>GreenPrime electricity premium</td>
<td>1,324,607</td>
</tr>
<tr>
<td>Other income</td>
<td>19,501</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>2,224,250</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td><strong>224,018,265</strong></td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Electricity</td>
<td>195,481,496</td>
</tr>
<tr>
<td>Contract services</td>
<td>6,753,560</td>
</tr>
<tr>
<td>Staff compensation and benefits</td>
<td>4,896,058</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>1,696,506</td>
</tr>
<tr>
<td>Depreciation</td>
<td>72,247</td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td><strong>208,899,867</strong></td>
</tr>
</tbody>
</table>

**OPERATING INCOME(LOSS)**

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>15,118,398</td>
</tr>
</tbody>
</table>

### NONOPERATING REVENUES (EXPENSES)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Income</td>
<td>171,157</td>
</tr>
<tr>
<td>Financing costs</td>
<td>(101,130)</td>
</tr>
<tr>
<td><strong>TOTAL NONOPERATING REVENUES (EXPENSES)</strong></td>
<td><strong>70,027</strong></td>
</tr>
</tbody>
</table>

### CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Position at beginning of period</td>
<td>166,082,486</td>
</tr>
<tr>
<td>Net Position at end of period</td>
<td>$181,270,911</td>
</tr>
</tbody>
</table>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS
October 1, 2021 through June 30, 2022

CASH FLOWS FROM OPERATING ACTIVITIES
Receipts from customers $201,679,995
Receipts from liquidated damages $2,224,250
Other operating receipts 2,274,502
Payments to suppliers for electricity (198,945,973)
Payments for other goods and services (9,232,858)
Payments for staff compensation and benefits (4,793,555)
Tax and surcharge payments to other governments (3,638,366)
Net cash provided (used) by operating activities (10,432,005)

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES
Finance costs paid (101,130)

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES
Acquisition of capital assets (71,668)

CASH FLOWS FROM INVESTING ACTIVITIES
Interest income received 171,157
Net change in cash and cash equivalents (10,433,646)
Cash and cash equivalents at beginning of year 162,808,564
Cash and cash equivalents at end of period $152,374,918

Reconciliation to the Statement of Net Position
Cash and cash equivalents (unrestricted) $151,713,064
Restricted cash 661,854
Cash and cash equivalents $152,374,918
SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)
October 1, 2021 through June 30, 2022

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

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Income (loss)</td>
<td>$ 15,118,398</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>72,247</td>
</tr>
<tr>
<td>Revenue adjusted for uncollectible accounts</td>
<td>$(500,000)</td>
</tr>
<tr>
<td>(Increase) decrease in net accounts receivable</td>
<td>$(10,013,587)</td>
</tr>
<tr>
<td>(Increase) decrease in energy settlements receivable</td>
<td>269,012</td>
</tr>
<tr>
<td>(Increase) decrease in other receivables</td>
<td>168,497</td>
</tr>
<tr>
<td>(Increase) decrease in accrued revenue</td>
<td>$(13,346,197)</td>
</tr>
<tr>
<td>(Increase) decrease in prepaid expenses</td>
<td>$(2,148,185)</td>
</tr>
<tr>
<td>(Increase) decrease in current deposits</td>
<td>$(3,120,798)</td>
</tr>
<tr>
<td>Increase (decrease) in accounts payable</td>
<td>$(847,022)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued cost of electricity</td>
<td>$(5,109,599)</td>
</tr>
<tr>
<td>Increase (decrease) in accrued liabilities</td>
<td>231,878</td>
</tr>
<tr>
<td>Increase (decrease) in energy settlements payable</td>
<td>6,491,451</td>
</tr>
<tr>
<td>Increase (decrease) in taxes and surcharges due to other governments</td>
<td>126,900</td>
</tr>
<tr>
<td>Increase (decrease) in supplier security deposits</td>
<td>2,175,000</td>
</tr>
<tr>
<td><strong>Net cash provided (used) by operating activities</strong></td>
<td><strong>$(10,432,005)</strong></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>OPERATING REVENUES</strong></td>
<td></td>
</tr>
<tr>
<td>Energy Sales</td>
<td></td>
</tr>
<tr>
<td>Green Prime Premium</td>
<td></td>
</tr>
<tr>
<td>Liquidated damages</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL OPERATING REVENUES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ENERGY EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td>Power Supply</td>
<td></td>
</tr>
<tr>
<td>Operating Margin</td>
<td></td>
</tr>
<tr>
<td><strong>OPERATING EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td>Data Management</td>
<td></td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td></td>
</tr>
<tr>
<td>Salaries &amp; Benefits</td>
<td></td>
</tr>
<tr>
<td>Professional Services</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td></td>
</tr>
<tr>
<td>Notifications</td>
<td></td>
</tr>
<tr>
<td>Lease</td>
<td></td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL OPERATING EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>OPERATING INCOME/(LOSS)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NON-OPERATING REVENUES</strong></td>
<td></td>
</tr>
<tr>
<td>Other Income</td>
<td></td>
</tr>
<tr>
<td>Investment Income</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL NON-OPERATING REVENUES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NON-OPERATING EXPENSES</strong></td>
<td></td>
</tr>
<tr>
<td>Financing</td>
<td></td>
</tr>
<tr>
<td><strong>CAPITAL EXPENDITURES, TRANSFERS, &amp; OTHER</strong></td>
<td></td>
</tr>
<tr>
<td>Capital Outlay</td>
<td></td>
</tr>
<tr>
<td>Transfer to Programs Fund</td>
<td></td>
</tr>
<tr>
<td>Nuclear Allocation</td>
<td></td>
</tr>
<tr>
<td>Double Down Programs Allocation</td>
<td></td>
</tr>
<tr>
<td>Customer Bill Relief</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL OTHER USES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE</strong></td>
<td></td>
</tr>
</tbody>
</table>
### SILICON VALLEY CLEAN ENERGY AUTHORITY

**PROGRAM FUND**

**BUDGETARY COMPARISON SCHEDULE**  
October 1, 2021 through June 30, 2022

<table>
<thead>
<tr>
<th>REVENUE &amp; OTHER SOURCES:</th>
<th>Amended BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>ADOPTED BUDGET</th>
<th>ACTUAL/ADOPTED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Operating Fund</td>
<td>$24,381,000</td>
<td>$18,286,094</td>
<td>$6,094,906</td>
<td>75%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXPENDITURES &amp; OTHER USES:</th>
<th>Amended BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>ADOPTED BUDGET</th>
<th>ACTUAL/ADOPTED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td></td>
<td>1,179,865</td>
<td>7,401,716</td>
<td>13.7%</td>
<td></td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance:  
- $15,799,419  
- $17,106,229  
- $22,943,940

**CUSTOMER RELIEF & COMMUNITY RESILIENCY FUND**

**BUDGETARY COMPARISON SCHEDULE**  
October 1, 2021 through June 30, 2022

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

<table>
<thead>
<tr>
<th>EXPENDITURES &amp; OTHER USES:</th>
<th>Amended BUDGET</th>
<th>ACTUAL</th>
<th>REMAINING</th>
<th>ADOPTED BUDGET</th>
<th>ACTUAL/ADOPTED BUDGET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program expenditures</td>
<td>2,850,000</td>
<td>6,135</td>
<td>2,843,865</td>
<td>0.2%</td>
<td></td>
</tr>
</tbody>
</table>

Net increase (decrease) in fund balance:  
- $(2,850,000)  
- $(6,135)  
- $7,984,180
SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
October 1, 2021 through June 30, 2022

Net Increase (decrease) in available fund balance per budgetary comparison schedule $ (1,911,182)

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

- Subtract depreciation expense (72,247)
- Subtract program expense not in operating budget (1,179,865)
- Subtract CRCR expense not in operating budget (6,135)
- Add back transfer to Program fund 18,286,094
- Add back capital asset acquisition 71,760

Change in Net Position 15,188,425
### SILICON VALLEY CLEAN ENERGY AUTHORITY

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

**October 1, 2021 through June 30, 2022**

<table>
<thead>
<tr>
<th></th>
<th>October</th>
<th>November</th>
<th>December</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING REVENUES</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$17,365,080</td>
<td>$14,621,707</td>
<td>$17,815,729</td>
<td>$17,223,581</td>
<td>$16,277,554</td>
<td>$29,781,167</td>
<td>$31,256,974</td>
<td>$31,334,686</td>
<td>$44,768,429</td>
<td></td>
<td></td>
<td></td>
<td>$220,449,907</td>
</tr>
<tr>
<td>Green electricity premium</td>
<td>80,961</td>
<td>60,556</td>
<td>95,594</td>
<td>462,877</td>
<td>103,634</td>
<td>131,601</td>
<td>116,747</td>
<td>141,505</td>
<td>131,322</td>
<td></td>
<td></td>
<td></td>
<td>$1,324,607</td>
</tr>
<tr>
<td>Other Income</td>
<td>1,000</td>
<td>2,500</td>
<td>1,000</td>
<td>3,500</td>
<td>2,250</td>
<td>5,251</td>
<td>1,000</td>
<td>2,000</td>
<td>1,000</td>
<td></td>
<td></td>
<td></td>
<td>19,501</td>
</tr>
<tr>
<td>Liquidated damages</td>
<td>922,250</td>
<td>1,302,000</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td>$-</td>
<td></td>
<td></td>
<td></td>
<td>2,224,250</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>17,447,041</td>
<td>14,684,763</td>
<td>17,912,323</td>
<td>18,617,018</td>
<td>17,685,438</td>
<td>29,918,019</td>
<td>31,374,721</td>
<td>31,478,191</td>
<td>44,900,751</td>
<td></td>
<td></td>
<td></td>
<td>224,018,265</td>
</tr>
</tbody>
</table>

| **OPERATING EXPENSES**  |             |             |             |             |             |              |              |              |              |              |              |              |              |
| Cost of electricity     | 14,524,607  | 17,907,845  | 18,660,060  | 23,179,137  | 22,034,894  | 26,743,821   | 18,988,683  | 23,163,741   | 195,481,496  |              |              |              | 195,481,496  |
| Staff compensation and benefits | 448,444 | 465,162     | 593,320     | 572,350     | 538,661     | 551,232      | 540,655     | 555,023      | 630,611      |              |              |              | 4,996,058    |
| Data manager            | 263,759     | 263,759     | 262,863     | 263,514     | 264,092     | 264,817      | 265,032     | -            | 531,059      |              |              |              | 2,378,865    |
| Service fees - PG&E     | 97,254      | 96,768      | 104,341     | 97,053      | 97,084      | 97,331       | 97,671      | -            | 199,269      |              |              |              | 886,771      |
| Consultants and other professional fees | 370,413 | 341,404     | 376,273     | 473,924     | 393,452     | 363,558      | 395,856     | 744,189      | 28,855       |              |              |              | 3,487,924    |
| General and administration | 209,985 | 134,289     | 152,437     | 306,490     | 129,063     | 161,762      | 179,349     | 247,909      | 175,222      |              |              |              | 1,696,506    |
| Depreciation            | 7,289       | 8,162       | 7,774       | 7,716       | 7,853       | 8,168        | 8,169       | 8,558        | 8,558        |              |              |              | 72,247       |
| Total operating expenses| 15,922,151  | 19,217,389  | 20,157,068  | 24,900,184  | 23,465,299  | 28,190,683   | 20,475,385  | 24,719,420   | 31,852,282   |              |              |              | 208,899,867  |
| Operating income (loss) | 1,524,890   | (4,532,626) | (2,244,745) | (6,283,166) | (5,779,861) | 1,727,330    | 10,899,336  | 6,758,771    | 13,048,469   |              |              |              | 15,118,398   |

| **NONOPERATING REVENUES (EXPENSES)** |             |             |             |             |             |              |              |              |              |              |              |              |              |
| Interest income         | 18,545      | 18,382      | 19,370      | 18,957      | 16,791      | 17,596       | 15,861      | 16,059       | 29,596       |              |              |              | 171,157      |
| Financing costs         | (11,042)    | (11,626)    | (12,027)    | (11,042)    | (11,226)    | (11,042)     | (11,042)    | (11,042)     | (11,042)     | (11,042)     | (11,042)     | (11,042)     | (101,130)    |
| Total nonoperating income (expenses) | 7,503       | 6,756       | 7,343       | 7,915       | 5,565       | 6,554        | 4,819       | 5,018        | 18,554       |              |              |              | 70,027       |

| **CHANGE IN NET POSITION** | $1,532,393 | ($4,525,870) | ($2,237,402) | ($6,275,251) | ($5,774,296) | $1,733,884 | $10,904,155 | $6,763,789 | $13,067,023 | $-          | $-          | $-          | $15,188,425 |

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**Item 1d**

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**June Treasure Report 2022**
**SILICON VALLEY CLEAN ENERGY AUTHORITY**  
**INVESTMENTS SUMMARY**  
October 1, 2021 through June 30, 2022

### Return on Investments

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$18,545</td>
<td>$18,382</td>
<td>$19,370</td>
<td>$18,957</td>
<td>$16,791</td>
<td>$17,596</td>
<td>$15,861</td>
<td>$16,059</td>
<td>$29,596</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$171,157</td>
</tr>
</tbody>
</table>

**Portfolio Invested**

- **Average daily portfolio available to invest***
  - 152,976,979  
  - 155,897,345  
  - 155,743,105  
  - 157,270,808  
  - 153,138,549  
  - 145,837,752  
  - 137,341,613  
  - 133,261,734  
  - 132,574,141

- **Average daily portfolio invested**
  - 141,994,910  
  - 145,456,026  
  - 148,530,962  
  - 147,297,741  
  - 145,363,213  
  - 137,891,490  
  - 128,040,211  
  - 122,422,665  
  - 125,005,246

- **% of average daily portfolio invested**
  - 92.8%  
  - 93.3%  
  - 95.4%  
  - 93.7%  
  - 94.9%  
  - 94.6%  
  - 93.2%  
  - 91.9%  
  - 94.3%

### Detail of Portfolio

<table>
<thead>
<tr>
<th></th>
<th>Opening Rate</th>
<th>Current Rate</th>
<th>Carrying Value</th>
<th>Interest Earned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money Market - River City Bank</td>
<td>1.26%</td>
<td>0.28%</td>
<td>$130,867,566</td>
<td>$28,986</td>
</tr>
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</table>

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

RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
</tr>
</thead>
<tbody>
<tr>
<td>2022</td>
<td>246.9</td>
<td>247.2</td>
<td>247.4</td>
<td>247.5</td>
<td>248.1</td>
<td>248.3</td>
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<td>249.3</td>
<td></td>
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</tr>
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</table>

NON-RESIDENTIAL ACCOUNTS

<table>
<thead>
<tr>
<th></th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
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<th>Apr</th>
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<th>Jun</th>
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<th>Sep</th>
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<tbody>
<tr>
<td>2022</td>
<td>27.7</td>
<td>27.6</td>
<td>27.6</td>
<td>27.4</td>
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<td>27.4</td>
<td>27.5</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Actual vs. Budget
SILICON VALLEY CLEAN ENERGY AUTHORITY
ACCOUNTS RECEIVABLE AGING REPORT

<table>
<thead>
<tr>
<th>Age Summary</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 30 days</td>
<td>$31,569,984</td>
</tr>
<tr>
<td>31 to 60 days</td>
<td>$2,938,407</td>
</tr>
<tr>
<td>61 to 90 days</td>
<td>$941,388</td>
</tr>
<tr>
<td>91 to 120 days</td>
<td>$499,314</td>
</tr>
<tr>
<td>Over 120 days</td>
<td>$2,748,048</td>
</tr>
</tbody>
</table>

Accounts Receivable Days: 37 Days

Total Due: $38,697,141

Bad Debt % (Budget): 1%
Staff Report – Item 1e

Item 1e: 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: 8/10/2022

RECOMMENDATION
To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-18 making the findings required by Section 54953(e)(3).

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

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

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

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

On October 13, 2021, the Board adopted its Resolution 2021-23 to authorize public meetings to be held via teleconferencing pursuant to Government Code section 54953(e).
Within thirty days after the first teleconferenced meeting held under AB 361, and every thirty days thereafter, in order to continue meeting by teleconference, the local agency’s legislative body must find that it has reconsidered the circumstances of the state of emergency and that either: (1) The state of emergency continues to directly impact the ability of the members to meet safely in person; or (2) State or local officials continue to impose or recommend measures to promote social distancing.

The list below identifies the board meeting dates and corresponding resolutions 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):

November 10, 2021: 2021-26;
December 8, 2021: 2021-27;
January 12, 2022: 2022-02;
February 9, 2022: 2022-03;
March 9, 2022: 2022-07;
April 13, 2022: 2022-11;
May 11, 2022: 2022-13; and

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 as of July 7, 2022, which is the date occurring thirty days after the Board made its previous findings by adopting Resolution No. 2022-14 on June 8, 2022, 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 2022-18 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. 2022-18

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. As required by Government Code Section 54953(e)(3), the findings made pursuant to this Section 2 shall apply as of July 7, 2022 and shall cover the period of time until the next regular meeting of the Board.

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 10th day of August 2022, by the following vote:

<table>
<thead>
<tr>
<th>JURISDICTION</th>
<th>NAME</th>
<th>AYE</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Campbell</td>
<td>Director Gibbons</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
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RESOLUTION 2022-18
<table>
<thead>
<tr>
<th>City of Cupertino</th>
<th>Director Willey</th>
</tr>
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<tbody>
<tr>
<td>City of Gilroy</td>
<td>Alternate Director Armendariz</td>
</tr>
<tr>
<td>City of Los Altos</td>
<td>Director Fligor</td>
</tr>
<tr>
<td>Town of Los Altos Hills</td>
<td>Director Tyson</td>
</tr>
<tr>
<td>Town of Los Gatos</td>
<td>Director Rennie</td>
</tr>
<tr>
<td>City of Milpitas</td>
<td>Director Chua</td>
</tr>
<tr>
<td>City of Monte Sereno</td>
<td>Director Ellahie</td>
</tr>
<tr>
<td>City of Morgan Hill</td>
<td>Director Martinez Beltran</td>
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<tr>
<td>City of Mountain View</td>
<td>Director Abe-Koga</td>
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<tr>
<td>County of Santa Clara</td>
<td>Director Lee</td>
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<tr>
<td>City of Saratoga</td>
<td>Director Walia</td>
</tr>
<tr>
<td>City of Sunnyvale</td>
<td>Director Klein</td>
</tr>
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</table>

____________________________

Chair

**ATTEST:**

____________________________

Andrea Pizano, Board Clerk
Staff Report – Item 1f

Item 1f: SVCE 2021 Annual Power Source Disclosure Report Attestation

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Supply
       Thomas Messier, Power Settlements & Compliance Analyst

Date: 8/10/2022

RECOMMENDATION
Staff recommends that the Board approve the use of statistics reflected in SVCE’s 2021 annual Power Source Disclosure reports for purposes of preparing SVCE’s 2021 Power Content Label and endorse the accuracy of information presented in SVCE’s 2021 Power Source Disclosure report for Green-Start service.

BACKGROUND
California Public Utilities Code requires all retail sellers of electric energy, including SVCE, to disclose “accurate, reliable, and simple-to-understand information on the sources of energy” that are delivered to their respective customers. Applicable regulations direct retail sellers to provide such communications to customers following each year of operation. The format for requisite communications is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. This format has been termed the “Power Content Label” (or PCL) by the California Energy Commission (CEC). Prior to distributing the PCL to its customers, SVCE annually submits a report regarding its specified power purchases to the CEC. This report is a required element of California’s Power Source Disclosure Program (PSD Program) and was timely submitted to the CEC prior to the June 1st reporting deadline. Both the aforementioned annual report and the PCL are required elements of California’s PSD Program, and information reflected in the annual report is contributory to the PCL (with the annual report’s power supply breakout being inserted in the PCL).

Information presented in the PCL includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. SVCE’s Community Relations team is in the process of designing the 2021 Power Content Label.

ANALYSIS & DISCUSSION
During the 2021 calendar year, SVCE successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal, hydropower, biomass and biogas – for Green-Start customers, the percentage of supply attributable to renewable energy sources approximated 44.1 percent; for Green-Prime customers, renewable energy comprised 100 percent of the supply portfolio. SVCE’s actual Green Start procurement equaled 48.9 percent RPS eligible resources.

1 California Public Utilities Code Section 398.1(b) Note: that Section (b)(1), as referenced in the excerpt from applicable PSD regulations, refers to the completion of annual independent audits.

2 Assembly Bill 1110, passed in 9/26/16, California Energy Commission “Modification of Regulations Governing the Power Source Disclosure Program” 5/15/20, modified the PCL reporting requirements starting with reporting year 2020 to include emissions associated with power supply and treatment of over procurement of resources. As such, for 2021 while SVCE has procured 48.9% RPS eligible resources under Green Start, because SVCE had more clean resources than load only 44.1% will be shown on the PCL.
Consistent with applicable regulations, SVCE will complete requisite customer communications following the Board’s approval of pertinent information to be included in the 2021 PCL. Customers receiving PCL communications will include those enrolled in the SVCE program as of December 31, 2022 – the distribution list was derived based on prior discussions with designated CEC staff.

SVCE’s Green-Prime retail service option is a Green-e Energy certified product, conforming to guidelines established by the Center for Resource Solutions, the Green-e Energy program administrator. As part of this certification, SVCE must successfully complete an annual independent audit of power sources, ensuring the delivery of qualifying renewable energy to participating Green-Prime customers. Such audits were timely completed, noting “no exceptions” in related audit reports.

While preparing SVCE’s 2021 annual PSD report, staff performed a detailed review of all power purchases completed for the 2021 calendar year. This review included an inventory of all renewable energy transfers within SVCE’s Western Renewable Energy Generation Information System (WREGIS) accounts, pertinent transaction records, and requisite independent audits for SVCE’s voluntary Green-Prime, 100% renewable energy program, which also provides 100% renewable energy to participating customers. Based on staff’s review of available data and findings of the independent auditor (related to the Green-Prime product offering), the information presented in the annual report was determined to be accurate. Again, such information will be reflected in SVCE’s upcoming PCL for 2021 operations.

To fulfill its obligations under the PSD Program, SVCE must also provide the CEC with an attestation of its Governing Board regarding the accuracy of information included in the PSD annual reports.

Because SVCE’s Green-Prime product offering is independently audited (a process that was completed in June 2022 for the 2021 operating year), SVCE is proceeding with self-certification of its annual report for the Green-Start product offering, consistent with PSDP regulations. Evidence of such attestation (for Green-Start) as well as the aforementioned audit report (for Green-Prime) must be provided to the CEC by October 1st.

Should the Board endorse staff’s recommendation, a copy of this staff report, related meeting minutes and a copy of SVCE’s 2021 Audit Report for the Green-Prime product offering will be forwarded to the CEC, thereby completing SVCE’s obligations under the PSD Program for the 2021 calendar year.

**STRATEGIC PLAN**

As referenced in SVCE’s Strategic Plan, SVCE will use various channels and platforms to cultivate relationships with and bring customer value to all segments of the communities we serve. Complying with these regulations will increase customer trust and continue SVCE’s transparency.

**ALTERNATIVE**

Should the Board choose not to endorse the information provided for the power content label, staff will need to file an extension with the CEC and hire an auditor to review SVCE’s data for compliance.

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

1. 2021 SVCE Power Content Label
### Greenhouse Gas Emissions Intensity (lbs CO₂e/MWh)

<table>
<thead>
<tr>
<th>Energy Resources</th>
<th>Green Start</th>
<th>Green Prime</th>
<th>2021 CA Utility Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Renewable¹</td>
<td>44.1%</td>
<td>100.0%</td>
<td>33.6%</td>
</tr>
<tr>
<td>Biomass &amp; Biowaste</td>
<td>4.9%</td>
<td>0.0%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Geothermal</td>
<td>13.9%</td>
<td>0.0%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Eligible Hydroelectric</td>
<td>2.2%</td>
<td>0.0%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Solar</td>
<td>17.5%</td>
<td>100.0%</td>
<td>14.2%</td>
</tr>
<tr>
<td>Wind</td>
<td>5.6%</td>
<td>0.0%</td>
<td>11.4%</td>
</tr>
<tr>
<td>Coal</td>
<td>0.0%</td>
<td>0.0%</td>
<td>3.0%</td>
</tr>
<tr>
<td>Large Hydroelectric</td>
<td>35.9%</td>
<td>0.0%</td>
<td>9.2%</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>0.0%</td>
<td>0.0%</td>
<td>37.9%</td>
</tr>
<tr>
<td>Nuclear</td>
<td>20.0%</td>
<td>0.0%</td>
<td>9.3%</td>
</tr>
<tr>
<td>Other</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Unspecified Power²</td>
<td>0.0%</td>
<td>0.0%</td>
<td>6.8%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
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</table>

### Percentage of Retail Sales Covered by Retired Unbundled RECs³:

<table>
<thead>
<tr>
<th></th>
<th>Green Start</th>
<th>Green Prime</th>
<th>2021 CA Utility Average</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td></td>
</tr>
</tbody>
</table>

¹The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.

²Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.

³Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.

For specific information about this electricity portfolio, contact: Silicon Valley Clean Energy 1-844-474-SVCE (7823)

For general information about the Power Content Label, visit: http://www.energy.ca.gov/pcl/

For additional questions, please contact the California Energy Commission at: Toll-free in California: 844-454-2906 Outside California: 916-653-0237
Staff Report – Item 1g

Item 1g: Establish Policy and Authorize Funding for SVCE Support of Electric Vehicle Charging in Affordable Housing Developments

From: Girish Balachandran, CEO

Prepared by: Justin Zagunis, Director of Decarbonization Programs & Policy; Tony Eulo, Senior Manager of Public Sector Services

Date: 8/10/2022

RECOMMENDATION
Staff recommends the Silicon Valley Clean Energy (SVCE) Board of Directors approve the following policy statement and action:

**Policy Statement:** Consistent with the SVCE Equity Framework, SVCE is committed to ensuring that residents in new affordable housing developments have equitable electric vehicle (EV) charging access. In support of this commitment, SVCE will provide funding to address the incremental EV charging infrastructure costs associated with the SVCE model code in new very low income and low income developments for this building code cycle.

**Action:** Authorize staff to expand SVCE’s support for affordable housing by reallocating up to $6M of unspent or future programs dollars to cover the impact of the EVI model code on affordable housing during this three-year building code cycle. The $6M in funding will be added above the currently budgeted $1.5M (to create a total program budget of $7.5M) as needed - depending on how many jurisdictions adopt the code and affordable housing construction that actually occurs. Additional funds from future programs allocations will be incorporated into the recommended budget presented to the Board.

EXECUTIVE COMMITTEE RECOMMENDATION
Staff presented the new program ideas at the June 24th Executive Committee meeting. The Executive Committee expressed support for the program idea and voted to recommend approval of the policy statement and budget authorization on the August 10th board meeting consent calendar.

BACKGROUND
**EV Charging in Multifamily Settings:** Unlike residents benefitting from a private garage, tenants in multifamily settings with shared parking facilities cannot easily install EV charging equipment. This large inequity in easy charging access significantly decreases the practicality of EV adoption for multifamily residents creating. As California transitions to widescale EV use and phases out internal combustion engine vehicles, charging access for multifamily residents looms as a huge problem to be solved. In recognizing this, the SVCE Board has previously authorized $1.5M in funding support to address charging at new affordable housing developments.

**Affordable Housing:** California’s well-documented housing crisis has resulted in housing unaffordability, homelessness, and a reduced quality of life for many residents. To counteract this crisis, the California
Legislature has established a host of laws to reduce impediments to new housing and has pushed local jurisdictions to become more responsible for siting and producing needed affordable housing.

**SVCE Model Reach Code:** In order to promote equity and facilitate EV adoption, the SVCE Model Reach Code calls for expanded EV charging access which results in an increase in construction costs of approximately $1,000 per unit. This Board item is focused on SVCE financial support for EV charging in affordable developments – not the merits or details of the Reach Code itself.

**ANALYSIS & DISCUSSION**
SVCE staff have identified that concerns related to the potential for reach codes to add to the cost of building new affordable housing may impede or limit member jurisdictions from adopting the SVCE model reach code requiring equitable electric vehicle charging. In order to address these concerns, staff is proposing that SVCE commit to funding these expenditures. Therefore, the purpose of this item is for the SVCE Board to consider:

1. Making a policy statement about SVCE’s commitment to equity in supporting electric vehicle charging in new affordable housing developments; and
2. Authorizing staff to reallocate program funds, as needed, to support this commitment.

**Which Housing Units?** The units targeted by this program would include units with shared parking lots (no private garages) that are deed-restricted for very low income (less than 50% of median income) or low income (50-80% of median income) residents. These would include units built by either nonprofit or for-profit developers and in developments that are either mixed income or exclusively designated as affordable housing. Since the Model Reach Code does not create substantial additional costs for accessory units, the program would not apply to them.

**How Many Units Are Anticipated?** Per the Regional Housing Needs Allocation for the SVCE territory, 20,171 very low and low income units have been allocated for the eight years of this housing cycle. This amounts to 2,521 per year. Given that this building code cycle is for a three year period, the current budget estimate for the program is based on 7,563 units (3 years at 2,521 per year) being built in the next three years. While staff recognizes that the RHNA is just an allocation plan and actual construction does not occur on a linear, planned schedule, this is the best estimate available for budgetary planning purposes.

**How Would This Work?** As noted above, the SVCE Model Reach Code is estimated to result in approximately $1,000 in additional construction costs per unit of multifamily housing built above and beyond the costs of complying with the base State code. If this program is approved by the Board, staff will conduct outreach to the development community to let them know that funding of $1,000 per eligible unit is available to support their projects being constructed within jurisdictions that have adopted the SVCE Model Reach Code or a more stringent local code.

**Would Jurisdictions be Involved?** Development staff and housing staff from SVCE member jurisdictions will be notified about the funding and invited to participate in informing local developers.

**Which Parking is Eligible?** The base program is designed around the typical suburban multifamily complex containing one or more parking spaces per unit in a dedicated (not open to the public) parking lot. Staff recognizes that new development doesn’t always follow this pattern and will apply the program to developments with different parking models based on the principle that the program is designed to cover the incremental costs of the SVCE Model Reach Code. Thus, a development with less parking will likely have lower EVI costs and will be eligible for lower SVCE subsidies.

**STRATEGIC PLAN**
The proposed programs align with the board-adopted strategic plan for the following goals:

- Goal #11: Engage a full range of public, private and nonprofit stakeholders to leverage our decarbonization efforts
• Goal #12: Enact competitive service offerings and programs that deliver measurable environmental and economic benefits

ALTERNATIVE
The Board may choose to amend the policy statement or budgetary authorization prior to adoption or take no action.

FISCAL IMPACT
Through the annual budget process, the Board has historically approved 2% of annual operating revenues for programs. The proposed additional $6M in authorized budget for EV charging can be accommodated within the unexpended programs budget and all spending would remain within the Board-approved programs budget. Therefore, the recommend action will not reduce SVCE’s other core reserves - nor funding from other already-identified programs. It is extremely likely that the actual additional amount required to support affordable development in the next three years will be less than $6M because the base State code may be amended and/or fewer very low and low income units will be built.

ATTACHMENTS
1. SVCE Support of Electric Vehicle Charging in Affordable Housing Developments Presentation
SVCE SUPPORT FOR CHARGING IN AFFORDABLE HOUSING DEVELOPMENTS
Request for Board of Directors Action: approve staff recommendation on a budgetary commitment to support electric vehicle charging in new affordable housing developments
Purpose
Background

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Cost Implications of SVCE Model Reach Code
Staff Recommendation
Staff Report – Item 1h

Item 1h: Authorize the Chief Executive Officer to Execute an Amendment to Agreement for FY21-22 with Keyes and Fox, LLP for Legal Services around Power Transactions

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, Director of Power Resources
           Kevin Armstrong, Administrative Services Manager

Date: 8/10/2022

RECOMMENDATION
Staff recommends that the Silicon Valley Clean Energy Authority Board (“Board”) authorize the Chief Executive Officer (“CEO”) to execute an amendment to the Keyes and Fox, LLP (“K&F”) agreement for legal services around power transactions, adding $25,000 for a new total amount not to exceed (“NTE”) $75,000 in FY21-22.

BACKGROUND
SVCE approved an agreement with Keyes and Fox in September 2021 to provide legal representation and support with respect to the procurement of wholesale electricity supply and related services including, energy, energy storage, resource adequacy, and renewable power to serve the Authority’s customers. At the time, staff recommended a new, separate agreement with K&F, separate from an existing agreement to provide regulatory representation, due to the differing legal standards between the two types of work.

ANALYSIS & DISCUSSION
As a load serving entity in California, the Authority is required to procure resources and products for multiple objectives and mandates. The number and complexity of such transactions has grown since the Authority first launched. The number of community choice aggregators in California has also grown resulting in high demand for resources and services including legal support. The Authority’s Power Resources Department continues to require additional legal support on retainer to review power transactions, including renewable power purchase agreements and energy and capacity transactions under master agreements and bilateral contracts.

Staff is requesting this amendment to the Keyes and Fox agreement to provide additional capacity through the end of the fiscal year, based on their familiarity with the power market and the transactions in question, and their long track record of working constructively with SVCE. Having additional capacity in the agreement for transactional support will allow SVCE to be more responsive to market opportunities and thus reduce transactional risk.

STRATEGIC PLAN
Approving this contract will directly support Goal 7 of the Strategic Plan is to “Ensure SVCE adopts the appropriate tools, systems, and resources to support portfolio optimization, risk management, load forecasting, compliance, and settlements”.

Page 1 of 2
ALTERNATIVE
If the Board does not approve this contract, SVCE will face transactional risk, due to potential lack of legal support given the high demand for legal support and limited capacity.

FISCAL IMPACT
The recommendation results in a total fiscal impact of $25,000 during Fiscal Year 2021-22. Existing agreements with Keyes and Fox for transactional and regulatory representation have a combined NTE amount of $266,100. This amendment will increase the total aggregate NTE amount to $291,100.

ATTACHMENTS
1. Draft Amendment to Agreement with Keyes & Fox LLP for FY21-22 legal services.
2. Existing Agreement with Keyes & Fox LLP for FY21-22 legal services.
FIRST AMENDMENT TO AGREEMENT WITH KEYES & FOX

WHEREAS, the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency (“Authority”), and KEYES & FOX entered into that certain agreement entitled LEGAL REPRESENTATION effective on August 9, 2021, hereinafter referred to as “Original Agreement”; and

WHEREAS, Authority and KEYES & FOX 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, EXPENSES, INVOICING and RETAINER of Original Agreement shall be amended to read as follows:

By signing this Engagement Letter, SVCE agrees to pay K&F for all professional fees and out-of-pocket expenses related to the Legal Services, according to the terms set forth below. Compensation under this Engagement Letter shall not exceed seventy-five thousand dollars ($75,000) without prior written authorization by SVCE.

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2. This Amendment shall be effective on August 11, 2022.

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

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

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

RECOMMENDED FOR APPROVAL

__________________________________
Monica Padilla, COO/Director of Power Resources

RECOMMENDED FOR APPROVAL

__________________________________
Amrit Singh, CFO/Director of Administrative Services
CONSULTANT NAME
KEYES & FOX

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
September 7, 2021

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

RE: Engagement Letter - Keyes & Fox LLP and Silicon Valley Clean Energy Authority

Keyes & Fox LLP (“K&F”) welcomes the opportunity to represent Silicon Valley Clean Energy Authority, a California joint powers authority, (“SVCE”) with respect to the procurement of wholesale electricity supply, energy storage, resource adequacy, renewable energy credits, and transmission rights to serve SVCE customers (referred to herein as “Legal Services”). This Engagement Letter excludes work that K&F is currently performing for SVCE under a separate representation agreement. This Engagement Letter describes the basis of the attorney-client relationship between K&F and SVCE with respect to the Legal Services, along with an explanation of how K&F will bill for those services.

1. Scope of Engagement

Pursuant to this engagement letter, K&F agrees to represent SVCE as its client with regard to the Legal Services described above. Keyes & Fox will do its utmost to serve SVCE effectively, provide Legal Services in an efficient manner, and respond promptly to SVCE’s inquiries.

K&F has run a conflict check as it relates to the contemplated Legal Services and has not found any direct conflicts with undertaking them. If a conflict arises that may impact our ability to provide SVCE with effective representation, including with respect to negotiations that may involve current or former K&F clients as counterparties, we will promptly bring that conflict to SVCE’s attention. If you have any concerns regarding any relationship K&F may have with particular companies, organizations, or individuals, please bring those concerns to our attention.

K&F will coordinate the provision of the Legal Services with Monica Padilla as the designated representatives of SVCE, or with whomever she may specifically delegate that authority. We understand that Ms. Padilla has the authority to make decisions on behalf of SVCE in connection with the Legal Services, and we are relying on that understanding.

2. Confidentiality of Communications and Work Product

It is in SVCE’s interest to preserve confidentiality of all communications with K&F and such work product related to the Legal Services not intended for use with third parties. If SVCE discloses any of our communications, it jeopardizes the privileged nature of the communications or work product. Accordingly, we advise our clients to take care not to disclose privileged information or work product not intended for use with third parties to any third-party person or entity.

Page 1
3. **Fees, Expenses, Invoicing, and Retainer**

By signing this Engagement Letter, SVCE agrees to pay K&F for all professional fees and out-of-pocket expenses related to the Legal Services, according to the terms set forth below. Compensation under this Engagement Letter shall not exceed fifty thousand dollars ($50,000) without prior written authorization by SVCE.

a. **Professional Fees**

K&F will keep an hourly total of time spent on the Legal Services. Work will be performed at the hourly rates set forth in the Rates for Professionals provided in Attachment A to this Engagement Letter, which is incorporated by reference herein. Attachment A lists those persons we anticipate may work on the Legal Services. In addition to the K&F attorneys listed in Attachment A, the assistance of other K&F attorneys and/or staff may be enlisted from time to time as determined necessary for the provision of the Legal Services.

It is K&F’s policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in Attachment A are 2021 rates. K&F shall not increase hourly rates charged for work performed during calendar year 2021 Legal Services above those listed in Attachment A. K&F’s practice is to charge for travel time, as discussed in Attachment A.

Mr. Fox will be the lead K&F attorney working with you in connection with the Legal Services. Mr. Fox may utilize the services of other K&F attorneys in connection with this matter. By entering into this Engagement Letter, you consent in writing to Mr. Fox serving as the lead attorney in this matter and to Mr. Fox’s assignment, with authorization by SVCE, of work on this matter to the other persons listed in Attachment A.

b. **Expenses**

Expenses may be incurred in connection with the Legal Services. K&F will bill for all costs, disbursements, and expenses in addition to our hourly fees. Costs and expenses include messenger and other delivery fees, copying and reproduction costs, costs for travel including mileage and parking, and similar expenses. Expenses will be billed at actual cost.

c. **Invoices and Payments**

K&F will invoice SVCE at the beginning of each month for Legal Services during the prior calendar month. Invoices will list the matter worked on and provide information on the dates of service, time involved, person responsible and activity undertaken. K&F will use best efforts to respond to requests for special invoice formats. Upon receipt of properly prepared invoicing, SVCE shall pay K&F within thirty (30) calendar days for services provided in accordance with this Engagement Letter.

4. **Termination of K&F’s Representation**

Either SVCE or K&F may terminate K&F’s representation of SVCE at any time and for any reason. At the time K&F’s representation of SVCE concludes, all unpaid fees and costs for work performed by K&F become due and payable. If at that time SVCE does not request the
return of files related to the Legal Services, K&F will retain such files for a period of three (3) years, after which K&F may have the files destroyed.

5. Miscellaneous

This letter is the entire agreement between SVCE and K&F concerning the Legal Services and supersedes all prior or contemporaneous agreement between SVCE and K&F, whether written or verbal, for the Legal Services. This agreement and the scope of work provided under it may be amended from time to time by mutual agreement among K&F and SVCE. California law will govern this agreement and any subsequent amendments.

6. Conclusion

If the terms of K&F’s representation as explained in this letter are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions.

We look forward to our representation of SVCE.

Sincerely,

[Signature]

Kevin Fox, Partner
Keyes & Fox LLP

By signing this letter, the signatory affirms that he or she understands and agrees to bind his or her company to the terms set forth in this Engagement Letter. This agreement shall not take effect, and K&F shall have no obligation to provide the work described herein, until SVCE has returned a signed copy of this letter.
Silicon Valley Clean Energy Authority

I have read the foregoing letter, understand it and agree to it on behalf of SVCE.

By:

[Name]

Title: Chief Executive Officer

Date: 9/9/2021

APPROVED AS TO FORM:

[Signature]
Gregory W. Stepaniuk
Counsel for Authority

ATTEST:

[Signature]
Melody Vega
Authority Clerk
Attachment A

Rates for Professionals

Hourly Rates and Other Terms

Kevin Fox, Partner $395
Caryn Lai, Counsel $320
Lilly McKenna, Associate $265
Julia Kantor, Associate $245
Beren Argetsinger, Associate $225
Alicia Zaloga, Paralegal $95

Firm Travel: Travel time is billed at the one-half of the listed hourly rate. Every effort will be made to work productively on the Legal Services during travel. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.
Staff Report – Item 1i

Item 1i: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Neysa Fligor, Executive Committee Vice Chair

Date: 8/10/2022

The Executive Committee met June 24, 2022 and received presentations from staff on electric vehicle (EV) charging infrastructure support at affordable housing developments, framework for the FY 22-23 budget, and the FutureFit EV Charging Installation Incentive program.

Tony Eulo, Senior Manager of Public Sector Services, presented a request for a recommendation to the Board of Directors to approve staff’s recommendation on a policy statement that SVCE is committed to ensuring that residents in new affordable housing developments have equal access to EV charging opportunities by funding the incremental costs of EVI associated with the SVCE recommended model code for this cycle, and a recommendation to authorize staff to re-allocate unspent or future programs dollars up to $6M to cover the impact of the EVI model code on affordable housing. The committee asked clarifying questions and provided suggestions to the report, and voted to support staff’s recommendation. This item is on the Consent Calendar in August for the Board of Director’s consideration.

Amrit Singh, CFO and Director of Administrative Services, presented the methodology and framework for developing SVCE’s FY 22-23 operating budget and updating the reserves policy. The presentation included information on revenue modeling, reserve targets, customer discount rate and funding for programs, power supply costs, and other cost drivers. The committee agreed with the methodology and framework and made few suggestions including ensuring there’s sufficient staffing contingency and further clarifying some of the proposals in the presentation. Staff will incorporate the Committee’s comments and will present the proposed operating budget and an update to the reserves policy to the Board of Directors.

Hannah Gustafson, Senior Energy Services Specialist, provided a presentation on SVCE’s FutureFit EV Charging Installation Incentive Program, which provides up to $45k rebates for multifamily properties to install EV charging for residents on-site.

Materials from this meeting can be found on SVCE’s website: [SVCE Executive Committee Meeting, June 24, 2022](#)

The next meeting of the Executive Committee will be August 26, 2022 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.
Staff Report – Item 1j

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

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Rob Rennie, Chair of the Finance and Administration Committee

Date: 8/10/2022

The Finance and Administration Committee met August 1, 2022 and discussed SVCE’s FY 2022-23 Proposed Operating Budget, updated SVCE reserves policy, and received an update on SVCE’s Investment Policy.

Amrit Singh, CFO and Director of Administrative Services, provided a presentation to the committee on the FY 2022-23 proposed operating budget (which projects depositing $115.5 million into reserves) and updated reserves policy. The presentation included a summary of the proposed budget, revenue modeling, reserve targets, customer discount rate and funding for programs, power supply costs, and other cost drivers. Some items to note are the proposed budget anticipates no PCIA charge, and a ~12 percent decrease in PG&E’s generation rates starting in January 2023. The amended reserves policy updated reserves targets such that SVCE can maintain at a minimum 120 Days of Cash on Hand (DCOH) for the next two fiscal years under Stress Test Scenario 2 condition, which modeled a collapse in energy prices that substantially reduce revenues along with a substantial increase in financial posting requirements to the Provider of Last Resort (PG&E). The committee provided feedback on the presentation to be reflected at the Board of Directors meeting, and voted unanimously to recommend that the SVCE Board of Directors approve the FY 2022-23 Proposed Operating Budget and approve the updated Reserves Policy when it is brought to the Board for approval in September 2022. A presentation on the FY 22-23 proposed operating budget will be provided at the August 10, 2022 Board of Directors meeting.

Monique Spyke of PFM Asset Management LLC presented to the committee on the work they are engaged with staff to revise SVCE’s investment policy and develop an investment strategy. Ms. Spyke reviewed the next steps in amending SVCE’s Investment Policy and responded to clarifying questions from the committee.

Meeting materials can be found on the SVCE website: [SVCE Finance and Administration Committee Meeting, August 1, 2022](#)

The next meeting of the Finance and Administration Committee is to be determined and is expected to occur in October; materials will be posted no later than 72 hours prior to the meeting date.
Staff Report – Item 1k

Item 1k: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 8/10/2022

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

The next meeting of the Audit Committee is scheduled for August 22, 2022 at 2:00 p.m.; materials will be posted no later than 72 hours in advance of the meeting.
Item 1: Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Rob Rennie, Committee Chair

Date: 8/10/2022

The Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee met June 14, 2022.

The committee received regulatory updates on provider of last resort and resource adequacy reform; legislative updates on senate and assembly bills, including those related to the Brown Act; federal updates on President Biden’s Executive Order; discussed the state budget; and reviewed proposed content for the next committee meeting.

The next meeting of the Committee will be held in early October 2022 and will be scheduled based on member availability.
Staff Report – Item 1m

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

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 8/10/2022

Per direction from the SVCE Board on December 9, 2020 for the CEO to provide a report of the ongoing activities of California Community Power (CC Power) after each of its meetings, this is to report CC Power held a regular board meeting on Wednesday, June 15, 2022; the regularly scheduled meeting on July 20, 2022 was adjourned.

Attached is a summary report from Interim General Manager Timothy Haines; materials from the June board meeting can be found here on the CC Power website: [CC Power Meeting, 6/15/22](#)

The next meeting of the board will be August 17, 2022 at 1:00 p.m.; meeting materials can be found on the CC Power website: [https://cacommunitypower.org/meetings/](https://cacommunitypower.org/meetings/)

**ATTACHMENTS:**
CA Community Power Board Meeting Summary from Interim General Manager Timothy Haines, June 15, 2022
TO: CC Power Board of Directors and Alternates
FROM: Tim Haines – Interim General Manager
SUBJECT: Report on CC Power Special Board of Directors Meeting – June 15, 2022

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, June 15, 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 April 20, 2022.
  - Minutes of the Special Board Meeting held on May 31, 2022.
  - Resolution 22-06-01 Determination that Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the Proclaimed State of Emergency
- **Chair Report**
  - Resolution 22-06-02 Approval of Budget Allowance for Development of Three-Year Strategic Plan. Board Chair Syphers informed the Board of his intent to appoint Vice Chair Mitchell and Board Members Balachandran and Sears to an ad hoc committee to develop a three-year strategic plan. The resolution proposes the committee receive an allowance of up to $50,000. The Chair acknowledged the committee will incorporate Board feedback now and throughout the effort. The Board adopted the resolution 6-0-2.
  - Resolution 22-06-03 Approval of Extension of Agreement with Grid & Power Symmetry, LLC, for Interim General Manager Services. The contract extension is through June 2023 and converts the Interim GM compensation from $235 per hour to $10,000 per month. The Interim GM remains a part time position. The Board adopted the resolution 8-0.
- **General Manager’s Report**
  - Update on LDS/FCR Projects. Interim GM Haines explained that the future activities associated with the Long-Duration Storage and Firm Clean Resources projects will be guided by the project agreements. The agreements specify the roles of the Board, GM, and project staff.
  - Update on the CC Power Budget. Interim GM Haines reminded the Board that, as expected when the 2022 Budget was approved in December 2021, he will seek a budget amendment to fund July through December activities at the July Board meeting. The Interim GM is working with the Treasurer, Member staff, the General Counsel and CC Power consultants to develop the budget amendment recommendations.
Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 8/10/2022

REPORT

SVCE Staff Update

Leslie Madarang joined the SVCE team as Marketing Specialist on June 10th. Leslie is responsible for eHub marketing and management, email campaigns, website management, and community outreach support. Before joining SVCE, Leslie worked as a Marketing Specialist with Central Coast Community Energy where she created campaigns and materials to launch new energy programs, produced annual CCA reports and managed multiple vendors. Leslie has a B.A. in Environmental Studies with a minor in Social Enterprise and a certification in Digital Marketing.

Kris Van Vactor joined the SVCE team August 8th as a full time Wholesale Energy Markets Manager reporting to the Senior Manager of Power Resources. Recently, Kris spent nearly 20 years at Southern California Edison, where he served a variety of progressively advancing roles in the Energy Procurement and Management department. Kris will support the Power Resources team in the build out of portfolio models, optimization of power resources, advocating and tracking of CAISO stakeholder initiatives and their impacts on the power supply portfolio. Kris has a degree in Economics from the University of Oregon.

Serrena Zanotto joined SVCE as a part-time Energy Services Intern and will support the Energy Services and Community Relations team in a variety of jobs, including supporting outreach efforts for the FutureFit Fundamentals programs. Serrena is in her final year at the University of Reno Nevada as a double major in Pre Nursing and Nutrition Dietetics.

Colleen McCamy, a 3-year SVCE Communications veteran, is pursuing a Masters of Environmental Data Science at the Bren School of Environmental Science at UCSB. While in school, Colleen will continue to support the Energy Services & Community Relations team in her new part-time role as Digital Engagement & Data Visualization Specialist.

Personnel Officer Update

SVCE has filled the Wholesale Energy Markets Manager position, and will be introducing Kris Van Vactor in that role. Staff has conducted several rounds of interviews for the new Director of Energy Services and Community Relations, and look forward to finalizing that recruitment in the coming weeks. Recruiting is underway for a Senior Regulatory Analyst, Human Resources Generalist, and Decarbonization Data Engineer. Finally, as part of the budget process, staff has proposed salary and benefit improvements to help SVCE remain an employer of choice within the CCA industry.

Customer Focused Strategic Plan Update

At the June Board of Directors meeting, staff noted there was a comment from the public to have a Strategic Plan with a more customer-focused view. The Strategic Plan aspires to reflect our community-driven mission demonstrating customer benefits from the activities that each department performs, making the presentation
easier for our community to understand, and ensuring our community and customers see themselves represented in the plan. Attached to the CEO report is a presentation with draft ideas for this plan.

**Clean Power Updates**

SVCE celebrated the repowered Mountain View Wind project July 21st in Riverside County, CA. The 67 megawatt wind project officially came on-line in July. SVCE has contracted for 33 megawatts which will meet about three percent of SVCE’s annual energy needs. A handful of SVCE staff joined Central Coast Community Energy and AES, the project developer, for a ceremonial ribbon cutting and tour of the facility. Thank you to Chair Gibbons for filming a short video testimonial about the project benefits that was played during the ceremony. Following is a link to the press release on the event: [Mountain View Repowering Project Press Release](#).

The Casa Diablo geothermal project in Mono County, CA also came on-line in July. The new geothermal project is 38 megawatts for which SVCE has contracted for seven megawatts meeting one and a half percent of expected energy. Plans for a ribbon cutting event are in process.

Slides and pictures are attached in the Clean Power Update.

**Voluntary Allocation and Market Offer (VAMO) Update**

At the June 8, 2022 SVCE Board of Directors meeting, the board approved authorization for SVCE’s CEO to participate in PG&E’s Voluntary Allocation Market Offer (VAMO) for up to SVCE’s full portion of its load ratio share and execute necessary agreements including the Voluntary Allocation Confirmation under PG&E and SVCE Master Power Purchase and Sale Agreement and resell quantities not necessary to meet SVCE’s internal needs. SVCE recently executed seven shares, or 70% of its load ratio share, of the Voluntary Allocation from PG&E and has resold five of the shares to East Bay Community Energy (EBCE) consistent with the authority delegated to the CEO. The terms of the resale agreement to EBCE mirror the terms in the agreement between SVCE and PG&E. Additional credit terms and a cost adder are included to minimize risk to SVCE. SVCE intends to retain the remaining two shares for its own renewable energy portfolio to meet RPS targets and legislative mandates.

**CEO Agreements Executed**

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

1) **NP Energy, LLC, Amendment: Management and Policy Consulting, date extended to 12/31/22**
2) **Management Partners, Inc., Amendment: Management Consulting Services, 6/8/21 – 9/30/22**
3) **HBT Energy, Amendment: Power Resources Management Services, not to exceed $279,600, 7/2/21 – 9/30/23**
4) **CSE, Amendment: Innovation Program Administration Services, amendment to agreement language TRC Engineers, Inc., Agreement, Streamlining Community-Wide Electrification Program, not to exceed $71,800, 6/20/22 – 1/27/23**
5) **SMUD, Task Order: GHG Modes and Methods Scoping Support, not to exceed $116,793**
6) **Community Resilience Program – Town of Los Gatos, Grant Agreement: Capital Project Grant, not to exceed $213,842, 12/31/23**
7) **NeoCharge, Amendment: Reducing barriers to home EV charging/Electrification with the Smart Splitter, extends date to 1/31/23**
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<td>Purchase</td>
<td>Hedge Energy</td>
<td>1/1/2023</td>
<td>9/30/2025</td>
<td>$25,805,004.25</td>
</tr>
</tbody>
</table>

These agreements are included in the Board packet as Appendix A.
Presentations & Relevant Meetings Attended by CEO
- Participated in CalCCA Monthly board, executive, and legislative meetings;
- CC Power Board Meeting, June 15th, report included on the Consent Calendar
- Participated in California Community Choice Financing Authority Board of Directors Special Meeting, July 1st & 29th (Zak Liske)

ATTACHMENTS
1. Clean Power Update, July/August 2022
2. Decarb Programs & Policy Update, July/August 2022
3. Energy Services & Community Relations Update, July/August 2022
4. Legislative and Regulatory Update, July/August 2022
5. Agenda Look Ahead, August – December 2022
6. Board Action Requested, July/August 2022 Update
7. Draft Customer Focused Strategic Plan Presentation
CEO Report
Clean Power Update

SVCE Board Meeting
August 10, 2022
Topics

• PPA Updates
Signed Power Purchase Agreements

- GEOTHERMAL
- SOLAR POWER + STORAGE
- SOLAR POWER
- WIND GENERATION
- LONG DURATION STORAGE

- 17 PPAs signed
- 14 new build projects
- 728 MW of Renewable Energy
- 173 MW lithium-ion storage paired with 516 MW of Solar PV
- 29 MW of Long-duration storage

Projects now delivering to SVCE:
- Slate
- Casa Diablo
- Mountain View
- Coso
- Slate
- Casa Diablo
- Mountain View
- Coso
PPA Expected Commercial On-line Dates over the next 8 quarters

- Casa Diablo Geothermal - achieved COD in mid-2022
- Rabbitbrush Solar + Storage - delivering test energy
- Mountain View Wind - achieved COD in late-2022
- Yellow Pine Solar + Storage - Construction mode
- Rabbitbrush Solar + Storage - Construction
- Cameron Crest Wind - Existing project
- Angela & Aratina Solar + Storage - Pre-construction
- Victory Pass & San Luis West Solar + Storage - Pre-construction
- FCR: Ormat and Fish Lake Geothermal - Pre-construction
- LDS: Goal Line and Tumbleweed Long Duration Storage - Pre-construction
Changes Since June 2022 BOD Meeting

- Ormat Casa Diablo Geothermal
  - Achieved CAISO/PPA COD on July 14, 2022

- AES Mountain View Wind
  - Achieved CAISO/PPA COD on July 26, 2022

- Leeward Rabbitbrush Solar plus Storage
  - Synchronized to the CAISO grid in July ahead of September 2022
    - COD and is delivering test energy
    - Substantial project completion expected by mid-August
Casa Diablo 4 New Geothermal 7 MW: COD July 14, 2022
Mountain View Wind – Repowered 33.5 MW: COD July 26, 2022 (6 months early)
Project Construction

Rabbitbrush Solar + Storage 40 MW
COD September 2022

Yellow Pine Solar + Storage 50 MW
COD December 2022

Item 2
Attachment 1
**ongoing metrics**

**july 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

**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
**ONGOING METRICS**

### CALeVIP

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

- **6,000,000**
- **4,000,000**
- **2,000,000**
- **0**

**Reserved**

**Level 2**

- **$1.5M**
- **$3.92M**

**Reserved**

**DCFC**

- **$6M**

- **$145,004**

**Installed**

- **25 Level 2 Installations**
- **5 DCFC Installations**

*The reserved funding is under a final review and validation.*

### FutureFit Fundamentals

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

- **1K Level 2 + 85 DC Fast Chargers by 2023**

- **1,000**
- **500**
- **100**
- **50**
- **0**

**Participants**

**Installations**

- **5 Participants Complete Course**
- **5 DCFC Installations**

- **5 Participants Complete Course**

- **To be released in future years**

Funding: **$11.58M**

Goal: **1K Level 2 + 85 DC Fast Chargers by 2023**

Funding: **$1.5M**

Goal: **150 Participants Complete the Course (Phase 1)**

---

Decarb Programs and Policy Update, July/August 2022
# Programs at a Glance

## July 2022

### Power Supply
- **Active**
  - C&I Clean Power Offerings
  - FutureFit Fundamentals
  - FutureFit Heat Pump Water Heater
  - Permit Simplification Effort
  - Resilience at Community Facilities
- **In Development**
  - 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

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

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

### Grid Integration
- **Active**
  - Customer Resource Center (eHub)
  - Data Hive
  - Community Engagement Grants

### Innovation
- **Active**
  - Innovation Onramp Pilots
  - Innovation Partners

---

Decarb Programs and Policy Update: July/August 2022

---

[Image: solar panels and people]

[Image: people working on a project]

[Image: electric vehicles and charging stations]

[Image: community engagement event]

[Image: customer resource center (eHub)]
1. Outreach Events & Sponsorships

Silicon Valley Clean Energy will be connecting with customers at upcoming community and industry events and will be supporting communities through event sponsorship.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 6</td>
<td>11:30 AM – 12:50 PM</td>
<td>Silicon Valley Youth Climate Action 2022 Leadership Summit – Speaking opportunity</td>
<td>Quinlan Community Center-Cupertino</td>
</tr>
<tr>
<td>August 21</td>
<td>5 – 7 PM</td>
<td>Los Gatos Music In the Park – sponsorship &amp; Tabling</td>
<td>Los Gatos Civic Center Lawn</td>
</tr>
<tr>
<td>August 22</td>
<td>All Day</td>
<td>Los Altos Chamber Charity Golf Classic – Sponsorship</td>
<td>Los Altos Golf and Country Club</td>
</tr>
<tr>
<td>August 30</td>
<td>TBD</td>
<td>Silicon Valley Business Journal Climate Series-Title sponsorship and panel discussion</td>
<td>Virtual</td>
</tr>
</tbody>
</table>
## 2. Customer Participation

<table>
<thead>
<tr>
<th></th>
<th>Participation Rate</th>
<th>Overall Participation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>96.41%</td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>96.61%</td>
<td>96.43%</td>
</tr>
</tbody>
</table>

ESCR Update, July/August 2022
3. Customer Credit Updates

CARE and FERA Rate Relief Bill

- SVCE began crediting customer bills in April, and as of July 27, 2022, has applied over 114,000 bill credits of $12.50, totaling $1.435M. 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 24, SVCE has provided $1,021,000 in NEM cash out checks and $404,000 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.)
The recent MAWG meeting was held virtually on June 23, 2022 and was attended by 11 different agencies and organizations with a total of 24 participants.

The following agenda items were presented and discussed:

- Quarterly Power Resource Update – Summer 2022 Readiness
- Community Electrification Demonstration Grants
- FutureFit Electric Vehicle Charging Installation Incentive (CHIPP) Program
- SVCE Education Program
- Greenhouse Gases Methods & Modeling Input
- Reach Codes Update
- Preparing for Future Item on Carbon Offsets
5. Press Releases

- $20,000 in Scholarship Prizes Awarded to Students in EmPower Silicon Valley Short Film Competition
- Milpitas Community Center Powers Up with Resiliency Grant from Silicon Valley Clean Energy
- Silicon Valley Clean Energy and Google Announce Comprehensive 24/7 Carbon-Free Energy Agreement
- Electric Vehicle Charger Funding Available for Multifamily Properties
- Central Coast Community Energy and Silicon Valley Clean Energy Join Forces on Contracting for 67 MW Mountain View Wind Repowering Project
- Los Gatos High School Students Awarded $2K In Short Film Contest
- San Francisco PUC’s Community Choice Energy Program Signs Storage Contracts
- South Bay students clean up in short film contest
- Los Gatos, Saratoga teens among winners of short film contest
- Google and SVCE devise a carbon-free energy plan
- Silicon Valley Tech Giants Moving the Needle on Renewable Technologies
- A million bucks for net zero, Sunnyvale Community Briefs
- Google’s 24/7 carbon-free energy deal for its California offices ‘could be replicable model’
- Solar power for senior center, Milpitas Community Briefs
- Leeward Renewable Energy closes financing for Rabbitbrush Solar + Storage Project
• Complex charges for EVs, Sunnyvale Community Briefs
• The way we build homes is changing fast. Meet net-zero, the building technique that creates more energy than it consumes without skimping on style,
• Ormat Commences Commercial Operation Of The 30MW CD4 Geothermal Project,
• Wind Power Added to Santa Barbara Grid
• Repowered Wind Project Providing Energy To California CCAs Comes Online,
• Central Coast Community Energy Gets Boost From New Wind Project,
• Lessons from Google’s clean energy agenda,
SVCE Legislative and Regulatory Update

August 10, 2022
Policy Updates

1. Regulatory Update:
   1. Resource Adequacy Reform (RA Reform)
   2. Integrated Resource Planning (IRP)
   3. Voluntary Allocation Market Offer (VAMO)
   4. Net Energy Metering (NEM 3.0)
   5. Reviewing Legislation
   6. Legislative Timeline

2. Legislative Update:
   1. Federal Inflation Reduction Act of 2022
   2. State Budget
   3. Proposition 30 Overview
   4. Bill Position Matrix
<table>
<thead>
<tr>
<th>Proceeding</th>
<th>Purpose</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource Adequacy Reform</td>
<td>Update resource adequacy rules and accounting methodology to ensure system reliability. Proposals include 24- and 2-slice methods.</td>
<td>CPUC adopted decision supporting 24-slice proposal on 6/23. Additional workshops to develop compliance materials and finalize resource counting will occur over the summer.</td>
</tr>
<tr>
<td>Integrated Resource Plan (IRP)</td>
<td>Ensure long-term system planning is on track to meet state’s climate and reliability goals.</td>
<td>The CPUC has released many, but not all, of the required materials to develop internal portfolios. SVCE has begun developing and modeling scenarios. The CPUC will hold additional stakeholder meetings and release final materials this month.</td>
</tr>
<tr>
<td>Voluntary Allocation and Market Offer</td>
<td>Voluntary allocation of legacy IOU Renewable Portfolio Standard resources to CCAs.</td>
<td>SVCE selected to take 70% of its long-term voluntary allocation option. SVCE will re-file its RPS procurement plan showing this allocation, per CPUC guidance.</td>
</tr>
</tbody>
</table>
## Key Regulatory Proceedings

<table>
<thead>
<tr>
<th>Proceeding</th>
<th>Purpose</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Energy Metering (&quot;NEM 3.0&quot;)</td>
<td>Update compensation structure for rooftop solar owners.</td>
<td>On May 9, the CPUC reopened the NEM Successor Tariff proceeding (&quot;NEM 3.0&quot;), specifically requesting comments on aspects of the original, December 2021 Proposed Decision (PD). The ruling seeks feedback from parties on the PD’s proposed grid access charge, calculation of non-bypassable charges to NEM customers, export compensation and specific rules for low-income customers. Ruling makes no changes to the PD and SVCE’s position on the NEM 3.0 PD remains unchanged. A new PD is expected mid-year—will provide an update to the board. We will continue to develop ideas for customer program offerings for current and prospective solar customers to promote solar-plus-battery installations in alignment with whole-home electrification.</td>
</tr>
</tbody>
</table>

Leg/Reg Update, July/August 2022
Legislative Update
Senators Schumer and Manchin announced a deal on a climate, health and taxes package to be voted on in the Senate the week of August 1st with $369 billion in climate investments.

<table>
<thead>
<tr>
<th>Clean Energy Tax Credits</th>
<th></th>
<th>Extends Production Tax Credits for electricity from renewable resources including solar, wind, and geothermal. Extends and expands Investment Tax Credits to storage, biogas, microgrids. Higher tax credits for projects with prevailing wage, domestic parts, and located in low-income communities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clean Energy Manufacturing</td>
<td>$60 billion</td>
<td>Includes $30 billion for manufacturing solar panels, wind turbines, batteries, and critical materials. $10 billion for clean tech manufacturing facilities.</td>
</tr>
<tr>
<td>Clean Vehicles – includes EVs and hydrogen fuel vehicles</td>
<td></td>
<td>Sales rebates of $7,500 for new vehicles and $4,500 for used, dealer-sold vehicles. Income limits and limits on price of cars. Commercial clean vehicle tax credits of $7,500 for light-duty and $40,000 for heavy-duty.</td>
</tr>
</tbody>
</table>
# Federal Inflation Reduction Act – Decarbonization Investments

Package includes significant support for existing building electrification as well as building code development and training support.

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Decarbonization – High-efficiency Electric Home Rebate Program</td>
<td>$4.275 billion</td>
<td>Grants to states for rebates: $8,000 for heat pump cooling/heating, $1,750 for heat pump water heaters, $840 for heat-pump clothes dryer/electric stoves, $4,000 for electric panel upgrades, $2,500 for electrical wiring. Maximum of $14,000 credit per homeowner. Income limit of 150% AMI.</td>
</tr>
<tr>
<td>HOMES Rebate Program</td>
<td>$4.3 billion</td>
<td>Grants to states: $2,000-$4,000 rebate depending on energy savings. $4,000-$8,000 for low-income.</td>
</tr>
<tr>
<td>Home Energy Efficiency Contractor Training Grants</td>
<td>$200 million</td>
<td>Funding to states to implement contractor training for installation of home energy efficiency and electrification improvements.</td>
</tr>
<tr>
<td>Zero Building Energy Code Adoption</td>
<td>$1 billion</td>
<td>Grants to be administered by states for local governments to adopt building codes that meet or exceed 2021 International Conservation Code.</td>
</tr>
<tr>
<td>Program</td>
<td>Amount</td>
<td>Notes</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Federal Clean Technology Procurement</td>
<td>$9 billion</td>
<td>Includes $3 billion for Postal Service to purchase ZEVs.</td>
</tr>
<tr>
<td>Green Bank</td>
<td>$27 billion</td>
<td>Clean Energy Technology Accelerator to support deployment of emissions-reduction technology in disadvantaged communities.</td>
</tr>
<tr>
<td>Environmental Justice</td>
<td>$60 billion</td>
<td>Includes block grants for environmental health, transportation access programs and $1 billion for heavy-duty buses and garbage trucks.</td>
</tr>
<tr>
<td>Defense Production Act</td>
<td>$500 million</td>
<td>Support for the President’s Defense Production Act authority for domestic heat pumps and solar production.</td>
</tr>
</tbody>
</table>
State Budget Invests in Energy Reliability and Climate Change Mitigation

Details on a $19 billion climate package to be worked out in August.

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic Electricity Reliability Reserve</td>
<td>$2.2 billion</td>
<td>Includes funding to extend the life of plants that were scheduled for retirement. Allows Dept. of Water Resources to procure new generation facilities, support distributed electricity backup assets and demand-side grid support projects.</td>
</tr>
<tr>
<td>Electricity Utility Arrearages</td>
<td>$1.2 billion</td>
<td>Extends financial support to residents who have struggled to pay for utilities to December 2021.</td>
</tr>
<tr>
<td>Long Duration Storage</td>
<td>$140 million</td>
<td>CEC will administer program to support non-lithium ion, non-pumped hydro storage projects.</td>
</tr>
<tr>
<td>Electric Vehicles</td>
<td>$6.1 billion</td>
<td>Charging infrastructure for low-income communities, ZEV trucks and buses.</td>
</tr>
<tr>
<td>Clean Energy Workforce</td>
<td>$80 million</td>
<td>Clean Energy Training at San Diego State University</td>
</tr>
</tbody>
</table>
Proposition 30 on ZEV and Wildfire Mitigation

Measure on November 2022 Ballot

- Proposition 30 raises income tax for households earning more than $2 million.
- Legislative Analysts' Office estimates Prop 30 will raise between $3 - 4.5 billion annually.
- Funding to go towards ZEV infrastructure, vehicles, and wildfire mitigation.
- ZEV infrastructure funding includes multifamily, fast-chargers, single-family, and medium/heavy-duty chargers.
## Leg/Reg Update, July/August 2022

### SVCE Legislative Positions Matrix

<table>
<thead>
<tr>
<th>Bill</th>
<th>Description</th>
<th>SVCE Position (Legislative Program Policy)</th>
<th>Status</th>
<th>Impact to SVCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB 1814</td>
<td>Adds CCAs as eligible program administrators for CPUC’s Transportation Electrification Program</td>
<td>Support (Climate Mitigation/Clean Energy Funding)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SB 833 (Dodd)</td>
<td>Creates grant program for local government community resiliency plans and to expedite permitting for distributed energy resources.</td>
<td>Support (Climate Mitigation/Clean Energy Funding)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SB 1112 (Becker)</td>
<td>Ensures notification to tenants and property owners for tariff on bill decarbonization charges.</td>
<td>Support (Fuel Switching and Electrification)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SB 1100 (Cortese)</td>
<td>Establishes a process for removing individuals who are willfully interrupting meetings</td>
<td>Support (per Board direction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AB 1944 (Lee)</td>
<td>Allows legislative body members to participate in meetings from private locations and without publishing private addresses on meeting notices.</td>
<td>Support (per Board direction)</td>
<td>Died, legislative vehicle now AB 2449 (Rubio)</td>
<td></td>
</tr>
</tbody>
</table>

© SVCE Legislative Positions Matrix

Bill Summary

AB 1814

Adds CCAs as eligible program administrators for CPUC’s Transportation Electrification Program

Support (Climate Mitigation/Clean Energy Funding)

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)

SB 1112 (Becker)

Ensures notification to tenants and property owners for tariff on bill decarbonization charges.

Support (Fuel Switching and Electrification)

SB 1100 (Cortese)

Establishes a process for removing individuals who are willfully interrupting meetings

Support (per Board direction)

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) vehicle now AB 2449 (Rubio)
<table>
<thead>
<tr>
<th>Bill</th>
<th>Summary</th>
<th>SVCE Position (Legislative Program)</th>
<th>Status</th>
<th>Impact to SVCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>AB 2061 (Ting)</td>
<td>Requires all entities that receive state or ratepayer funding to submit data on EV station uptime, or the amount of time an EV station is operational.</td>
<td>Support (Fuel Switching and Electrification)</td>
<td>Senate</td>
<td></td>
</tr>
</tbody>
</table>
SVCE is actively reviewing the following bills:

<table>
<thead>
<tr>
<th>Bill</th>
<th>Summary</th>
<th>SVCE Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>SB 1158 (Becker)</td>
<td>Requires load serving entities to report hourly electricity purchases. Requires the CPUC to assess whether reporting demonstrates &quot;adequate progress&quot; towards GHG targets.</td>
<td>Reviewing</td>
</tr>
</tbody>
</table>
Key State Legislative Milestones

1. Legislature reconvenes
2. Governor submits budget
3. Deadline to move 2 year bills out of first house
4. Bill introduction deadline
5. Deadline for policy committees to move fiscal bills to fiscal committees
6. Deadline for nonfiscal bills to move to the floor
7. Deadline for fiscal committees to move bills to floor
8. Last day for bills to pass out of first house
9. Budget deadline
10. Fiscal Committees to move bills to floor
11. Last day for each house to pass bills
12. Governor deadline to sign bills
<table>
<thead>
<tr>
<th>AUGUST 2022</th>
<th>SEPTEMBER 2022</th>
<th>OCTOBER 2022</th>
<th>NOVEMBER 2022</th>
<th>DECEMBER 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board of Directors, August 10:</strong> Consent: Minutes July 2022 Treasurer Report Committee Reports Regular Calendar: FY 22-23 Budget Adoption PPA IRP Update Clean Air Day Resolution Reach Code Update Closed Session: CEO Review</td>
<td><strong>Board of Directors, September 14:</strong> Consent: Minutes August 2022 Treasurer Report Committee Reports Regular Calendar: FY 22-23 Budget Adoption Strategic Plan focus areas PPA IRP Update Clean Air Day Resolution Reach Code Update Closed Session: CEO Review</td>
<td><strong>Board of Directors, October 12:</strong> Consent: Minutes August 2022 Treasurer Report Committee Reports Regular Calendar: FY 22-23 Budget Adoption Strategic Plan focus areas PPA IRP Update Clean Air Day Resolution Reach Code Update Closed Session: CEO Review</td>
<td><strong>Board of Directors, November 9:</strong> Consent: Minutes September 2022 Treasurer Report Committee Reports Regular Calendar: FY 22-23 Budget Adoption Strategic Plan focus areas PPA IRP Update Clean Air Day Resolution Reach Code Update</td>
<td><strong>Board of Directors, December 14:</strong> Consent: Minutes October 2022 Treasurer Report Committee Reports Regular Calendar: FY 22-23 Budget Adoption PPA IRP Update Clean Air Day Resolution Reach Code Update</td>
</tr>
<tr>
<td><strong>Executive Committee, August 26:</strong> Program Snapshots IRP</td>
<td><strong>Executive Committee, September 23:</strong> Program Snapshots</td>
<td><strong>Executive Committee, October 28, 11am:</strong> Program Snapshots</td>
<td><strong>Executive Committee, Date TBD:</strong> Program Snapshots</td>
<td><strong>Executive Committee, Date TBD:</strong> Program Snapshots</td>
</tr>
<tr>
<td><strong>Audit Committee - August 22:</strong> Independent Auditor Selection</td>
<td><strong>Audit Committee - TBD</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Finance &amp; Admin Committee - Aug. 1</strong></td>
<td><strong>Finance &amp; Admin Committee - TBD</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Meeting Where Requested</td>
<td>Request/Comment</td>
<td>Comments</td>
<td>Department</td>
</tr>
<tr>
<td>------------</td>
<td>-------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>6/10/2022</td>
<td>Special Meeting</td>
<td>Info on frequency and voltage changes required for reliability – future deeper</td>
<td>Staff will consider this topic for future board member information</td>
<td>General</td>
</tr>
<tr>
<td></td>
<td></td>
<td>dive (Vice Chair Tyson)</td>
<td>sessions</td>
<td></td>
</tr>
<tr>
<td>6/10/2022</td>
<td>Special Meeting</td>
<td>Information request on small modular reactors (SMRs) (Dir. Chua)</td>
<td>Staff is preparing information for Dir. Chua on SMRs</td>
<td>General</td>
</tr>
<tr>
<td>6/8/2022</td>
<td>Board Meeting</td>
<td>Can unique user data from SVCE website visitors identify location by city</td>
<td>Community Relations staff has responded to Dir. Fligor's inquiry</td>
<td>ESCR</td>
</tr>
<tr>
<td>5/12/2021</td>
<td>Board Meeting</td>
<td>Training request on how to manage a potential new working environment and check-</td>
<td>Staff will keep this in mind as the hybrid work structure is developed</td>
<td>Executive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in 6 months to 1 yr after implementation of a possible hybrid work structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/3/2021</td>
<td>Audit Committee</td>
<td>SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)</td>
<td>Staff will consider this when looking at overall risk mitigation and</td>
<td>Finance &amp; Admin</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>insurance</td>
<td></td>
</tr>
<tr>
<td>8/28/2020</td>
<td>Executive Committee</td>
<td>Policy check regarding duration of contracts before they go back out to bid (Dir.</td>
<td>Purchasing Policy does not currently have a formal duration limit, will</td>
<td>Finance &amp; Admin</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gibbons)</td>
<td>update Purchasing policy as part of policy review</td>
<td></td>
</tr>
</tbody>
</table>
Customer Focused Strategic Plan
What We Heard:
Frame the strategic plan from an external viewpoint - how customers and community benefit from the work that SVCE is undertaking*

For the 2022 Strategic Plan We Aspire to:
• Present strategic plan in community and customer context
• Demonstrate that the SVCE organizational structure successfully supports the SVCE mission and produces significant community value
• Link department activities & goals to community deliverables & benefits
• Display the strategic plan in a way that is easier for customers to understand
• Say more about our community & our customers

*Public Comment 2
THE MISSION DRIVES PLAN & ORGANIZATION STRUCTURE TO DELIVER CUSTOMER & COMMUNITY BENEFITS

Strategic Plan

Departments:
- Power Resources
- Energy Services & Community Relations
- Decarbonization Programs & Policy
- Legislative Policy
- Administration

Functions:
- Regulatory Policy
  Advocacy, Planning, Procurement and Operations of Clean, Reliable and Affordable Supply
- Engage with Customers to Provide Affordable and Reliable Energy Services
- Advance Fuel Buildings and Transportations
- Advocate for State & National Clean Energy Policies
- Resources and Operational Efficiencies

Customer & Community Benefits
COMMUNITY BENEFIT LINKED TO STRATEGIC GOALS

OCTOBER 2021 STRATEGIC PLAN:

STRATEGIC PLAN GOALS

1. Build and maintain a high-performing team
2. Maintain an enjoyable and rewarding workplace
3. Get great at prioritizing, and rebalancing to align work plan with higher level goals
4. Plan for resources to meet SVCE’s mission while balancing multiple stakeholder objectives
5. Acquire clean and reliable electricity in a cost effective, adjustable and sustainable manner
6. Manage and optimize power supply resources to meet affordability, GHG reduction and reliability objectives
7. Work with the community to plan and track achieving energy and transportation GHG reductions of 30% from the 2015 baseline by 2021, 40% by 2025, and 50% by 2030
8. Coordinate development of decarbonization and resilience strategy, lead design of local policy and programs, and support program deployment
9. Use DAISY to enable data-driven decision-making across the organization
10. Empower customers with the awareness, knowledge and resources needed to make effective clean energy choices
11. Engage a full range of public, private, and non-profit stakeholders to leverage our decarbonization efforts
12. Enact competitive service offerings and programs that deliver measurable environmental and economic benefits
13. Commit to maintaining a strong financial position
14. Avoid failures in management of market, credit, liquidity, operational and enterprise risks
15. Advocate for policies that protect CCA customer investments and further decarbonization, grid reliability, affordability, and social equity with federal and state elected officials and regulators
16. Engage regulators, legislators, and local elected officials in representing SVCE priorities
17. Develop and enhance internal processes related to Supplier Diversity, Staffing and Compliance
18. Engage the development of regulations that proactively support the changing evolving energy market and facilitate grid innovation
19. Drive SVCE’s local policy objectives by leveraging key stakeholders
20. Ensure SVCE’s Information Technology infrastructure is secure, reliable, and disaster resistant to provide 24/7/365 online access
21. Enable data-driven decision-making across the organization; automate, integrate, and streamline business processes to minimize operational risk and move organization toward industry best practices from its startup phase

OCTOBER 2022 STRATEGIC PLAN:

STRATEGIC PLAN GOALS

OPERATIONS
Community has a trusted source of reliable, affordable and clean electricity today and carbon:

1-3 strategic planning, acquisition and management of power supply resources and ongoing risk mitigation.

Engage with Customers to Provide Affordable and Reliable Electric Services:
Community confidently makes clean energy choices by engaging with SVCE through educational tools & materials, programs and outreach activities that are accessible to all customer segments.

Buildings and Transportation:
Coal-fired use to clean electricity, and strengthening driven, carbon-free programs.

Community’s interest in clean energy, affordable rates and carbon reduction is further advanced through state & local

FINANCE & ADMINISTRATION
Community served by a responsive, transparent and financially sustainable organization, highly capable of meeting

* Focus areas and associated goals will be highlighted in Strategic Plan
<table>
<thead>
<tr>
<th>Department Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Workplace &amp; How We Get Work Done</td>
</tr>
<tr>
<td>B. Power Supply</td>
</tr>
<tr>
<td>C. Decarbonization &amp; Grid Innovation</td>
</tr>
<tr>
<td>Program Planning &amp; Tracking</td>
</tr>
<tr>
<td>D. Account Services, Customer &amp; Community, Program Deployment</td>
</tr>
<tr>
<td>E. Finance and Fiscal Responsibility</td>
</tr>
<tr>
<td>F. Regulatory &amp; Legislative Policy</td>
</tr>
<tr>
<td>G. Data Analytics, Governance &amp; Information Technology</td>
</tr>
</tbody>
</table>

**OCTOBER 2021 STRATEGIC PLAN:**

- Plan, Build and Operate Reliable: [Power Policy, Procurement, Regulatory & Operations]
- Engage with Customers to Provide Affordable and Reliable: [Energy Services, Community Relations]
- Advance Customer Fuel Switching in: [Decarbonization Programs, Policy]
- Advocate for State and Local Clean Energy Policy: [Legislative Policy]
- Direct Financial Resources and Operational Efficiencies: [Finance & Administration]
SVCE’s 13 service territories are home to many of the world’s largest high-tech corporations, hundreds of startup companies and approximately 250,000 residential customers. Over 96% of these businesses and residents participate in SVCE’s offerings and services.
RECOMMENDATION
In preparation to receive and adopt the Budget in September, Staff recommends that the Board of Directors provide feedback on the fiscal year (FY) 2022-23 Proposed Operating Budget that projects depositing $115.5 million into the reserves and the updated Reserves Policy.

COMMITTEE REVIEW
On June 24, 2022, staff presented the methodology and framework for developing the proposed budget to the Executive Committee (EC). The EC agreed with the methodology and the framework and made few suggestions including ensuring there’s sufficient staffing contingency and further clarifying some of the proposals in the presentation.

After incorporating EC’s comments and developing the budget per the proposed methodology, on August 1, 2022, staff presented the Proposed Operating Budget and updated Financial Reserves Policy to the Finance and Administration Committee. The Committee requested additional clarifications relating to staffing levels over time, peer CCA staffing levels, and budget changes year over year, which are included in the accompanying presentation and unanimously recommended that the Board adopt the proposed budget and update the reserves policy.

ANALYSIS & DISCUSSION
The FY 2022-23 Proposed Operating Budget is balanced and presents Silicon Valley Clean Energy (SVCE) in stable financial condition. The projected balance available for reserves of $115.5 million is an increase of $53.9 million above the $61.6 million presented in the FY 2021-22 Mid-Year Budget.

Energy Revenues
The Proposed budget shows an increase in revenues of $98.4 million compared to the FY 2021-22 adjusted mid-year budget. The biggest contributor to this increase in revenues is the favorable SVCE margins based on a reduced PCIA rate. SVCE margins relative to the current rates that went in effect March of 2022, with slight adjustment in June of 2022, is about 10 percent higher. However, compared to the average margin over the entire FY 2021-22 period, the current margin is about 26 percent higher.

The proposed budget anticipates no PCIA charge (currently at ~1.88 cents/kWh) and a ~12 percent decrease in PG&E’s generation rates (from ~14.3 cents/kWh to ~12.79 cents/kWh) starting in January 2023. Both

---

1 The fiscal year 2022-23 starts on October 1, 2022 and ends on September 30, 2023.
estimates are based on CalCCA’s NewGen Model using SVCE’s updated market prices and an adjustment for modeling error.

PG&E’s forecast of 2023 rates in the ERRA filing made in May 2022, shows a lower PG&E Generation Rate (~12.62 cents/kWh) and a charge of about 1.43 cents/kWh for PCIA, implying a reduction in SVCE margin of about ~10 percent. PG&E’s filing, however, is based on results using market prices in late March 2022 and since then market prices have increased about ~20 percent. Based on the ERRA filing schedule, PG&E will update its rate forecast in early fall, and the CPUC is expected to approve new rates in late December. Based on current market data and using the NewGen Model, PG&E’s update in the fall should show a higher PG&E generation rate and a negative PCIA charge.

To test the accuracy of the NewGen model and working with the NewGen consultant, staff calibrated the model to PG&E’s forecast using the same period market data PG&E used in developing its 2023 rate forecast. The calibration shows that the model results in about 10 percent higher SVCE margin. Using the methodology discussed with the EC, to account for potential modeling error, staff reduced the resulting margins from the current model using latest market prices by 10 percent. The results show PCIA to be slightly negative. Because PG&E tariffs do not allow for negative rates, PCIA is set at zero. If PCIA does turn negative, PG&E will account for the negative portion in the following year’s PCIA rates.

Using the NewGen model with latest prices and an adjustment for modeling error likely better aligns revenues closer to the rates that PG&E will update in October, and it also better aligns revenues with power supply costs because both estimates are made using the same set of market data. Nevertheless, the results are based on a forecast and the actual rates won’t be known until the CPUC approval, expected in late December. Between now and when the rates are finalized, market prices will change, which can create less or more favorable results. Staff recommends that SVCE change its rates when the CPUC makes the new PCIA and PG&E generation rates effective. At that time, the Board can revisit the customer discount rate and make its decision based on the actual rates. For the purposes of setting the Budget, the effective discount is set at 3% starting January 2023. The current 1 percent discount remains until the end of December 2022. The 3 percent effective discount rate is composed of 2 percent relative to comparable PG&E generation rates for all customers and an additional 1 percent converted to dollar bill credits to the CARE & FERA customers, which amounts to $3.6 million or about $10.50 per month bill credit for 12 months. The budget shows the bill credit as a separate cost item.

The proposed budget continues to reduce revenues to account for potential write-offs that SVCE could incur because of the large accounts receivable balances resulting from our customers facing economic hardships. SVCE is currently budgeting revenues to include a 0.9% write-off rate, which amounts to roughly $4.4 million. This is a conservative estimate, as statewide efforts are underway to potentially cover a large portion of those losses.

Power Supply Expenses

Power supply expenses are expected to increase to $325.3 million due to increasingly volatile market prices. In addition, the costs for non-RPS, carbon-free attributes are expected to remain high, due to the ongoing drought in the western US and the resultant low hydropower production. SVCE does expect to receive PG&E allocations in 2022 to offset some of those costs increases, but the volumes are unknown at this time. Changing resource adequacy (RA) requirements along with high RA prices also contribute to higher costs relative to the last fiscal year. While long-term PPAs continuing to come online puts downward pressure on SVCE’s power supply costs, potential delays in their operational starts and negotiations subject SVCE to additional energy, RPS, and RA volumes at currently high market prices.

Using the same methodology resulted in a ~20% reduction in SVCE margins when staff presented the results to the EC. Since the EC presentation, NewGen released a new model (version 3.1 versus 2.5 used for the EC presentation).
While commercial load is yet to fully recover to pre-Covid levels and the Covid related increases in residential load is starting to taper off, load relative to the Mid-year budget forecast, including the growth from new load moving into SVCE’s portfolio, is higher and contributes to the increase in Power Supply cost.

![Historical Baseline & 2023 Load](image)

**Updated Reserves Policy**

At the June 8th, 2022 Board of Directors meeting, staff presented the results of the stress test analyses and emphasized the need to hold sufficient reserves to ensure SVCE can withstand risks such as those modeled in the analyses. The most consequential stress test was scenario 2 that modeled a collapse in energy prices that substantially reduce revenues along with a substantial increase in the financial posting requirements to the Provider of Last Resort (PG&E). Staff has since updated the stress test scenario 2 analysis with market and portfolio data consistent with those used to develop the proposed budget and computed the results on a fiscal year basis as opposed to calendar year view presented in the initial analyses.

Staff proposes that the reserves targets in the Reserves Policy, as redlined in the attachment, be updated such that SVCE can maintain at a minimum 120 Days of Cash on Hand (DCOH) for the next two fiscal years under Stress Test Scenario 2 conditions. Staff also proposes to reset the upper reserves target such that if stress test 2 were to occur, reserves over the next remaining 5 fiscal years do not fall below 90 DCOH.

As presented in the June Stress Test report and presentation, the upcoming fiscal year margins are not guaranteed given the true-up in 2024 for PCIA and PG&E generation rates. If the adverse-modeled risk conditions materialize, the updated reserves policy targets to maintain at least 120 DCOH, which will be needed to reshape strategy and secure additional liquidity. Staff’s proposal to also increase the upper reserves target is intended to take advantage of good margin years to manage risks over the 5-year period.

The table below summarizes the change in the reserve targets:

<table>
<thead>
<tr>
<th>Reserve Targets (DCOH)</th>
<th>Current</th>
<th>New Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum</td>
<td>120</td>
<td>120</td>
</tr>
<tr>
<td>Goal (Target)</td>
<td>230</td>
<td>285</td>
</tr>
<tr>
<td>Maximum (Upper Target)</td>
<td>320</td>
<td>490</td>
</tr>
</tbody>
</table>

If stress test 2 were to occur, the draw on reserves in the Fiscal Year 2023-24 would be about $186 million. To end Fiscal Year 2023-24 with 120 DCOH, SVCE needs to end FY 2022-23 with about $288 million in
reserves, which is equivalent to holding 285 DCOH based on a daily burn rate slightly higher than a million dollars. Similarly, the new upper reserves target was computed to ensure that each of the latter 3 years of the 5-year forecast stays above 90 DCOH.

Operating Expenses

Operating expenses are expected to grow in the proposed budget, increasing by $6.5 million from the FY2021-22 adjusted midyear budget. The increase in projected operating expenses is largely comprised of costs associated with an increase in staffing and professional services. In addition, the operating budget includes an overall 5% contingency, which amounts to $1.34 million.

Overall personnel expenses are expected to increase by $3.5 million, of which $1.8 million is associated with the request for ten new positions, spread across the organization. These new positions will focus on program deployment, power market data analysis, commercial and industrial services, and risk control. In addition to these new positions, SVCE continues to work with specialized consultants who provide critical skills that are needed to bridge gaps between full-time staff. Of the increase in personnel costs, $370 thousand arise from proposed benefit improvements, intended to bring SVCE up to a competitive position with its peer CCAs and retain staff. Proposed improvements include increases to the monthly medical premium and cash in-lieu amounts, an increase to the monthly technology allowance, the creation of a paid parental leave benefit for new parents, and an amount for staff to participate in programs alongside our customers, but without competing for existing program funds.

The salary portion of the staffing budget includes a 5.3% cost-of-living adjustment to salaries, based on a trailing six-month average for the Bay Area CPI, which adds $350 thousand in additional cost. SVCE is budgeting for a similar 5% in merit increases, to be determined by management during the upcoming annual review process, and which contribute another $330 thousand. SVCE continues to work to fill positions and anticipates fully staffing up by the end of the calendar year but continues to utilize a 5% long-term vacancy rate in the personnel budget.

The ten new positions being requested through this proposed budget reflect the increasing needs of a mature organization. The new positions include three new program staff, to focus on community programs, policy development, and overall program portfolio effectiveness. On the Power Resources team, an additional regulatory analyst is proposed to deal with the growing volume of work generated by the CAISO and CEC, along with two market data analysts to work on PPA data and load forecasting. The Energy Services and Community Relations team is proposing three new positions, including two Energy Services Specialists to support commercial and industrial offerings, along with an outreach specialist to coordinate with member agencies and community groups. Finally, the Finance and Administration team is proposing a Risk Control Analyst to support middle office functions and Business Process Optimization (BPO) technology solutions implementation.

Professional services costs are proposed to increase by $2.25 million, largely accounted for by a $1.5 million request for potential litigation costs, along with a $375 thousand increase in the Phase 1 implementation costs for the BPO project, a $150,000 request for funds to develop and launch a structured financing program, and a $125 thousand increase in recruiting costs to account for the continued potential for a competitive hiring market.

The final notable increase in operating expenses is the $600,000 increase in general and administrative costs, which is largely the result of increased hardware, travel, training, and conference fees anticipated for a larger staff, and a return to pre-COVID levels of outside engagement. SVCE is also budgeting additional funds for insurance costs, as we’ve seen large increases in cybersecurity insurance and directors’ and officers’ coverage over the past year. Administrative staff is planning to conduct a comprehensive insurance review this fiscal year, to determine both the appropriate levels of coverage, and whether any savings can be found through bundling our various coverages. SVCE continues to prioritize cybersecurity efforts and maintains a budget of...
$250 thousand for system improvements and hardening. Staff intends to work with a virtual Chief Information Security Officer (vCISO) this fall on an updated cybersecurity assessment, which may identify additional funding needed at mid-year.

Programs Budget

SVCE will continue to incorporate projected programs spending over the 5-year forecast period into the reserve balance projections. This includes remaining CRCR funds (expected to be drawn down by the end of FY23-24) and the double down program allocation from FY21-22 (expected to be drawn down by FY24-25). For this coming fiscal year, programs spending is projected to be $15 million, with an additional $3.2 million in CRCR spending. In addition to these previously allocated funds, staff is currently including $1.9 million from the PG&E nuclear allocation, which represents the savings to the portfolio from accepting the allocation. Options for these funds were presented to the Board of Directors in June 2022.

Non-Operating Revenues

Non-operating revenues are projected to increase by about $290,000. This increase reflects the increase in interest earned on the growing reserve balance, although rates remain quite low.

STRATEGIC PLAN

The recommendation supports all goals of the Board adopted Strategic Plan. Specifically, the recommendations strongly support Goal 13 - “Commit to maintaining a strong financial position” and the accompanying Measure “Balanced budget that achieves cash reserve targets and maintains customer value”.

ALTERNATIVE

Staff is open to feedback and suggestions from the Board. At a strategic level, the Board can change the discount to PG&E, reduce the carbon-free percent of power supply, reduce the renewable percent of the power supply, and cut the programs expenditure.

Considering any of the above options requires an extensive policy level discussion, and the Board can consider them while finalizing SVCE’s strategic priorities during the coming months as well as revisit the customer discount rate when actual PCIA and PG&E generation rates are known. Given a sufficient projected reserve balance that maintains SVCE’s stable financial condition staff does not recommend any specific reductions at this time.

FISCAL IMPACT

The FY 2022-23 Proposed Operating Budget includes total revenues of $483.9 million and total expenses, non-operating revenues, and transfers of $368.4 million, resulting in a surplus / contribution to reserves of $115.5 million.

ATTACHMENTS

1. FY 2022-23 Proposed Operating Budget
2. Updated Financial Reserves Policy
## SILICON VALLEY CLEAN ENERGY
### FY 2022-23 OPERATING BUDGET
($ in thousands)

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FY 2021-22 ADJUSTED BUDGET</th>
<th>FY 2022-23 PROPOSED BUDGET</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ENERGY REVENUES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Sales</td>
<td>384,498</td>
<td>482,930</td>
<td>98,432</td>
</tr>
<tr>
<td>Green Prime</td>
<td>1,005</td>
<td>931</td>
<td>(74)</td>
</tr>
<tr>
<td>TOTAL ENERGY REVENUES</td>
<td>$385,502</td>
<td>$483,860</td>
<td>$98,358</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>ENERGY EXPENSES</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Supply</td>
<td>274,979</td>
<td>325,296</td>
<td>50,317</td>
</tr>
<tr>
<td>OPERATING MARGIN</td>
<td>110,523</td>
<td>158,564</td>
<td>48,041</td>
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<table>
<thead>
<tr>
<th>OPERATING EXPENSES</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Management</td>
<td>3,249</td>
<td>3,413</td>
<td>163</td>
</tr>
<tr>
<td>PG&amp;E Fees</td>
<td>1,450</td>
<td>1,470</td>
<td>20</td>
</tr>
<tr>
<td>Salaries and Retirement</td>
<td>8,535</td>
<td>12,024</td>
<td>3,490</td>
</tr>
<tr>
<td>Professional Services</td>
<td>5,669</td>
<td>7,922</td>
<td>2,252</td>
</tr>
<tr>
<td>Marketing &amp; Promotions</td>
<td>908</td>
<td>862</td>
<td>(46)</td>
</tr>
<tr>
<td>Notifications</td>
<td>131</td>
<td>131</td>
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</tr>
<tr>
<td>Lease</td>
<td>525</td>
<td>525</td>
<td>0</td>
</tr>
<tr>
<td>General &amp; Administrative</td>
<td>1,225</td>
<td>1,857</td>
<td>633</td>
</tr>
<tr>
<td>TOTAL OPERATING EXPENSES</td>
<td>$21,693</td>
<td>$28,204</td>
<td>$6,512</td>
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<tr>
<td>OPERATING INCOME (LOSS)</td>
<td>88,831</td>
<td>130,360</td>
<td>41,529</td>
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<thead>
<tr>
<th>NON-OPERATING REVENUES</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Income</td>
<td>50</td>
<td>50</td>
<td>0</td>
</tr>
<tr>
<td>Interest Income</td>
<td>300</td>
<td>592</td>
<td>292</td>
</tr>
<tr>
<td>Grant Income</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL NON-OPERATING REVENUES</td>
<td>350</td>
<td>642</td>
<td>292</td>
</tr>
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<table>
<thead>
<tr>
<th>NON-OPERATING EXPENSES</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing</td>
<td>40</td>
<td>3</td>
<td>(37)</td>
</tr>
<tr>
<td>Interest</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL NON-OPERATING EXPENSES</td>
<td>40</td>
<td>3</td>
<td>(37)</td>
</tr>
<tr>
<td>TOTAL NON-OPERATING INCOME (EXPENSES)</td>
<td>310</td>
<td>639</td>
<td>329</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CHANGE IN NET POSITION</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>89,141</td>
<td>130,999</td>
<td>41,858</td>
<td>47.0%</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>150</td>
<td>200</td>
<td>50</td>
</tr>
<tr>
<td>Transfer to CRCR Fund</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Transfer to Program Fund</td>
<td>6,781</td>
<td>9,765</td>
<td>2,984</td>
</tr>
<tr>
<td>Nuclear Allocation</td>
<td>600</td>
<td>1,900</td>
<td>1,300</td>
</tr>
<tr>
<td>Add'l Programs Allocation</td>
<td>17,000</td>
<td>0</td>
<td>(17,000)</td>
</tr>
<tr>
<td>Add'l Customer Bill Relief</td>
<td>3,000</td>
<td>3,600</td>
<td>600</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</td>
<td>$27,531</td>
<td>$15,465</td>
<td>($12,066)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BALANCE AVAILABLE FOR RESERVES</th>
<th>FY 2021-22</th>
<th>FY 2022-23</th>
<th>VARIANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>$61,602</td>
<td>$115,534</td>
<td>$53,924</td>
<td>87.5%</td>
</tr>
</tbody>
</table>
FINANCIAL RESERVES POLICY

I. PURPOSE
This Reserve Policy outlines the appropriate types and levels (minimum, goal, and maximum) of financial reserves as prescribed in the following policy. The primary reason for a reserve policy is to be prepared for contingencies, but other reasons also exist. Seven important purposes of a reserve policy are as follow:

1. **Plan for contingencies.** To maintain sufficient reserves to minimize rate increase due to market volatility (power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.

2. **Maintain good standing with rating agencies.** By maintaining sufficient reserves, SVCE can preserve good credit ratings, allowing it to secure power at lower costs, that is, without posting credit enhancements, in the energy markets.

3. **Avoid interest expense.** To avoid interest expense to cover short-term cash shortfalls by having sufficient reserves to use for this purpose, rather than debt.

4. **Ensure cash availability when revenue is unavailable.** To bridge times of the year that normally see temporary low levels of cash.

5. **Plan for anticipated future rate increases by gradually raising those rates, using reserves to cushion the full impact on customers over an extended time period.** For example, if it is expected that rates are highly likely to increase in 3 to 5 years, higher reserves on hand can cushion those rate increases over a more gradual timeframe by drawing down on the accumulated funds that may be in excess of the reserves’ goal.

6. **Manage the risks identified in the Energy Risk Management Policy, which are:**
• Market price risk,
• Net revenue risk,
• Counterparty credit and performance risk,
• Load and generation volumetric risk,
• Operational risk,
• Liquidity risk, and
• Regulatory/legislative risk.

7. Establish clear expectations between the Board of Directors and staff. A formal reserve policy creates a shared understanding of the proper level and use of reserves.

II. POLICY

Reserve Levels Established
Financial reserves shall be set aside as follows:

The Reserve targets cover the operations of SVCE over a number of days in the event of emergencies or other significant unforeseen events. Three levels are defined, with the first being baseline. Given the purposes stated above, the Reserve shall be maintained at no less than the minimum described in (a) below. The reserve level described in (b) is recommended as the goal. The Maximum reserve level described in (c) would provide solid reserves for significant fluctuations in revenue or unforeseen circumstances. The Board shall review its reserve levels annually in context of SVCE’s overall financial condition of the agency, as well as due to changes to the industry and/or risk factors as described in periodic review of targets below.

(a) Minimum Operating Reserve (baseline) shall be the minimum maintained to cover 120 days of operations of the annual operating budget;

(b) An Operating Reserve goal of covering 230285 days of operations of the annual operating budget;

(c) Maximum Operating Reserve to cover 320490 days of operations of the annual operating budget.
Conditions for Use of Reserves

For purposes of this policy, use of reserves is defined as a projected or estimated\(^1\) reduction in reserves by fiscal year-end. A temporary reduction in cash consistent with the expected peaks or dips in revenues and expenditures are normal cyclical occurrences to be expected during the fiscal year, and do not constitute a use of reserves.

The reserves may be drawn down upon by the CEO during the year, up to the lesser of 10% of the year’s budgeted cost of power supply, or $30 million, to:

1. Cover increases in power supply expenses due to spikes in costs and/or due to higher customer demand;
2. Provide necessary funds to make up for unanticipated revenue shortfalls;
3. Meet any margin or collateral posting requirements under energy supply contracts; and,
4. Provide resources to meet emergency expenditures.

If further use of reserves are needed to manage the operations of the organization, or if the use of reserves would bring the balance below the Minimum Operating Reserve baseline, the CEO must present recommendations to the Board and the Board must authorize any such use.

Replenishment of Reserves

Should SVCE drawdown reserves below the Minimum Operating Reserve level, SVCE will implement plans to return reserves to their minimum targets within two (2) fiscal years. Such plans will be provided in subsequent budget and rate discussions with the Board.

\(^1\) It is not practical to wait the formal fiscal year end closing of the accounting records to determine if the reserves have been “used”. Therefore, it is appropriate for staff to estimate reserve levels, with the important amount being what is estimated for fiscal year end.
**Excess Reserves**
If reserve funds are projected to exceed the maximum level, the CEO shall present options for consideration by the Board of Directors for proper disposition of those reserves during the next budget cycle.

**Reserves between Minimum and Maximum**
To the extent that reserves are above target and below the maximum, no other action by SVCE would be required.

**Periodic Review of Reserve Goals**
Reserve goals shall be periodically reviewed for consistency with industry standards. If significant risk factors are eliminated or significant new risks emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve policy shall be reviewed, and the funding level shall be adjusted accordingly. Unless the Reserves are approaching minimum levels, formal Reserve funding discussions with the Board may await the next budget process.

**Reporting**
Reserve levels will be monitored during the fiscal year and reported in the quarterly financial reports. Reserve target levels (minimum and maximum) will be analyzed annually, and over/under reserve determination shall be made in conjunction with year-end financial results. These results will be reported to the Board of Directors as part of the year-end financial report presentation.
Staff Report – Item 4

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: 8/10/2022

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 jurisdictions 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, with additional updates in April, May, and June.

ANALYSIS & DISCUSSION
In an effort to continue communications with the Board of Directors on reach codes, staff will provide a presentation with status updates and highlight upcoming actions/priorities.

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

August 10, 2022

Appendix A

Power Resource Contracts Executed by CEO
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between Marin Clean 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 May 3, 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.
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
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.

2.2 Reductions in Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

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

2.3 Seller’s Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units having the same Capacity Attributes of the Unit(s) originally identified in Appendix B, including the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a “Replacement Unit”) in an amount such that the total amount
of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser’s Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D ("Planned Outage Schedule") for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. 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.

(b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

(d) Purchaser shall have the exclusive right to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit’s SC shall comply with the Purchaser’s direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit’s SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit’s SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit’s SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller
may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to
demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 **Seller’s Representations and Warranties**

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 **Market Based Rate Authority**

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

**ARTICLE 5**

[RESERVED]
ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure.
pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.

6.3 **Dodd-Frank Act**


6.4 **Change in Law**

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.
6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 No Recourse to Members

The Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are each a public entity separate from its 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. The Parties will have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party's constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 9.4 is deleted in its entirety and replaced with the following:

“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”

(b) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;
(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(c) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(d) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(f) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(g) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(h) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(i) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

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 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.”

6.9 **Counterparts**

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 **Entire Agreement; No Oral Agreements or Modifications**

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.
[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

MARIN CLEAN ENERGY, a California joint powers authority

By: [Signature]
Name: Dawn Weisz
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: CEO
APPENDIX A
DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable
environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.
“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is ten (10) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR  ☐ Local RAR  ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: North
Resource Category (MCC Bucket): 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A
## Unit 1

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<thead>
<tr>
<th><strong>Unit Specific Information</strong></th>
<th><strong>Value</strong></th>
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<tr>
<td><strong>Resource Name</strong></td>
<td>Sunrise Power Project</td>
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<td><strong>Physical Location</strong></td>
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<td><strong>Unit NQC by month (e.g., Jan=50, Feb=65):</strong></td>
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<td><strong>Unit EFC by month (e.g., Jan=30, Feb=50)</strong></td>
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<td><strong>Resource Type (e.g., gas, hydro, solar, etc.):</strong></td>
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<td><strong>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3):</strong></td>
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<td><strong>TAC Area (e.g., PG&amp;E, SCE):</strong></td>
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<td><strong>Prorated Percentage of Unit Factor:</strong></td>
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<td><strong>Prorated Percentage of Unit Flexible Factor:</strong></td>
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<td><strong>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt):</strong></td>
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<td><strong>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4):</strong></td>
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## APPENDIX C
### NOTICE INFORMATION

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<tr>
<th>Seller: Marin Clean Energy</th>
<th>Purchaser: Silicon Valley Clean Energy</th>
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Appendix C - 1

Marin Clean Energy
## APPENDIX D
### PLANNED OUTAGE SCHEDULE

<table>
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<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
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APPENDIX D - 1

Marin Clean Energy
WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between Peninsula Clean Energy Authority, a California joint powers authority (“Seller”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of May 24, 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.
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
Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.

(h) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

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

(c) If applicable, Seller’s obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced at Seller’s option in the event Purchaser fails to deliver, for any reason, the contract quantity of product set forth in Appendix B of the Swap Confirmation (such option, the “Swap Reduction Option”); provided, however, that (i) Seller’s obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Purchaser failed to deliver under the Swap Confirmation and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Purchaser of such

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

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Joint CCA WSPP Standard RA Confirmation

modification no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller’s rights under the Swap Reduction Option are cumulative and in addition to Seller’s rights under the Swap Confirmation.

2.3 **Seller’s Option To Provide Alternate Capacity**

If Seller is unable to provide the full Contract Quantity for a Showing Month for any reason, including, without limitation, as provided in Section 2.2, or Seller desires to provide some or all of the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with replacement Product from one or more replacement units having the same Capacity Attributes of the Unit(s) originally identified in Appendix B, including the same Resource Category and, if applicable, the Flexible Capacity Category (each such unit, a “Replacement Unit”) in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser’s Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.
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2.4 Planned Outages

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

2.5 Purchaser’s Remedies for Seller’s Failure to Deliver Expected Contract Quantity

a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.

b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

(a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller’s obligations hereunder other than as set forth in this Section 2.6(a). For any such a resale, the Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller shall, or shall cause the Shown Unit’s SC, to follow Purchaser’s instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller’s obligations under this Confirmation. Seller shall, and shall cause the Shown Unit’s SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser’s rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Shown Unit’s SC to comply with this Confirmation, Seller will be liable to Purchaser for the

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amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.

(b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.

(c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit’s SC shall comply with Purchaser’s direction and Purchaser shall retain and receive all revenues from such re-sale.

(d) Purchaser shall have the exclusive right to direct the Seller or the Unit’s SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit’s SC shall comply with the Purchaser’s direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit’s SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit’s SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit’s SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3
PAYMENTS

3.1 Payment

Purchaser shall make a monthly payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.
3.2 **Allocation of Other Payments and Costs**

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

**ARTICLE 4**

**OTHER PURCHASER AND SELLER COVENANTS**

4.1 **CAISO Requirements**

Seller shall schedule or cause the Shown Unit’s SC to schedule or make available to CAISO the Expected Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Shown Unit’s SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller shall indemnify and hold Purchaser harmless from, the failure of Seller or the Shown Unit’s SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Shown Unit’s SC, owner, or operator for noncompliance.
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4.2 **Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization**

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 **Seller’s Representations and Warranties**

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.
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4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.

ARTICLE 5
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser’s request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser’s use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Purchaser’s request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to
determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it. Notwithstanding the foregoing, Purchaser may release confidential information without notice to or over the objection of Seller if Purchaser’s legal counsel advises Purchaser that Purchaser is required by law to release such confidential information.
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6.3 **Dodd-Frank Act**


6.4 **Change in Law**

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 **Governing Law**

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 **Collateral**

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.

6.7 **No Recourse to Members of Seller or Purchaser**

Parties are organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are public entities separate from its constituent members. Parties will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against either Parties constituent members, or the officers, directors, advisors, contractors, consultants or employees of either Party or either Parties constituent members, in connection with this Confirmation.

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6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 9.4 is deleted in its entirety and replaced with the following:

“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”

(b) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

(c) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(d) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”
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(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

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.
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(ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

6.9 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

Peninsula Clean Energy Authority

By: Janis C. Pepper
Name: Janis Pepper
Title: CEO

Silicon Valley Clean Energy Authority

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO
APPENDIX A
DEFINED TERMS

“Alternate Capacity” means replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.3.

“CAISO” means the California ISO or the successor organization to the functions thereof.

“Capacity Attributes” means attributes of the Shown Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Shown Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Shown Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable
environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“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 twelve (12) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Swap Confirmation” means that certain WSPP Agreement Confirmation between Seller and Purchaser dated concurrently herewith, in which Seller is purchasing ____ MW of ______ Product from Purchaser.

“Swap Reduction Option” has the meaning specified in Section 2.2(c).

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ RAR  ☐ Local RAR  ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone:
Resource Category (MCC Bucket): 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable):
## Unit 1

<table>
<thead>
<tr>
<th>Unit Specific Information</th>
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<tbody>
<tr>
<td>Resource Name</td>
<td>Wright Solar Freeman</td>
</tr>
<tr>
<td>Physical Location</td>
<td>Los Banos, CA</td>
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<tr>
<td>CAISO Resource ID</td>
<td>WRGTSR_2_WSFSR1</td>
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<tr>
<td>SCID of Resource</td>
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<td>Unit NQC by month (e.g., Jan=50, Feb=65):</td>
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<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<td>TAC Area (e.g., PG&amp;E, SCE)</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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</tr>
<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td>N/A</td>
</tr>
<tr>
<td>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>CAISO System</td>
</tr>
<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
<td>4</td>
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</table>

*(Repeat for additional Units)*

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]
APPENDIX C
NOTICE INFORMATION
## APPENDIX D

### PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
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<tr>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</table>

Peninsula Clean Energy
CONFIRMATION LETTER - RESOURCE ADEQUACY BETWEEN SILICON VALLEY CLEAN ENERGY AUTHORITY AND EDF TRADING NORTH AMERICA, LLC

This confirmation letter ("Confirmation") confirms the Transaction between Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer") and EDF Trading North America, LLC, ("Seller"), and each individually a "Party" and together the "Parties", dated as of June 6, 2022 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement (Effective Version: August 12, 2021) to which both Seller and Buyer are members, along with any amendments and annexes thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

1.6 "Buyer" has the meaning specified in the introductory paragraph hereof, and has the same meaning as "Purchaser" under the Master Agreement.

1.7 "CAISO" means the California Independent System Operator Corporation or its successor.

1.8 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.

1.13 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.

1.14 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-
024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time
to time by the CPUC.

1.15  “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines,
requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy
program.

1.16  “Delivery Period” has the meaning specified in Section 4.1 hereof.

1.17  “Delivery Point” has the meaning specified in Section 4.2 hereof.

1.18  “Designated RA Capacity” means an amount of Product equal to, with respect to any Showing Month
during the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such
Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for
such Showing Month and for which Seller has not elected to provide Alternate Capacity.

1.19  “Excusable Event” means (i) a Planned Outage taken in accordance with Section 4.4(a) or (ii) a reduction
in the Unit EFC or Unit NQC (as applicable) in accordance with Section 4.4(c), that causes Seller to fail to
or be unable to perform its obligations under this Confirmation.

1.20  “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at
any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent
jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

1.21  “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC
pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.22  “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor
showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the
CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.23  “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any
governmental, regulatory or administrative agency, commission or other authority legally exercising or
entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority
or power; and (iii) any court or governmental tribunal.

1.24  “LAR” means local area reliability, which is any program of localized resource adequacy requirements
established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of
competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or
local capacity requirement in other regulatory proceedings or legislative actions.

1.25  “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other
locational attributes related to system reliability), as they may be identified at any time during the Delivery
Period by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with
the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that
can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it
should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines
existing local areas, then such change will not result in a change in payments made pursuant to this
Transaction.

1.26  “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is
required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the
CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.27  “Local Capacity Area” has the meaning set forth in the Tariff.

1.28  “LRA” means Local Regulatory Authority as defined in the Tariff.

1.29  “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a
community aggregator or community choice aggregator, or a municipality serving load in the CAISO
Control Area (excluding exports).

1.30  “Master Agreement” has the meaning specified in the introductory paragraph hereof.
"Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

"Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

"Net Qualifying Capacity" has the meaning set forth in the Tariff.

"Non-Availability Charges" has the meaning set forth in the Tariff.

"Notification Deadline" has the meaning specified in Section 4.5 hereof.

"Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

"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" has the meaning specified in Article 3 hereof.

"RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

"RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR and, if applicable, Flexible RAR purposes for any portion of the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

"RAR" means the resource adequacy requirements (other than LAR and Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

"RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

"Replacement Capacity" has the meaning specified in Section 4.7 hereof.

"Replacement Unit" has the meaning specified in Section 4.5.

"Resold Product" has the meaning set forth in Article 9.

"Resource Category" means a “Resource Category” as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"Scheduling Coordinator" has the same meaning as in the Tariff.

"Seller" has the meaning specified in the introductory paragraph hereof.

"Showing Month" means the calendar month during the Delivery Period that is the subject of an RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

"Supply Plan" has the meaning specified for such term in the Tariff.

"Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

"Transaction" for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
1.53 “Unit” or “Units” means the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.54 “Unit EFC” means, with respect to a period during the Delivery Period, the effective flexible capacity set by the CAISO for the applicable Unit for such period as of the Confirmation Effective Date.

1.55 “Unit NQC” means, with respect to a period during the Delivery Period, the Net Qualifying Capacity set by the CAISO for the applicable Unit for such period as of the Confirmation Effective Date.

**ARTICLE 2.
UNIT INFORMATION**

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<tr>
<td>CAISO Resource ID</td>
<td>NAROW2_2_UNIT</td>
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<tr>
<td>Unit SCID</td>
<td>YCWA</td>
</tr>
<tr>
<td>Unit NQC</td>
<td>Varies By Month</td>
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<tr>
<td>Unit EFC</td>
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<tr>
<td>Resource Type</td>
<td>Hydro</td>
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<td>Resource Category (1, 2, 3 or 4)</td>
<td>4</td>
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<tr>
<td>Flexible RAR Category (1, 2 or 3)</td>
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<tr>
<td>Path 26 (North or South)</td>
<td>North</td>
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<tr>
<td>Local Capacity Area (if any, as of Confirmation Effective Date)</td>
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<td>Product Attributes (RA Attributes, LAR Attributes, Flexible RA Attributes)</td>
<td>LAR Attributes</td>
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<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td>None</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
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</tbody>
</table>

**ARTICLE 3.
RESOURCE ADEQUACY CAPACITY PRODUCT**

3.1 **RA Attributes, LAR Attributes and Flexible RA Attributes.**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes and LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.
3.2 Contingent Firm RA Product
Seller shall provide Buyer with RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from the Units in the amount equal to the applicable Contract Quantity for each Showing Month during the Delivery Period. Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month during the Delivery Period will be excused to the extent that the Units are not available to provide the full amount of the Contract Quantity as a result of an Excusable Event and Seller has, in accordance with the requirements of Section 4.4, affected a reduction in the Contract Quantity for such Showing Month, as applicable.

3.3 Flexible RA Product
Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

ARTICLE 4.
DELIVERY AND PAYMENT

4.2 Delivery Point.
The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

4.4 Excusable Events
(a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity during a Showing Month due to a Planned Outage of a Unit, then Seller shall, upon written notice to Buyer by the Notification Deadline, either (i) notify Buyer of the unavailability of the Unit, including the duration of the Planned Outage and the amount of the Contract Quantity that Seller is excused from delivering due to the Planned Outage; or (ii) in lieu of excusing the delivery of the applicable portion of the Contract Quantity for such day, provide Alternate Capacity up to the Contract Quantity for the Showing Month.

In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in this Section 4.4(a), no payment shall be owed by Buyer for the portion of the Contract Quantity that is subject to such reduction.

(b) Reductions in Unit NQC and/or Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for a portion of a Showing Month may also be excused if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. The Contract Quantity with respect to a Monthly Delivery Period following a reduction in the Unit NQC and/or Unit EFC will equal (x) the Contract Quantity for such Monthly Delivery Period as of the Confirmation Effective Date multiplied by (y) the amount equal to the revised NQC or EFC of the Unit, as applicable, divided by the Unit NQC or Unit EFC, as applicable. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller may, in lieu of excusing the delivery of the applicable portion of the Contract Quantity and upon written notice to Buyer by the Notification Deadline,
provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

(a) The “Notification Deadline” in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires or is required to provide the Contract Quantity of applicable RA Attributes for any day(s) during a Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no additional cost to Buyer, provide Buyer with RA Attributes from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event shall Seller provide Alternate Capacity that is supplied by or from generating units that utilize coal or coal materials as a source of fuel. In each case, Seller must notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the applicable portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase Product from a third party.

4.6 Delivery of Product

(a) Seller shall provide Buyer with the Designated RA Capacity of RA Attributes for each Showing Month.

(b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month, Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, including Section 4.4, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes (“Replacement Capacity”) by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices, as determined by Buyer in a commercially reasonable manner. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 9 of the Master Agreement, the following damages in lieu of damages specified in Section 21.3 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity (including costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, and (B) each Capacity Replacement Price, times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a) times 1,000 kw/MW; and (ii) the Designated RA Capacity not provided.
for the applicable Showing Month times the Contract Price for that month, times 1,000 kw/MW. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any applicable adjustments pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or

(c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may, in addition to any other rights or remedies available to Buyer, offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Designated RA Capacity that was not delivered at the time of the CAISO filing for such Showing Month.

RA CAPACITY PRICE TABLE

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller’s account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit.
during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the Master Agreement, all such Buyer revenues received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit’s Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may, in addition to any other rights or remedies available to Buyer, offset any amounts owing to it for such revenues pursuant to Section 28 of the Master Agreement against any future amounts it may owe to Seller under this Confirmation.

If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5.
CAISO OFFER REQUIREMENTS

During the Delivery Period Seller shall either schedule or cause the Unit’s Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit’s Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit’s Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit’s Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6.
[RESERVED]

ARTICLE 7.
OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include to the extent necessary and without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings. In the event that subsequent clarifications,
revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR materially impair the suitability of the Product with respect to the purpose of the Transaction and the Parties are unable to reach agreement on amendments as contemplated by this Section 7.1, Seller or Buyer may terminate this Agreement and the Parties shall have no further obligations to each other except with respect to invoices and payments for deliveries of the Product prior to such termination.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit’s Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 30 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, or to a subsequent purchaser, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.).

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller 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 Buyer.

ARTICLE 11. WSPP AGREEMENT AMENDMENTS

For purposes of this Transaction only, the WSPP Agreement shall be amended as follows:

A) SECTION 22.1 OF THE WSPP AGREEMENT IS MODIFIED BY INSERTING THE FOLLOWING NEW TEXT AT THE END THEREOF:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”

B) IN SECTION 22.3(E), DELETE THE ENTIRE PROVISION (INCLUDING SUBSECTIONS) AND REPLACE IT WITH THE FOLLOWING: “[INTENTIONALLY OMITTED]”

C) IN SECTION 22.3(F), DELETE THE ENTIRE PROVISION AND REPLACE 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 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."

D) SECTION 24 OF THE WSPP AGREEMENT IS DELETED AND REPLACED WITH THE FOLLOWING:

“This Agreement and any Confirmation 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.”

E) THE NETTING PROVISIONS OF SECTION 28, NETTING, OF THE WSPP AGREEMENT SHALL APPLY TO THE TRANSACTION COVERED BY THIS CONFIRMATION AS IF BUYER AND SELLER HAD BOTH EXECUTED EXHIBIT A, NETTING, TO THE WSPP AGREEMENT. BOTH PARTIES INTEND FOR THE NETTING PROVISIONS OF EXHIBIT A TO THE WSPP AGREEMENT TO BE EFFECTIVE ON THE CONFIRMATION EFFECTIVE DATE.

F) SECTION 30.1 OF THE WSPP AGREEMENT 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”.

G) SUBSECTIONS 34.1 AND 34.2 OF THE WSPP AGREEMENT ARE HEREBY DELETED AND REPLACED WITH THE FOLLOWING:

“34.1 WAIVER OF JURY TRIAL

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY) AND HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.”

“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.”

H) THE PHRASE “ARBITRATION OR” IS HEREBY DELETED FROM THE FIRST LINE OF SECTION 34.4.

I) THE FOLLOWING SHALL BE INSERTED AS A NEW SECTION 34.5; PROVIDED, HOWEVER, THAT THE FOLLOWING NEW SECTION 34.5 SHALL NOT LIMIT BUYER’S RIGHT TO RECOVER FROM SELLER, OR SELLER’S OBLIGATION TO PAY BUYER, ANY AND ALL AMOUNTS OWED UNDER SECTION 4.8 OF THIS CONFIRMATION, INCLUDING PENALTIES AS SPECIFIED THEREIN:
“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.”

j) Section 37 of the WSPP Agreement is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.

K) SECTION 41 “WITNESS” OF THE WSPP AGREEMENT SHALL BECOME SECTION 42 AND THE FOLLOWING “STANDARD OF REVIEW” SECTION SUBSTITUTED IN ITS PLACE:

“The Parties agree as follows:

For purposes of this Section, the term “Transaction” means a specific sale and purchase, or an option for sale and purchase, of capacity and/or energy to be supplied by one Party to the other Party. 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."

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer is and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this
Confirmation. Seller will have no recourse to, and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer’s constituent members, in connection with this Confirmation.

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

ARTICLE 14. ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and (together with the WSPP Agreement, as revised by this Confirmation) 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.

[Signature Page to Follow]
ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: CEO

EDF TRADING NORTH AMERICA, LLC

By: Kathy Stroman
Name: Kathy Stroman
Title: Confirmation Manager

Signature Page to RA Confirmation
EDF Trading North America, LLC
CONFIRMATION LETTER
BETWEEN
MORGAN STANLEY CAPITAL GROUP INC.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY

This confirmation letter ("Confirmation") confirms the Transaction between Morgan Stanley Capital Group Inc. ("Morgan Stanley" or "Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("SVCE" or "Buyer"), each individually a "Party" and together the "Parties," dated as of June 15, 2022 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the EEI Master Power Purchase and Sale Agreement dated November 23, 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 (collectively, the "Master Agreement"), as amended and supplemented by this Confirmation, under the following terms and conditions. The definitions and provisions contained in this Confirmation, the Master Agreement, the RA Rules (as defined herein), and in the tariffs and/or protocols of the California Independent System Operator ("CAISO") as amended from time to time (the "CAISO Tariff" or the "Tariff"), shall apply to this Confirmation and are incorporated by reference; provided that, to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder. 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 Confirmation supersedes and replaces any prior oral or written confirmation or agreement, including broker confirmations, regarding this Transaction.

ARTICLE 1
PRODUCT 1

1.1. Product 1 – Contract Price, Contract Quantity, Delivery Term and Delivery Point

(a) 

(b) 

(c) 

(d) 

(e) 

(f)
(g) **Contract Price (Product 1):** The Contract Price is an aggregation of three components, as further described in Section 1.2(c).

(h) **Passage of Title:** Seller represents and warrants that Seller holds the rights to the Product free and clear of all liens and encumbrances, and Seller agrees to convey and hereby conveys all such Product to Buyer free and clear of all liens and encumbrances as included in the delivery of the Product subject to the terms and conditions contained herein. As set forth in Section 10.3 of the Master Agreement, title and reporting rights to the Carbon Free Firm Energy shall pass from Seller to Buyer at the Delivery Point.

(i) **Transmission and Agreed Transmission Path:** Under this Confirmation and pursuant to Section 10 of the WSPP Agreement, the agreed transmission path for deliveries to the Delivery Point will be from the Carbon Free Source (as listed in Exhibit A) to John Day and John Day to COB (each, an “Agreed Transmission Path”).

For the purposes of Section 10 of the WSPP Agreement, “firm transmission” means Firm Transmission (as defined herein).

For the purposes of the Cap and Trade Regulations, the foregoing agreed upon transmission path shall constitute a “continuous physical transmission path” which shall provide for “direct delivery of electricity” (as such terms are defined in the Cap and Trade Regulations).

(j) **Seller Delivery Obligation.** Seller shall deliver Carbon Free Firm Energy in the amount of the Hourly Contract Quantity from Carbon Free Source into the CAISO on behalf of Buyer without substituting electricity from another source, as evidenced by e-Tags, or such other format acceptable to Buyer. Deliveries shall be measured for each hour that the Carbon Free Firm Energy is delivered to the CAISO but shall not exceed the lesser of corresponding amounts shown on the e-Tags or meter data from the Carbon Free Source.

(k) **Reporting Requirements.** Seller shall provide Buyer with all necessary documentation required to support and verify that delivery requirements have been met according to the Applicable Program, including but not limited to documentation demonstrating that the Carbon Free Source meets the CARB requirements of a Specified Source Facility, the Carbon Free Firm Energy is traceable to a specific generating facility, and that the electricity source claimed has been sold once and only once to a retail consumer.

1.2. **Special Conditions – Product 1**

(a) **Generally Accepted Utility Practice:** All scheduling and tagging shall be in accordance with Generally Accepted Utility Practice.

(b) **External Resource:** Energy delivered pursuant to this Confirmation will not be sourced from resources internal to the CAISO Balancing Authority Area.

(c) **Product 1 Contract Price Components:** The Parties acknowledge that the Contract Price is a per megawatt hour aggregation of the following components:
The Capacity Fee shall be due and payable on the entire Hourly Contract Quantity of Carbon Free Firm Energy each hour (unless energy is not delivered due to an unexcused failure to deliver by Seller), not to exceed the Minimum Monthly Delivery Quantity during any calendar month. For greater certainty, the Parties hereby acknowledge and agree that Seller may deliver more than the Minimum Monthly Delivery Quantity hereunder (“Additional Monthly Quantity”) during any calendar month; provided however (A) no Capacity Fee shall be due and payable for any such Additional Monthly Quantity and (B) no Attributes Fee shall be payable for Additional Monthly Quantities in excess of 7,300 MWh. All other components of the Product 1 Contract Price shall be due and payable only on the quantity of energy delivered to the Delivery Point in each hour.

Notwithstanding and without limiting Section 4.2 of the Master Agreement, in determining the Sales Price there will be no obligation or requirement to attribute or include a value attributable to the capacity or the carbon free attributes.

(d) **Additional Seller Representations:** Seller represents and warrants to Buyer as follows:

(i) The facilities comprising the Carbon Free Source are each external to the CAISO Balancing Authority Area;

(ii) as of the Confirmation Effective Date, the capacity supporting energy to be delivered pursuant to this Confirmation is surplus to the expected capacity requirements of the Carbon Free Source’s host balancing authority area and is not committed to another balancing authority area (i.e. no double-counting);

(iii) throughout the Delivery Term, Seller will not commit the capacity necessary to support delivery of Carbon Free Firm Energy from the Carbon Free Source to a third party or other balancing authority area;

(iv) the Hourly Contract Quantity of Carbon Free Firm Energy sold to Buyer hereunder has been sold once and only once by Seller;

(v) throughout the Delivery Term, Carbon Free Firm Energy will be delivered to the Delivery Point using Firm Transmission on the last segment immediately preceding the CAISO balancing authority; and

(vi) throughout the Delivery Term, Seller’s firm energy obligation under Product 1 is and will be supported (backed) each hour by operating reserves (including required contingency reserves and sufficient balancing reserves) in the Carbon Free Source’s host balancing authority area necessary to ensure there is sufficient energy available for Seller to meet its obligation throughout the applicable operating hour.
For greater certainty, Seller’s performance (and failure to perform) hereunder is and remains subject to the terms of the Product and the Master Agreement.

**ARTICLE 2**

**PRODUCT 2**

2.1. **Product 2 – Scheduling Coordinator Services**

(a) **Seller:** Morgan Stanley

(b) **Buyer:** SVCE

(c) **Product 2:** Scheduling Coordinator Services as described below for Carbon Free Firm Energy procured by Buyer as Product 1.

2.2. **Overview**

The purpose of Product 2 is for Morgan Stanley to perform the required scheduling coordinator functions for the “resource” (as such term is used by the CPUC in D. 20-06-028, the Carbon Free Firm Energy). Although D.20-06-028 required the Buyer to take responsibility for ensuring that energy associated with an import RA contract is bid into, and delivered to, the CAISO markets, the CPUC’s decision also permitted the Buyer to designate another party to act on its behalf as a scheduling coordinator to bid and deliver the energy into the CAISO markets.

Morgan Stanley is a Scheduling Coordinator recognized by CAISO pursuant to the CAISO Tariff and has the requisite experience, skill and capability to perform the scheduling obligations assumed by it in providing the Scheduling Coordinator Services (as defined below). In providing the Scheduling Coordinator Services, Morgan Stanley will perform, and assume all costs, risks and liabilities associated with performing, the scheduling responsibilities defined below for the limited purpose of submitting Bid(s) and physically scheduling and delivering Buyer’s Carbon Free Firm Energy procured as Product 1 from the Delivery Point to the Sink as required and contemplated by CPUC D.20-06-028 and the resource adequacy requirements established by CAISO pursuant to the CAISO Tariff.

2.3. **Scheduling Coordinator Services**

Morgan Stanley agrees to assume the scheduling functions required to schedule and deliver the Carbon Free Firm Energy purchased by Buyer as Product 1 at and from the Delivery Point to the Sink, being an Aggregated Pricing Node in the CAISO Balancing Authority Area, as set forth below (“Scheduling Coordinator Services”):

(a)
(b) Working with CAISO and Buyer to set up a Resource ID associated with Morgan Stanley’s SCID for purposes of undertaking the services in paragraph (a) above (“RA Resource ID”), which shall be set up as a CAISO system resource;

(c) Submitting a monthly and annual Supply Plan using the RA Resource ID for each month of the Delivery Term on or prior to the deadline in the CAISO Tariff;

(d) Undertaking all scheduling and tagging requirements in accordance with Generally Accepted Utility Practice from the Delivery Point to the Sink, including inserting the following in each NERC E-Tag:

(i) Morgan Stanley’s Scheduling Coordinator PSE in the “physical path” at and from the Delivery Point to the Sink,

(ii) Buyer’s PSE in the “market path” at the Delivery Point,

(iii) Buyer’s PSE as the last PSE in the “physical path”,

(iv) [Blank]

(v) A CAISO Aggregated Pricing Node as the Sink; and

(e) performing such other ancillary requirements under the CAISO Tariff to give effect to the foregoing.

A sample NERC E-Tag is attached hereto as Exhibit B for informational purposes. Actual NERC E-Tags generated for deliveries hereunder may vary from the sample attached as Exhibit B due to changes in Carbon Free Source, CAISO or WECC tagging practices or otherwise as required to be consistent with Generally Accepted Utility Practice.

2.4. **Seller’s Scheduling Contacts**

2.5. 

2.6. **Special Conditions – Product 2**

(a) Resource Adequacy Plan: Buyer shall submit (or cause to be submitted) a monthly and annual Resource Adequacy Plan (“RA Plan”), as required by the CAISO Tariff, that
explicitly identifies the Delivery Profile hours as the temporal constraint/limitation and such RA Plan shall otherwise match the Supply Plan submitted by Morgan Stanley.

(b) **CAISO Acceptance/Rejection:** Morgan Stanley shall be entitled to retain any and all revenues received from (and if prices are negative, liable for all payments to) CAISO as a result of CAISO accepting the Bid(s) (including Self-Schedule(s)) submitted by Morgan Stanley. If, in any hour of the Delivery Term, CAISO rejects the Bid(s) (including Self-Schedule) submitted by Morgan Stanley in the CAISO Day Ahead Market and Real-Time Market, then

(i) if Morgan Stanley Self-Schedules or Bids in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as Uncontrollable Force such that each Party shall be excused from their respective obligation to sell and deliver or purchase and receive the Carbon Free Firm Energy for that hour, and

(ii) if Morgan Stanley does not Bid in accordance with the Bidding Requirement, the Parties agree to treat such rejection by CAISO as a failure to deliver by Seller, no Capacity Fee shall be due for such hour, and, unless Seller is otherwise excused from its delivery obligations, Buyer shall be entitled to such remedies as are provided hereunder and in the Master Agreement.

(c) **ARTICLE 3**

**GENERAL PROVISIONS**

3.1 **Uncontrollable Force/Force Majeure**

The Parties agree that Product 1 shall be subject to Uncontrollable Force and Product 2 shall be subject to Force Majeure. The Parties agree, for the purposes of Section 10 of the WSPP Agreement, Section 3.3 of the Master Agreement and the definition of Force Majeure, that:

(a) any limitation, interruption or curtailment on the applicable Agreed Transmission Path, at the Delivery Point or from the Delivery Point to Sink by the transmission provider pursuant to the applicable OATT or transmission service contract (including CAISO pursuant to CAISO Tariff), by or at the direction of WECC or any applicable NERC-recognized regional reliability coordinator, including for unscheduled flow mitigation, planned outage(s) and full or partial de-rate(s), whether or not known or anticipated as of the Confirmation Effective Date, will be considered Uncontrollable Force and Force Majeure,

(b) a limitation, interruption or curtailment described in paragraph (a) may result in Bid(s), schedule(s) or E-Tag(s) not being submitted or created, as applicable, for one or more hours depending on the timing and circumstances of the qualifying limitation, interruption or curtailment, Generally Accepted Utility Practice and requirements and practices pursuant to CAISO Tariff,
(c) if and to the extent any of the events or circumstances described in paragraphs (a) and (b) above prevents (i) delivery of the Hourly Contract Quantity of Carbon Free Energy from the Carbon Free Source to Sink for any hour(s) of the Delivery Term or (ii) Bid(s), schedule(s) or E-Tag(s) being submitted or created, as applicable, by Morgan Stanley for any hour(s) of the Delivery Term, subject to Section 1.2(c), Morgan Stanley and Buyer shall be relieved of their obligation to sell and deliver or purchase and receive, respectively, the Carbon Free Firm Energy at the Delivery Point for such hour(s) and Morgan Stanley shall be relieved of its SC Services obligations for such hour(s), and

(d) Morgan Stanley will use commercially reasonable efforts to communicate (verbally or electronically in writing, including via eTags) any limitations, interruptions or curtailments on the Agreed Transmission Path known prior to the day-ahead pre-scheduling deadline and advise as to what quantities, if any, of Carbon Free Firm Energy Morgan Stanley is able to deliver to Buyer during the affected hours.

3.2 Monthly Reporting

The Parties acknowledge that in each month of the Delivery Term non-delivery of energy can reasonably be expected from time to time as a result of, among other things, Uncontrollable Force (e.g. transmission limitations, interruptions and/or curtailments) and CAISO rejecting Bid(s) meeting the Bid Requirement, including during conditions of oversupply and congestion. For transparency, in addition to Buyer having delivery visibility through inclusion on all NERC E-Tags, Morgan Stanley will provide a monthly report that includes a lessor of analysis showing eTags, and meter readings from the Carbon Free Source.

3.3 Electricity Importer

As a result of the provision of Scheduling Services, Morgan Stanley will be the electricity importer into California for purposes of the Cap and Trade Regulations for the Carbon Free Firm Energy delivered pursuant to this Confirmation. The Parties acknowledge that Morgan Stanley will be responsible for satisfying any Compliance Obligation (as defined in the Cap and Trade Regulations) associated with the energy that is scheduled and imported into California pursuant to this Confirmation.

3.4 Confidentiality

Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, the Parties agree that either Party may disclose a copy of this Confirmation to a Governmental Authority if required or if requested by such Governmental Authority or for the purposes set forth in Section 3.5(b), provided such Party shall redact commercial terms (e.g. Contract Price) prior to disclosure or disclose the Confirmation confidentially to the Governmental Authority unless redactions or confidential treatment is not permitted by the Governmental Authority. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

3.5 RA Requirements / Change in Law

(a) The Parties acknowledge that Buyer has entered into this transaction to, among other things, use Product 1 toward meeting its RA Requirements. Buyer acknowledges that Seller makes no representation or warranty that Product 1 as procured by Buyer will be
eligible for or can be used or counted toward Buyer’s resource adequacy obligations pursuant to the RA Requirements.

(b) The Parties agree that either or both Parties may provide a copy of this Confirmation to the CPUC confidentially prior to the time required for Buyer’s compliance filings to obtain the CPUC’s guidance or advice as to the eligibility of Product 1 for meeting the RA Requirements, provided if Seller provides a copy it shall redact or exclude Buyer’s name.

(c) It is Buyer’s sole responsibility to (i) ensure it has obtained sufficient intertie import capability at the Delivery Point such that it may use Product 1 toward its RA Requirements and (ii) determine the appropriate maximum cumulative capacity bucket(s).

(d) If there is a Change in Law that (i) materially adversely changes or affects a Party’s obligations hereunder or (ii) results in Buyer being unable to use Product 1 to meet its RA Requirements, the Parties shall work in good faith to try and revise this Confirmation, which may include changes to commercial terms, to appropriately address the material adverse change or effect or permit Buyer to be able to use Product 1 toward its RA Requirements. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 30 days’ written notice from one Party following the Change in Law (“Negotiation Period”), then either Party may terminate this Confirmation within thirty (30) days after the Negotiation Period upon written notice to the other Party, which, subject to Section 3.8, shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties provided that if multiple transactions between the Parties are similarly affected by the Change in Law the terminating Party must concurrently terminate all such transactions unless the other Party otherwise agrees.

3.6 **Seller Indemnification / Termination**

To the extent Seller fails to fulfill its obligations under this Confirmation and such failure is not excused under the terms of either Product, this Confirmation or the Master Agreement or caused by a failure to perform by Buyer or other third party contracting directly or indirectly with Buyer, then

(a) Seller agrees to indemnify Buyer for any monetary penalties directly resulting from Seller’s nonperformance hereunder as assessed against Buyer by the CPUC pursuant to the RA Requirements, but only to the extent such penalties being assessed could not be avoided by Buyer following notice from Seller of its nonperformance; and

(b) in addition to Buyer’s other remedies hereunder, if such failure meets all the criteria for a RA Termination Event, Buyer may terminate this Confirmation upon written notice to Seller, provided such notice is provided no later than two (2) Business Days after such RA Termination Event having occurred. If timely termination notice is provided to Seller, subject to Section 3.8, termination shall be effective the next Business Day after such notice is received. Any termination in accordance with this paragraph shall be without liability of either Party to the other on the termination date as a result of such termination, provided
for greater certainty each Party shall remain liable for any payments arising from performance (and non-performance) up to and including the termination date. Termination of this Confirmation pursuant to this paragraph shall not result in termination (or give rise to a right of termination) of any other transactions between the Parties.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize any such monetary penalties or the impact of any Seller non-performance; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize such penalties.

3.7 Survival

To the extent this Confirmation is terminated by either Party as provided in Section 3.5 or 3.6 and Morgan Stanley, in performing its obligations hereunder, has submitted a monthly Supply Plan or has other binding obligations or commitments to CAISO that cannot be rescinded without Morgan Stanley incurring penalties or other charges, all applicable terms, conditions and provisions of this Confirmation shall survive termination until all binding obligations or commitments to CAISO as at the effective date of such termination have been fully performed, including, without limiting the generality of the foregoing, the purchase and sale of Carbon Free Firm Energy. For greater certainty, neither Party will make any further binding commitments to CAISO (e.g. no filing of monthly RA Plans or Supply Plans) after the effective date of termination.

3.8 Relationship of the Parties

The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Confirmation will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

[Signatures appear on the following page.]
Acknowledged and agreed to as of the Confirmation Effective Date.

MORGAN STANLEY CAPITAL GROUP INC.

Sign: Katie Martin
Print: Katie Martin
Title: Vice President

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: Girish Balachandran
Print: Girish Balachandran
Title: Chief Executive Officer

Morgan Stanley Capital Group Inc
EXHIBIT A

CARBON FREE SOURCE

In any delivery hour, the Carbon Free Firm Energy will be generated by any one or more of the following large hydro generating facilities listed below (in aggregate, the “Carbon Free Source”).

<table>
<thead>
<tr>
<th>Facility Name</th>
<th>Technology</th>
<th>Location</th>
<th>CARB ID</th>
<th>EIA ID</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wanapum Dam</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500054</td>
<td>3888</td>
</tr>
<tr>
<td>Priest Rapids Dam</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500054</td>
<td>3887</td>
</tr>
<tr>
<td>Rock Island Dam</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500003</td>
<td>6200</td>
</tr>
<tr>
<td>Rocky Reach Dam</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500055</td>
<td>3883</td>
</tr>
<tr>
<td>Boundary Dam</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500043</td>
<td>6433</td>
</tr>
<tr>
<td>Lucky Peak Dam</td>
<td>Large hydroelectric</td>
<td>Idaho State</td>
<td>500046</td>
<td>10014</td>
</tr>
<tr>
<td>Wells</td>
<td>Large hydroelectric</td>
<td>Washington State</td>
<td>500237</td>
<td>3886</td>
</tr>
<tr>
<td>Kerr (Seli's Ksanka Qlispé) Dam</td>
<td>Large hydroelectric</td>
<td>Montana State</td>
<td>500014</td>
<td>2188</td>
</tr>
</tbody>
</table>
EXHIBIT B

SAMPLE NERC E-TAG
EXHIBIT C

DEFINITIONS

Capitalized terms not otherwise defined herein that are defined in the CAISO Tariff shall have the meanings ascribed thereto in the CAISO Tariff.

“AH” or “Availability Assessment Hours” means the five consecutive hour period pre-defined by CAISO pursuant to the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy for the applicable month of the Delivery Term. The Parties acknowledge that, as of the Confirmation Effective Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy for the applicable months of the Delivery Term are hour ending (“HE”) 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays.

“Applicable Program” means the Cap and Trade Regulations or the PSD Regulations.

“Buyer”, as used in the Master Agreement, means Buyer.

“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).

“CARB” means the California Air Resources Bureau of the California Environmental Protection Agency.

“CAISO Tariff” means the FERC-approved electric tariff of the California Independent System Operator Corporation (“CAISO”) and any current applicable CAISO-published Operating Procedures and Business Practice Manuals, in each case as amended or supplemented from time to time.

“Change in Law” means any changes, revisions, additions or clarifications to or of (i) the RA Requirements by the CPUC, or (ii) the CAISO Tariff by CAISO, including CAISO changing the five consecutive hour period for the Availability Assessment Hours for any month of the Delivery Term such that it is no longer HE 1700 through HE 2100 (5 hours per day), Monday through Friday (5 days per week), excluding Federal Holidays, in either case occurring after the Confirmation Effective Date.

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the RA Requirements.

“Federal Holidays” means legal public holidays as set forth in 5 USC § 6103(a).

“Firm Transmission” means NERC Transmission Service Reservation Priority 7-F (firm point-to-point transmission), and includes conditional firm point-to-point transmission.

“Flat” means all Off-Peak and On-Peak hours (24x7).

“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.
“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority over a Party or the subject matter of this Agreement, and includes, without limitation, the Federal Energy Regulatory Commission (“FERC”) and California Public Utilities Commission (“CPUC”).

“LMP Index” means, for any day of delivery, the day-ahead hourly Locational Marginal Price (“LMP”) at TH_NP15_GEN-APND (or any successor Aggregated Pricing Node for NP 15) (“NP 15 Trading Hub”) for the applicable hours of delivery as published by the CAISO. In the event the CAISO fails to publish the LMP for the NP 15 Trading Hub, such failure shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to Market Disruption Events. In the event the CAISO subsequently corrects the LMP for the NP 15 Trading Hub, such correction shall be addressed by the Parties in a manner consistent with the Master Agreement provisions applicable to price corrections. Notwithstanding any other provision of this Confirmation or the Master Agreement, the LMP Index shall not be revised as a result of a correction to the LMP for the NP 15 Trading Hub made any time after 6 months from the end of the Delivery Term.

“MCC Bucket(s)” means the maximum cumulative capacity bucket categories adopted and defined by the CPUC in CPUC Decision 20-06-031 pursuant to which CPUC-jurisdictional LSEs are required to categorize their resource adequacy resources based on availability (as defined in the D. 20-06-031). There are five MCC Bucket categories: DR, 1, 2, 3 and 4.

“MCC Bucket Category 1” means, as provided in D. 20-06-031, the resource has availability (as defined in the D. 20-06-031) as updated by the “2022 Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings” in R.19-11-009, issued September 24, 2021 (the “2022 RA Guide”) every Monday through Saturday, for 4 consecutive hours between 4 pm through 9 pm, and at least 100 hours per month from May through September.

“NERC Holiday” means any day designated as a holiday by NERC.

“Off-Peak” means HE 0100 through HE 0600 and HE 2300 through HE 2400 PPT and all hours on (i) Sundays or (ii) any NERC Holiday.

“On-Peak” means HE 0700 through HE 2200 (16 hours per day) PPT, Monday through Saturday (6 days per week), excluding NERC Holidays.

“PSD Regulations” means the Power Source Disclosure Program regulations (California Code of Regulations Title 20, Division 2, Chapter 3, Article 5, Sections 1390 through 1394).

“RA Requirements” means (i) the resource adequacy requirements established for CPUC jurisdictional load serving entities by the CPUC pursuant to the CPUC’s currently effective or future decisions, resolutions, or rulings related to resource adequacy as applicable to system resource adequacy and the availability, eligibility and use of imports for system resource adequacy, including CPUC Decision 20-06-028 and (ii) CPUC Decision 20-06-031 solely for the purposes of the eligibility of Product 1 for an MCC Bucket category if specified in this Confirmation.

“RA Termination Event” means, for any Availability Assessment Hour in the Delivery Term, (i) Seller fails to (x) satisfy the Bidding Requirement or (y) deliver the Carbon Free Firm Energy to the Delivery Point, and in either case such failure is not excused pursuant to the terms hereof, and (ii) such unexcused failure by Seller is likely to cause Buyer to not (or no longer) be able to count Product 1 toward its RA Requirements.
“Scheduling Coordinator” has the meaning given in the CAISO Tariff.

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

“Sink” means the final point of delivery for the energy, which shall be a point within the CAISO Balancing Authority Area.

“Specified Source Facility” means a power source registered by an electric power entity with CARB that is intended to be claimed in an Emissions Data Report pursuant to section 95111(g)(1) of the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions in the state of California.
IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
CENTRAL COAST COMMUNITY ENERGY

This confirmation letter including all appendices hereto (“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 (“Buyer”), each individually a “Party” and together the “Parties”, dated as of June 10, 2022 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation (the “Transaction”). This Confirmation is governed by the terms and conditions of the WSPP Agreement effective as of August 12, 2021, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1
TRANSACTION

1.1 Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the “Product”), at the Delivery Point in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

(a) 

(b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.3 Contract Quantity, Contract Price, and Delivery Point

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount (the “Contract Quantity”), at the Contract Price, and for the Delivery Point as specified in the table below:
ARTICLE 2
DELIVERY OBLIGATIONS

2.1 Delivery

Within three (3) Business Days from the Confirmation Effective Date, Seller shall transfer the Product to Buyer by registering the transfer with CAISO as a Bilateral Import Capability Transfer in the amount of the Contract Quantity for the applicable Contract Month, and completing any other action or documentation required by the CAISO to effect such transfer (the “Registration”).

2.2 Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

ARTICLE 3
PAYMENT

3.1 One-Time Payment

Buyer shall make a One-Time Payment to Seller for the Product in accordance with Section 9 of the Master Agreement.

The One-Time Payment is calculated as follows:

\[
\text{One-Time Payment} = \sum_{i} (A_i \times B_i \times 1,000)
\]

where:

- \( A = \) Contract Price (in $/kW-month) for Contract Month \( i \)
- \( B = \) Contract Quantity (in MW) transferred by Seller for Contract Month \( i \)
- \( i = \) Each Contract Month
- \( n = \) number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

3.2 Offset Rights
Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Section 9 of the Master Agreement against any future amounts it may owe to the other Party.

**ARTICLE 4**
**CONFIDENTIALITY**

Notwithstanding Section 30 of the Master Agreement, the Parties agree that:

(a) This Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.);

(b) both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller’s performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller’s performance; and

(c) in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

**ARTICLE 5**
**COLLATERAL REQUIREMENTS**

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

**ARTICLE 6**
**GENERAL PROVISIONS**

6.1 **Governing Law**

Section 24 of the WSPP Agreement is deleted and replaced with the following: “This WSPP Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to principles of conflicts of law.”
6.2 **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. Delivery of an executed signature page of this Confirmation as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.

6.3 **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 Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

6.4 **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 its debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

Acknowledged and agreed to as of the Confirmation Effective Date.

**CENTRAL COAST COMMUNITY ENERGY**, a California joint powers authority

By: [Signature]
Name: Tom Habashi
Title: Chief Executive Officer

**SILICON VALLEY CLEAN ENERGY AUTHORITY**, a California joint powers authority

By: [Signature]
Name: Girish Balachandran
Title: Chief Executive Officer

Approved as to form

By: [Signature]
Name: Brian Kimball

[Central Coast Community Energy]
Title: General Counsel
APPENDIX A
DEFINED TERMS

“Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning set forth in the introductory paragraph of this Confirmation and shall have the same meaning as “Purchaser” under the Master Agreement.

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), 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.

“Confirmation” has the meaning set forth in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning set forth in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table in Section 1.3.

“Contract Price” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Contract Quantity” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning set forth in Section 1.2(a).

“Delivery Point” has the meaning set forth in the Contract Quantity Table in Section 1.3.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) 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 (c) court or governmental tribunal.

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

“Master Agreement” has the meaning set forth in the introductory paragraph of this Confirmation.
“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning set forth in Section 3.1.

“NOB” means the CAISO Branch Group corresponding to the CAISO Intertie NOB_ITC.

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

“Registration” has the meaning set forth in Section 2.1.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

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

“Seller” has the meaning set forth in the introductory paragraph of this Confirmation.

“Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

“Term” has the meaning set forth in Section 1.2(b).

“WSPP Agreement” is defined in the introductory paragraph hereof.
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, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of June 10, 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.
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
Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.

(h) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.1

2.2 Reductions in Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

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

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

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1 For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
Capacity Category (each such unit, a “Replacement Unit”) in an amount such that the total amount of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing Month is not more than the Contract Quantity, provided that in each case:

(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity and shall identify the proposed Replacement Units from which such Alternate Capacity shall be provided no later than the Notification Deadline for Purchaser’s Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Purchaser’s Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for the applicable Showing Month and, if applicable, annual filing, then any such Replacement Units shall not be deemed a Replacement Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.3 and Purchaser has approved such Replacement Units as consistent with this Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given Showing Month shall not be construed as approval of such Replacement Unit for any subsequent Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may provide Purchaser with proposed changes to the Planned Outage Schedule from time to time. 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.

(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 the Product by the later of (i) ten (10) Business Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to
Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and
provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 **Seller’s Representations and Warranties**

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 **Market Based Rate Authority**

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.
ARTICLE 5
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser’s request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser’s use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Purchaser’s request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its
Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Each Party to this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

6.3 Dodd-Frank Act


6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.
6.7 No Recourse to Members

The Parties are each organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are each a public entity separate from their constituent members. Each Party will solely be responsible for all of such Party’s debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

6.8 Other WSPP Agreement Changes

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 9.4 is deleted in its entirety and replaced with the following:

“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”

(b) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
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.

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.”

In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

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.”

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.

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”.

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.”

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 as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: 
Name: Girish Balachandran
Title: Chief Executive Officer

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, however entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“Contingent Firm RA Product” has the meaning set forth in Article 1 herein.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“CPUC Filing Guide” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Effective Flexible Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable
environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“Expected Contract Quantity” means, with respect to any Showing Month of the Delivery Period, (a) for Firm RA Product, the Contract Quantity of Product, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and (b) for Contingent Firm RA Product, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, less any reductions to Contract Quantity consistent with Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.
“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR  ☐ Local RAR  ☐ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: CAISO System
Resource Category (MCC Bucket): 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): N/A
## Unit 1

<table>
<thead>
<tr>
<th>Unit Specific Information</th>
<th>Value</th>
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<tbody>
<tr>
<td><strong>Resource Name</strong></td>
<td>LA PALOMA GENERATING PLANT, UNIT #4</td>
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<tr>
<td><strong>Physical Location</strong></td>
<td>McKittrick, CA</td>
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<tr>
<td><strong>CAISO Resource ID</strong></td>
<td>LAPLMA_2_UNIT 4</td>
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<td><strong>SCID of Resource</strong></td>
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<tr>
<td><strong>Unit NQC by month (e.g., Jan=50, Feb=65):</strong></td>
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<tr>
<td><strong>Unit EFC by month (e.g., Jan=30, Feb=50):</strong></td>
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<tr>
<td><strong>Resource Type (e.g., gas, hydro, solar, etc.):</strong></td>
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<td><strong>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</strong></td>
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<td><strong>TAC Area (e.g., PG&amp;E, SCE)</strong></td>
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<td><strong>Prorated Percentage of Unit Factor</strong></td>
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<tr>
<td><strong>Prorated Percentage of Unit Flexible Factor</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</strong></td>
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<tr>
<td><strong>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4):</strong></td>
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APPENDIX C
RESERVED
## APPENDIX D
### PLANNED OUTAGE SCHEDULE

<table>
<thead>
<tr>
<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
<th>SLIC Outage Start Date</th>
<th>SLIC Outage End Date</th>
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WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Seller”) and Central Coast Community Energy, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of June 10, 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.
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
Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.

(h) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

2.2 Reductions in Contract Quantity

(a) If Seller is providing Contingent Firm RA Product, Seller’s obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller’s option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser’s Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.

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

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

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046
Capacity Category (each such unit, a “Replacement Unit”) in an amount such that the total amount
of Product provided to Purchaser from the Unit and any Replacement Unit(s) for each Showing
Month is not more than the Contract Quantity, provided that in each case:

(a) Seller shall notify Purchaser in writing of its intent to provide Alternate Capacity
and shall identify the proposed Replacement Units from which such Alternate
Capacity shall be provided no later than the Notification Deadline for Purchaser’s
Compliance Showings related to such Showing Month;

(b) The proposed Replacement Units must (i) be accepted by the CAISO, and (ii)
otherwise satisfy the requirements of this Agreement;

(c) Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month
and, if applicable, annual filing, no later than the Notification Deadline for
Purchaser’s Compliance Showings;

(d) If Seller does not comply with the requirements of Sections 2.3(a), (b) and (c) for
the applicable Showing Month and, if applicable, annual filing, then any such
Replacement Units shall not be deemed a Replacement Unit for purposes of this
Confirmation for that Showing Month and Seller shall not receive payment for
such Product; and

(e) The designation of any Replacement Unit(s) by Seller shall be subject to
Purchaser’s prior written approval, which shall not be unreasonably withheld.

Once Seller has identified in writing any Replacement Units that meet the requirements of this
Section 2.3 and Purchaser has approved such Replacement Units as consistent with this
Confirmation, then any such Replacement Units shall be deemed a Unit for purposes of this
Confirmation for that Showing Month. Purchaser’s approval of a Replacement Unit as to a given
Showing Month shall not be construed as approval of such Replacement Unit for any subsequent
Showing Month.

2.4 Planned Outages

As of the Confirmation Effective Date, Seller and Purchaser have agreed to all Planned Outages as
specified in Appendix D (“Planned Outage Schedule”) for all relevant Showing Months for the
following calendar year, or until the end of the Delivery Period, whichever is shorter. Seller may
provide Purchaser with proposed changes to the Planned Outage Schedule from time to time.
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.

(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 the Product by the later of (i) ten (10) Business Days after Purchaser’s receipt of Seller’s invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) day of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day (“Monthly RA Capacity Payment”). The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Expected Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Expected Contract Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to
Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.

(b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit’s SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.

(c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit’s SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

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

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.1 CAISO Requirements

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

4.2 Seller’s and Purchaser’s Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure (a) Purchaser’s rights to the Expected Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser and (b) that Purchaser may use the Expected Contract Quantity to meet its Compliance Obligations. Such commercially reasonable actions shall include, without limitation cooperating with and providing, and causing each Shown Unit’s SC, owner, or operator to cooperate with and
provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable Compliance Obligations, including to demonstrate that the Expected Contract Quantity can be delivered to the CAISO controlled grid for the minimum hours required to satisfy the Compliance Obligations, as applicable, pursuant to the “deliverability” standards established by the CAISO or other Governmental Body of competent jurisdiction.

If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller’s Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

(a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit’s Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;

(d) if applicable, Seller has notified either the Shown Unit’s SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and

(e) Seller has notified or will notify the Shown Unit’s SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit’s SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

4.4 Market Based Rate Authority

Upon Purchaser’s written request, Seller shall, in accordance with FERC Order No. 697, submit a letter of concurrence in support of any affirmative statement by Purchaser that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Purchaser as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Purchaser.
ARTICLE 5
HOLD-BACK AND SUBSTITUTE CAPACITY

No later than three (3) Business Days before the before the relevant deadlines for the Compliance Showings applicable to that Showing Month, Purchaser may request in writing that Seller not list, or cause the Unit’s Scheduling Coordinator not to list, in the Unit’s Supply Plan a portion or all of the Contract Quantity for any portion of such Showing Month included in the Delivery Period (“Hold-Back Capacity”). Along with such request, Purchaser shall also provide updated Unit information reflecting the requested change. The updated Unit information shall be in the form of the Supply Plan. Following Purchaser’s request for Hold-Back Capacity, Purchaser may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Purchaser’s use as Substitute Capacity within the respective Showing Month. Such request shall be received by Seller no later than eight (8) Business Days prior to the first day for which Purchaser seeks to use such Substitute Capacity as required by the CAISO. The portion of the Contract Quantity that is the subject of Purchaser’s request for Hold-Back Capacity shall be deemed Contract Quantity delivered consistent with Section 2.1 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 3.1 and calculating any amounts due pursuant to Sections 2.2. Seller shall, or shall cause the Unit’s Scheduling Coordinator to, comply with Purchaser’s request under this Article Five.

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Expected Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

6.2 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement:

(a) (i) Purchaser may disclose information as necessary in order to support its
Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose as necessary to a Shown Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information as necessary to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information as necessary to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

(b) Each Party to this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

6.3 Dodd-Frank Act


6.4 Change in Law

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction, or any change in applicable law, occurring after the Confirmation Effective Date results in (i) material changes to Purchaser’s or Seller’s obligations with regard to the Products sold hereunder, (ii) has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the performance of this Confirmation becomes impracticable, or (iii) changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Purchaser’s Resource Adequacy Requirements (a “Change in Law”), the Parties shall work in good faith to revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of the Product sold hereunder in order to maintain the original intent.

6.5 Governing Law

Notwithstanding Section 24 of the WSPP Agreement, this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

6.6 Collateral

Notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction.
6.7 **No Recourse to Members**

The Parties are each organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and are each a public entity separate from their constituent members. Each Party will solely be responsible for all of such Party’s debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

6.8 **Other WSPP Agreement Changes**

For this Transaction, the WSPP Agreement shall be amended as follows:

(a) Section 9.4 is deleted in its entirety and replaced with the following:

“In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”

(b) Section 22.1 is modified by inserting the following new text at the end thereof:

“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to generally pay its debts as they become due;

(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or

(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”
(c) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.

(d) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following: “If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”

(e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: “[Intentionally omitted]”

(f) In Section 22.3(f), delete the entire provision and replace it with the following:

“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

(g) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Confirmation Effective Date.

(h) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.

(i) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

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.”

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 as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.

6.10 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]
AGREED AS OF THE EFFECTIVE DATE:

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: Girish Balachandran
Name: Girish Balachandran
Title: Chief Executive Officer

CENTRAL COAST COMMUNITY ENERGY, a California joint powers authority

By: Tom Habashi
Name: Tom Habashi
Title: Chief Executive Officer

Approved as to form:

By: Brian Kimball
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.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

“Firm RA Product” has the meaning set forth in Article 1 herein.

“Flexible Capacity Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“Local RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s Local RAR.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.
“MW” means megawatt.

“Net Qualifying Capacity” has the meaning given in CAISO’s FERC-approved Tariff.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“Product” means RAR Attributes, Local RAR Attributes and FCR Attributes, each for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric power industry during the relevant time period in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the electric power industry in the Western United States.

“RAR Attributes” means, with respect to a Shown Unit, any and all resource adequacy attributes of the Shown Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s RAR.

“Replacement Unit” has the meaning set forth in Section 2.3.

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, not including Local RAR or FCR.

“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means the Unit, or any Replacement Unit meeting the requirements of Section 2.3 of this Confirmation and specified by Seller in a Supply Plan.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Substitute Capacity” has the meaning set forth in the Tariff for “RA Substitute Capacity”.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B. A Unit or Shown Unit may not be a coal-fired generating facility.

“Unit EFC” means the lesser of the Unit’s Effective Flexible Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means the lesser of the Unit’s Net Qualifying Capacity as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.
APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☑️ RAR          ☐ Local RAR          ☑️ Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: CAISO System
Resource Category (MCC Bucket): 4
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 1
## Unit 1

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<tr>
<th>Resource Name</th>
<th>BLM East Facility</th>
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<td>Physical Location</td>
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<tr>
<td>CAISO Resource ID</td>
<td>BLM_2_UNITS</td>
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<td>SCID of Resource</td>
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<td>Unit NQC by month (e.g., Jan=50,Feb=65):</td>
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</tr>
<tr>
<td>Unit EFC by month (e.g., Jan=30, Feb=50)</td>
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</tr>
<tr>
<td>Resource Type (e.g., gas, hydro, solar, etc.)</td>
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<td>Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)</td>
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<tr>
<td>TAC Area (e.g., PG&amp;E, SCE)</td>
<td>SCE</td>
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<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Prorated Percentage of Unit Flexible Factor</td>
<td></td>
</tr>
<tr>
<td>Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)</td>
<td>CAISO System</td>
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<tr>
<td>Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)</td>
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</tr>
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APPENDIX C
RESERVED
# APPENDIX D
## PLANNED OUTAGE SCHEDULE

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<th>Unit Name</th>
<th>CAISO Resource ID *</th>
<th>Outage (MW)</th>
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<th>SLIC Outage End Date</th>
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<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</tbody>
</table>
LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: SDGE_SELL_SVCE_SYS RA_NO FLEX_AUG 2022

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between San Diego Gas & Electric Company ("Party A" or "Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Party B" or "Buyer"), each individually a "Party" and together the "Parties", dated as of June 28, 2022 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer
Execution Version

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to
the following provisions as provided for in the General Terms and Conditions:

---

**Article Two**

Transaction Terms and Conditions

- Optional provision in Section 2.4.
  - If not checked, inapplicable.

---

**Article Four**

Remedies for Failure to Deliver or Receive

- Accelerated Payment of Damages.
  - If not checked, inapplicable.

---

**Article Five**

Events of Default; Remedies

- Cross Default for Party A:
  - Party A: N/A
  - Cross Default Amount: N/A
  - Other Entity: N/A
  - Cross Default Amount: N/A

- Cross Default for Party B:
  - Party B: N/A
  - Cross Default Amount: N/A
  - Other Entity: N/A
  - Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
  - Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
    - Option C (No Setoff)

---

**Article Eight**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:
  - Option A
  - Option B Specify: __________________________
  - Option C Specify: __________________________

(b) Credit Assurances:
  - Not Applicable
  - Applicable

(c) Collateral Threshold:
  - Not Applicable
  - Applicable

(d) Downgrade Event:
  - Not Applicable
  - Applicable

(e) Guarantor for Party B: N/A
  - Guarantee Amount: N/A
8.2 Party B Credit Protection

(a) Financial Information:
- Option A
- Option B Specify: __________________________
- Option C Specify: __________________________

(b) Credit Assurances:
- Not Applicable
- Applicable

(c) Collateral Threshold:
- Not Applicable
- Applicable
  If applicable, complete the following:
  Party A Collateral Threshold: $______________;
  provided, however, that Party A’s Collateral
  Threshold shall be zero if an Event of Default or
  Potential Event of Default with respect to Party A
  has occurred and is continuing.
  Party A Independent Amount: $______________
  Party A Rounding Amount: $______________

(d) Downgrade Event:
- Not Applicable
- Applicable
  If applicable, complete the following:
  - It shall be a Downgrade Event for Party A if
    Party A’s Credit Rating falls below _______ from S&P or _______ from Moody’s or if Party A
    is not rated by either S&P or Moody’s
  - Other:
    Specify: __________________________

(e) Guarantor for Party A: N/A
  Guarantee Amount: N/A

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**Article 10**

Confidentiality
- Confidentiality Applicable If not checked, inapplicable.

**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.4. If not checked, inapplicable

Note to Buyers: If Buyer is a form of governmental entity, then Schedule M shall apply and further modifications to this Confirm will be needed.
Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 1.23 is amended by inserting the following before the period at the end of the second sentence: “, or (v) Buyer’s inability to use the Product purchased hereunder due to decertification of its CPUC implementation plan, or by cessation or termination of Buyer’s Joint Powers Agreement by any or all of its members”.

3. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

4. In Section 2.1, delete the first sentence in its entirety and replace with the following:

   “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties evidencing the commercial terms of such Transaction (a “Confirmation”).

5. Section 2.3 is deleted in its entirety and replaced with the following:

   “2.3 No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended, supplemented or modified and any such amendment, supplement or modification shall only be effective pursuant to a writing signed by both Parties.”

6. Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

7. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

8. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

   “10.6 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 PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

9. Schedule M is amended, with respect to Party B, as follows:

(a) Paragraph A is amended by deleting the term “Act” and replacing it with the following:

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

(b) Section 3.4 of Paragraph D is deleted in its entirety and replaced with the following:

“Party B’s Deliveries. Upon request, Party B shall provide to Party A copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and any Confirmations executed in connection therewith.”

(c) Paragraph G is deleted in its entirety and replaced with the following:


10. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff.
1.3 “Availability Standards” has the meaning set forth in the Tariff.

1.4 “Buyer” has the meaning specified in the introductory paragraph.

1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any account construct applied to any Compliance Obligations, based on the applicable Unit’s electric generation capacity.

1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.

1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.

1.9 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit’s Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

1.10 “Compliance Showing” means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

1.11 “Confirmation” has the meaning specified in the introductory paragraph.

1.12 [Reserved]

1.13 “Confirmation Execution Date” has the meaning specified in the introductory paragraph.

1.14 “Contract Price” means, for any day in any Monthly Delivery Period, the Capacity Price for such period.

1.15 “Contract Quantity” means the quantity of Product (in MW) as set forth in Section 3.4.
1.16 “Contract Term” has the meaning set forth in Section 2.1.

1.17 “CPUC” means the California Public Utilities Commission.

1.18 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

1.19 “CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program as provided in the CPUC Decisions.

1.20 “Credit Rating” means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Master Agreement.

1.21 “Delivery Period” has the meaning specified in Section 3.3.

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

1.23 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and 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, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

1.24 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.

1.25 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body
having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.

1.26 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

1.27 “GADS” means the Generating Availability Data System, or its successor.

1.28 “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.

1.29 “Local Capacity Area” has the meaning set forth in the Tariff.

1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.

1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

1.33 “LSE” means load-serving entity.

1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.37 “Monthly Payment” has the meaning specified in Section 4.1.

1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.

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

1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.

1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.

1.42 “Non-Availability Charges” has the meaning set forth in the Tariff.

1.43 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.44 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

1.45 “Product” has the meaning specified in Section 3.1.

1.46 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

1.47 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.

1.48 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.

1.49 “RA Substitute Capacity” means capacity that the CAISO permits under the CAISO Tariff to be substituted for a Resource Adequacy Resource that is on Outage.

1.50 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

1.51 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
1.52 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.

1.53 “Replacement Unit” means a generating unit providing Replacement Capacity.

1.54 “Resource Category” shall be as described in the CPUC Filing Guide.

1.55 “RMR Contract” has the meaning set forth in the Tariff.

1.56 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).

1.57 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.

1.58 “Seller” has the meaning specified in the introductory paragraph.

1.59 “Showing Month” shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.60 “Substitution Rules” has the meaning set forth in Section 3.8(b).

1.61 “Supply Plan” has the meaning set forth in the Tariff.

1.62 “Tariff” means the tariff and protocol provisions, including any applicable CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

1.63 “Transaction” has the meaning specified in the introductory paragraph.

1.64 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.

1.65 “Unit Contract Quantity” means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.

1.66 “Unit Delivered Quantity” means the amount of applicable Product (in MW) actually “delivered” by Seller to Buyer by each individual Unit. As used herein, “delivered” shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any RA Substitute Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Contract Capacity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Contract Capacity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

1.67 “Unit EFC” means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
1.68 “Unit NQC” means the Net Qualifying Capacity established by the CAISO for the applicable Unit.

2. **Term**

2.1 **Contract Term**

The “Contract Term” shall mean the period of time commencing upon the Confirmation Execution Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

3. **Transaction**

3.1 **Product**

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes but excluding Flexible RA Attributes (if any)][and Flexible RA Attributes) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

(b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

3.2 **Contingent Firm Quantity**

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Seller shall be excused from delivery of Product to the extent such portion of the Contract Quantity is not available due to a Planned Outage if Seller provides written notification to Buyer of such Planned Outage and Seller’s intent not to provide Replacement Capacity no later than twelve (12) days before the relevant deadline for the applicable Compliance Showing. Except for reasons of Planned Outage that meet the notice requirements of the preceding sentence or Force Majeure or any adjustment of the Capacity Attributes of any Unit(s), if the Unit(s) are not available to provide any portion of the Product, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 11. Seller is obligated to meet the Tariff obligations with respect to Planned Outage approvals.

3.3 **Delivery Period**
3.4 **Contract Quantity:**

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

3.5 **Delivery of Product**

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause each Unit’s SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.8; and

(b) Seller shall submit, or cause each Unit’s SC to submit, written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit’s SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.6 **CAISO/CPUC Offer Requirements**

Subject to Buyer’s request under Section 3.8(a), Seller shall, or cause the Unit’s SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit’s SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit’s SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit’s SC, owner, or operator for such noncompliance.

3.7 **Reserved**
3.8 Unit Substitution; RA Replacement Capacity

(a) RA Replacement Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller’s reasonable approval, that Seller not, or cause each Unit’s SC not to, list a portion or all of a Unit’s applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as RA Substitute Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as “RA Substitute Capacity” and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such RA Substitute Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.

(b) Seller’s Obligations With Respect to RA Substitute Capacity: If Buyer requests RA Substitute Capacity, Seller shall (i) make such RA Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Sections 9.3.1.3.1, 9.3.1.3.2 and 40.9.4.2.1 of the Tariff (“Substitution Rules”) and (ii) take, or cause each Unit’s SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules, including, but not limited to, ensuring that the RA Substitute Capacity will qualify, as applicable, for substitution under the Substitution Rules, and providing Buyer with all information needed to utilize the Substitution Rules.

(c) Seller agrees that all RA Substitute Capacity utilized by Buyer under the Substitution Rules, as applicable, is subject to the requirements identified in Section 3.8.

(d) Failure to Provide RA Substitute Capacity: If Seller fails to provide RA Substitute Capacity or Buyer is unable to utilize the RA Substitute Capacity under the Substitution Rules due to Seller’s failure to fulfill its obligations under Section 3.8(b)(ii), then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the RA Substitute Capacity does not qualify for substitution under Section 9.3.1.3.1, 9.3.1.3.2, 40.9.4.2.1(i)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.8(d) associated with such inability.

3.9 Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product; provided, however, that any such resale does not increase Seller’s obligations or liabilities under this Confirmation. Seller will, or will cause the Unit’s SC, to follow Buyer’s reasonable instructions with respect to providing such resold Product to a subsequent buyer (“Subsequent Buyer”) provided that such instructions are consistent with Seller’s obligations under this Confirmation. Seller will, and will cause the Unit’s SC, to: (a) execute such other documents that are necessary and reasonable to allow such Subsequent Buyer to use such resold Product as otherwise permitted by Buyer under this Confirmation, and (b) take such commercially reasonable actions that are no more onerous than the actions
otherwise required of Seller and the Unit’s SC hereunder to permit such Subsequent Buyer to use such resold Product as otherwise permitted by Buyer under this Confirmation.

4. **Payment**

4.1 **Monthly Payment**

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a “Monthly Payment” to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

\[
Monthly\ Payment = \sum_{n=1}^{d} (A_n \times B_n \times 1000)
\]

where:

\( A = \) applicable Contract Price (in $/kW-day) for that calendar day

\( B = \) Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity “\( B \)” exceed the Contract Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity “\( B \)” be less than zero.

\( d = \) Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

4.2 **Reserved.**

4.3 **Allocation of Other Payments and Costs**

(a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall be responsible for the Environmental Costs associated with the Product and shall indemnify, defend and hold Buyer harmless from and against all third-party claims brought against Buyer for Environmental Costs.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or
availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).

(c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.

(d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.

(e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges are the responsibility of Seller and for Seller’s account.

4.4 **Offset Rights**

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. **Seller’s Failure to Deliver Contract Quantity**

5.1 **Seller’s Duty to Provide Replacement Capacity**

Seller will be under no obligation to provide Replacement Capacity in the event of Force Majeure or Planned Outages that are timely noticed to Buyer in accordance with Section 3.2. If Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

(a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s); and

(b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Contract Quantity.
provided that the designation of any Replacement Unit by Seller shall be subject to Buyer’s prior written approval, which shall not be unreasonably withheld or delayed. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller’s failure to properly provide Replacement Capacity, including Seller’s obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 11.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

(a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity; and

(b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to “Accelerated Payment of Damages,” if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Contract Capacity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Contract Capacity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Contract Capacity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Contract Capacity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Capacity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Contract Capacity or any portion of the Replacement Capacity;
Execution Version

(b) Seller’s failure to provide timely notice of the non-availability of any portion of the Contract Capacity;

(c) A Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Unit Contract Quantity purchased hereunder; or

(d) any other failure by Seller to perform its material obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller’s and Buyer’s Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer’s Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

As used in this Section 6.1, “commercially reasonable actions” or “good faith” shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

6.2 Seller’s Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit’s owner or operator;

(c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
(d) Seller shall, and each Unit’s SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;

(e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;

(f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;

(g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(h) Seller has notified each Unit’s SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;

(i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit’s SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO; and

(j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).
8. **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 written agreement signed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document signed by both Parties.

9. **Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10. **Collateral Requirements**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

11. **Declaration of an Early Termination Date and Calculation of Settlement Amounts**

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller’s Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a $/kW-day basis subtracting the Contract Price (in $/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

[Signature page follows]
IN WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Execution Date.

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

By: ________________________________

Name: Monica Padilla

Title: Director of Power Resources

SAN DIEGO GAS & ELECTRIC COMPANY a California corporation

By: ________________________________

Name: Joseph Pasquito

Title: Market Analysis Manager
## APPENDIX A

### Unit Information

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<thead>
<tr>
<th>Month</th>
<th>August</th>
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<tr>
<td>Unit Resource Name</td>
<td>Desert Star</td>
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<td>Path 26 (North or South)</td>
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<td>Local Capacity Area (if any, as of Confirmation Execution Date)</td>
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<td>Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)</td>
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<td>Unit Contract Quantity (MW) for Flexible RA Attributes</td>
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<tr>
<td>Run Hour Restrictions</td>
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CONFIRMATION OF POWER PURCHASE AND SALE TRANSACTION

Date: June 15, 2022

Transaction Number: 3451445

To: Silicon Valley Clean Energy Authority (Buyer)

Trader: NextEra Energy Marketing, LLC (Seller)

From: Ruben Lorenzo

This confirmation confirms the terms and conditions of the physical power transaction entered into between the parties.

Trade Date: June 14, 2022

Type of Transaction: FIRM (LD)

Delivery Period: Hour Type: 7x8
- Days of Week: Sunday through Saturday and NERC holidays
- Hour Endings: 0100 through 0600
- 2300 through 2400
- Time Zone: Pacific Prevailing Time (PPT)

Hour Type: 6x16
- Days of Week: Monday through Saturday excluding NERC holidays
- Hour Endings: 0700 through 2200
- Time Zone: Pacific Prevailing Time (PPT)

Hour Type: 1x16
- Days of Week: Sunday and NERC holidays
- Hour Endings: 0700 through 2200
- Time Zone: Pacific Prevailing Time (PPT)

Contract Quantity:

Total Contract Quantity:

Contract Price:

Delivery Point:

Scheduling Rules:
CONFIRMATION OF POWER PURCHASE
AND SALE TRANSACTION

Special Terms:

Governing Terms: Unless otherwise noted in this confirmation, this transaction is governed by the
terms and conditions of the Master Agreement between NextEra Energy Marketing, LLC and
Silicon Valley Clean Energy Authority executed on March 14, 2019.

Upon receipt:

NextEra Energy Marketing, LLC
By: 
Name: Nicole Lawrence
Title: Trading Risk Analyst
Date: June 15, 2022
Contact: 

Silicon Valley Clean Energy Authority
By: 
Name: Girish Balachandran
Title: CEO
Date: 6/17/2022
Contact: 

700 Universe Blvd, EPM/JB, Juno Beach, FL 33408
NEM Ref No: 3451445
CONFIRMATION OF POWER PURCHASE AND SALE TRANSACTION

Date: June 15, 2022
Transaction Number: 3451452
To: Silicon Valley Clean Energy Authority (Buyer)
Trader: NextEra Energy Marketing, LLC (Seller)
Trader: Ruben Lorenzo

This confirmation confirms the terms and conditions of the physical power transaction entered into between the parties.

Trade Date: June 14, 2022
Type of Transaction: FIRM (LD)

Term:

Delivery Period:
Hour Type: 7x8
Days of Week: Sunday through Saturday and NERC holidays
Hour Endings: 0100 through 0600
2300 through 2400
Time Zone: Pacific Prevailing Time (PPT)

Hour Type: 6x16
Days of Week: Monday through Saturday excluding NERC holidays
Hour Endings: 0700 through 2200
Time Zone: Pacific Prevailing Time (PPT)

Hour Type: 1x16
Days of Week: Sunday and NERC holidays
Hour Endings: 0700 through 2200
Time Zone: Pacific Prevailing Time (PPT)

Contract Quantity:
Total Contract Quantity:
Contract Price:
Delivery Point:
Scheduling Rules:
CONFIRMATION OF POWER PURCHASE AND SALE TRANSACTION

Special Terms:

Governing Terms: Unless otherwise noted in this confirmation, this transaction is governed by the terms and conditions of the Master Agreement between NextEra Energy Marketing, LLC and Silicon Valley Clean Energy Authority executed on March 14, 2019.

<table>
<thead>
<tr>
<th>NextEra Energy Marketing, LLC</th>
<th>Silicon Valley Clean Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By: Girish Balachandran</td>
</tr>
<tr>
<td>Name: Nicole Lawrence</td>
<td>Name: Girish Balachandran</td>
</tr>
<tr>
<td>Title: Trading Risk Analyst</td>
<td>Title: CEO</td>
</tr>
<tr>
<td>Date: June 15, 2022</td>
<td>Date: 6/17/2022</td>
</tr>
<tr>
<td>Contact:</td>
<td>Contact:</td>
</tr>
</tbody>
</table>

700 Universe Blvd, EPM/ JB, Juno Beach, FL 33408

NEM Ref No: 3451452

page 2

NextEra Energy Marketing, LLC
CONFIRMATION

This confirmation agreement ("Confirmation") confirms the Transaction between TransAlta Energy Marketing (U.S.) Inc. ("Seller") and Silicon Valley Clean Energy Authority ("Purchaser"), each individually a “Party” and together the “Parties,” dated as of June 14, 2022 ("Effective Date") regarding the sale and purchase of electric capacity and/or electric energy under the terms and conditions set forth below.

Governing Terms: This Transaction is governed by the terms and conditions of the EEI Master Agreement dated July 24, 2017, as amended August 15, 2019, along with any schedules and amendments thereto (collectively, the “Master Agreement”), and is subject to all the terms and provisions of such agreement. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” If
there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement.

**Counterparts:** This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

**Entire Agreement; No Oral Agreements Or Modifications:** This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the
Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a written agreement executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a written agreement executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

TRANSALTA ENERGY MARKETING (U.S.) Inc.

By: Shauna Britton
Name: Shauna Britton
Title: Confirmations Coordinator
Date: 16 June 2022 | 9:57 AM MDT

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: Girish Balachandran
Name: Girish Balachandran
Title: Chief Executive Officer
Date: 6/15/2022

TransAlta Energy Marketing (U.S.) Inc.
CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Constellation Energy Generation, LLC, a Pennsylvania limited liability company
(“Seller”)
And
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated November 28, 2016
Transaction Date: June 14, 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 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.

   “Buyer Facilities” has the meaning set forth in Section 10 hereof.
“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.


“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 deliveries from 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 San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Debt Service” means the obligations payable by Buyer for interest on loans outstanding and any principal repayments and any capital leases, but excluding any interest on or principal repayments of inter-company working capital loans between Buyer and one or more of its Affiliates.

“Debt Service Coverage Ratio” means, the ratio of (a) EBITDA to (b) Debt Service, for the preceding twelve (12) month period measured annually as of each fiscal year end, beginning September 1, 2017.

“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 to Buyer’s Third Party SC 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” shall have the meaning set forth in Section 2.1 below.

“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 Practice 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 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.

“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. For avoidance of doubt, the Parties agree that RECs do not include any production tax credits associated with the construction or operation of an ERR or other financial incentives in the form of credits, reductions, or allowances associated with an ERR that are created by state or federal tax laws.
“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 (e.g., a Transaction Confirmation).

“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 SC” means a third party designated by Buyer to provide the Scheduling Coordinator (as defined in the Tariff) functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract (e.g., a Transaction Confirmation).

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

“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 determined in accordance with Section 7.1;

(b) the quantity of Renewable Energy determined in accordance with in Section 7.2; and

(c) the quantity of Carbon Free Energy determined in accordance with Section 7.3.
For avoidance of doubt, Product does not include any resource adequacy or capacity attributes.

2.2 Change in Law.

If due to (i) any action by the CPUC or any other Governmental Authority, or (ii) any change in Applicable Law, including any modification of the California RPS or the Cap and Trade Regulation (i and ii, collectively, 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, 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 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 and in Section 2.8.

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.

2.4 **No New Construction.** Seller does not intend to construct any new facilities in California to meet its supply obligations hereunder. Notwithstanding the foregoing, to the extent that Seller constructs any new facilities in California to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 **Resources.** For Category 1 Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use either (i) Unspecified Sources of Power or (ii) Specified Sources of Power; provided that any such Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) from Specified Sources of Power shall not be procured from nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 **Delivery of WREGIS Certificates.** Buyer and Seller agree that the obligation to deliver RECs hereunder shall be evidenced by the delivery of WREGIS Certificates in WREGIS. 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. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-
binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

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 and in any event no later than May 1 following the delivery year.

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 specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller’s rejection of such non-conforming WREGIS Certificates.

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 records 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.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 et seq., and to comply with the requirements of the Cap and Trade Regulations in Title 17 CCR Section 95111 and 17 CCR Section 95852 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period and to provide WREGIS reports to Seller by no later than May 15 of the year following delivery that (1) evidence retirement of the RECs and (2) provide REC serial numbers.
2.8 **RPS Adjustment.** The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the RPS Adjustment is eliminated from the Cap and Trade Regulations and is no longer applicable to the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

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.**

<table>
<thead>
<tr>
<th>Product</th>
<th>Delivery Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>TH_NP15_GEN-APND</td>
</tr>
<tr>
<td>Renewable Energy</td>
<td>Any scheduling point within the CAISO system</td>
</tr>
<tr>
<td>Carbon Free Energy</td>
<td>Any scheduling point within the CAISO system</td>
</tr>
</tbody>
</table>

5. **SCHEDULING.** The Product will be scheduled to Buyer’s Third Party SC on a Day-Ahead basis using an Inter-SC Trade.

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 transferred from Seller to Buyer through WREGIS during such month plus b) the Day-Ahead LMP (as defined under the Tariff) at the Delivery Point for each MWh of the Renewable Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to a) the Carbon Free Energy Contract Price as specified in Exhibit C plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Carbon Free Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

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.

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 **Collection of Customer Payments.** In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

8.2 **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not 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 behalf of Silicon Valley Clean Energy 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. Each party shall provide all reasonable information to the other party necessary to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product. Buyer agrees to cooperate with any informational requests Seller may receive from a Governmental Authority, including but not limited to supplying WREGIS reports for Seller’s compliance with Cap and Trade Regulations.

10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities (“Buyer Facilities”) or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.

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 Utility Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform.

12.2 **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 any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports set forth below in Section 15.2(a) and such failure is not remedied within fifteen (15) Business Days of Seller’s written request therefore and notice of a potential Event of Default, such failure shall be an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform; provided, however, that should any such reports, not be
available on a timely basis due to a delay in preparation or certification, or otherwise outside of the reasonable control of Buyer, such delay shall not be an Event of Default of Buyer so long as Buyer diligently pursues the preparation and delivery of the required reports.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);

(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts;

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers; and

(v) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

(b) **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.
12.3 **Debt Service Coverage Ratio Covenant** From September 1, 2017 through the remainder of the Delivery Period, Buyer shall establish and maintain a Debt Service Coverage Ratio of at least 1.25 to 1.0 (measured annually as of each fiscal year end beginning September 1, 2017). If at any time after September 1, 2018, Buyer fails to maintain such Debt Service Coverage Ratio for the prior fiscal year, such event shall constitute an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such event.

[SIGNATURE PAGE FOLLOWS]
This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 28, 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.”

<table>
<thead>
<tr>
<th>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A – Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CONSTELLATION ENERGY GENERATION, LLC</th>
<th>SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign: Matthew A. Stasch</td>
<td>Sign: Girish Balachandran</td>
</tr>
<tr>
<td>Print: Matthew A. Stasch</td>
<td>Print: Girish Balachandran</td>
</tr>
<tr>
<td>Title: VP, Chief Risk Officer</td>
<td>Title: CEO</td>
</tr>
</tbody>
</table>
“ATC” means HE 0100-2400 PPT Monday through Sunday, including NERC holidays
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

N/A
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

N/A
CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Constellation Energy Generation, LLC, a Pennsylvania limited liability company
(“Seller”)

And
Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated November 28, 2016
Transaction Date: June 29, 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 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.

   “Buyer Facilities” has the meaning set forth in Section 10 hereof.
“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.


“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 deliveries from 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 San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Debt Service” means the obligations payable by Buyer for interest on loans outstanding and any principal repayments and any capital leases, but excluding any interest on or principal repayments of inter-company working capital loans between Buyer and one or more of its Affiliates.

“Debt Service Coverage Ratio” means, the ratio of (a) EBITDA to (b) Debt Service, for the preceding twelve (12) month period measured annually as of each fiscal year end, beginning September 1, 2017.

“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 to Buyer’s Third Party SC 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” shall have the meaning set forth in Section 2.1 below.

“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 Practice 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 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.

“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. For avoidance of doubt, the Parties agree that RECs do not include any production tax credits associated with the construction or operation of an ERR or other financial incentives in the form of credits, reductions, or allowances associated with an ERR that are created by state or federal tax laws.
“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 (e.g., a Transaction Confirmation).

“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 SC” means a third party designated by Buyer to provide the Scheduling Coordinator (as defined in the Tariff) functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract (e.g., a Transaction Confirmation).

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

“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 determined in accordance with Section 7.1;

(b) the quantity of Renewable Energy determined in accordance with Section 7.2; and

(c) the quantity of Carbon Free Energy determined in accordance with Section 7.3.
For avoidance of doubt, Product does not include any resource adequacy or capacity attributes.

2.2 Change in Law.

If due to (i) any action by the CPUC or any other Governmental Authority, or (ii) any change in Applicable Law, including any modification of the California RPS or the Cap and Trade Regulation (i and ii, collectively, 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, 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 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 and in Section 2.8.

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.

2.4 **No New Construction.** Seller does not intend to construct any new facilities in California to meet its supply obligations hereunder. Notwithstanding the foregoing, to the extent that Seller constructs any new facilities in California to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.

2.5 **Resources.** For Category 1 Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use either (i) Unspecified Sources of Power or (ii) Specified Sources of Power; provided that any such Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) from Specified Sources of Power shall not be procured from nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.

2.6 **Delivery of WREGIS Certificates.** Buyer and Seller agree that the obligation to deliver RECs hereunder shall be evidenced by the delivery of WREGIS Certificates in WREGIS. 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. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-
binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

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 and in any event no later than May 1 following the delivery year.

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 specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller’s rejection of such non-conforming WREGIS Certificates.

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 records 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.

2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations (“CCR”) Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 et seq., and to comply with the requirements of the Cap and Trade Regulations in Title 17 CCR Section 95111 and 17 CCR Section 95852 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period and to provide WREGIS reports to Seller by no later than May 15 of the year following delivery that (1) evidence retirement of the RECs and (2) provide REC serial numbers.
2.8 **RPS Adjustment.** The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the RPS Adjustment is eliminated from the Cap and Trade Regulations and is no longer applicable to the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

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.** The Product will be scheduled to Buyer’s Third Party SC on a Day-Ahead basis using an Inter-SC Trade.

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 transferred from Seller to Buyer through WREGIS during such month plus b) the Day-Ahead LMP (as defined under the Tariff) at the Delivery Point for each MWh of the Renewable Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

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 plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Carbon Free Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

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.

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 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller’s invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not 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 behalf of Silicon Valley Clean Energy 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. Each party shall provide all reasonable information to the other party necessary to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product. Buyer agrees to cooperate with any informational requests Seller may receive from a Governmental Authority, including but not limited to supplying WREGIS reports for Seller’s compliance with Cap and Trade Regulations.

10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer’s ability to develop its own generation facilities (“Buyer Facilities”) or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.

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 Utility Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer’s failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such failure to perform. Provided, however, that should any such reports, not be...
available on a timely basis due to a delay in preparation or certification, or otherwise outside of the reasonable control of Buyer, such delay shall not be an Event of Default of Buyer so long as Buyer diligently pursues the preparation and delivery of the required reports.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer’s identity;

(ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);

(iii) Cash reconciliations and bank statements for each of Buyer’s banking accounts;

(iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days, and 120 days, plus the total account receivable balance owed to Buyer from its Customers; and

(v) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

(b) **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.
12.3 **Debt Service Coverage Ratio Covenant** From September 1, 2017 through the remainder of the Delivery Period, Buyer shall establish and maintain a Debt Service Coverage Ratio of at least 1.25 to 1.0 (measured annually as of each fiscal year end beginning September 1, 2017). If at any time after September 1, 2018, Buyer fails to maintain such Debt Service Coverage Ratio for the prior fiscal year, such event shall constitute an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the ‘Defaulting Party’ with regard to such event.

[SIGNATURE PAGE FOLLOWS]
This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 28, 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.”

<table>
<thead>
<tr>
<th>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A – Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</td>
</tr>
<tr>
<td>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</td>
</tr>
</tbody>
</table>

**CONSTELLATION ENERGY GENERATION, LLC**

Sign: [Signature]
Print: Ravi S. Ganti
Title: SVP Portfolio Management and Analysis

**SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority**

Sign: Girish Balachandran
Print: Girish Balachandran
Title: CEO
Exhibit A

Energy Contract Quantity and Price Schedule

<table>
<thead>
<tr>
<th>ATC</th>
<th>Quantity</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>HE 0100-2400 PPT</td>
<td>Monday through Sunday, including NERC holidays</td>
<td></td>
</tr>
</tbody>
</table>

"ATC" means HE 0100-2400 PPT Monday through Sunday, including NERC holidays
Exhibit B

Renewable Energy Contract Quantity and Price Schedule

N/A
Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

N/A
WSPP CONFIRMATION
LONG-TERM RPS ENERGY AND GREEN ATTRIBUTES

This confirmation ("Confirmation") confirms the transaction between East Bay Community Energy Authority, a California joint powers authority ("Purchaser" or "EBCE") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Seller" or "SVCE") and, together with Purchaser, the "Parties" and each individually, a "Party") dated as of July 8, 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 terms of the WSPP Agreement, effective as of August 12, 2021, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference (the "Master Agreement") and as amended and supplemented by this Confirmation; provided that, in the case of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. This Confirmation and the Master Agreement, including any schedules, appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement" and will constitute a single agreement between the Parties.

<table>
<thead>
<tr>
<th>Product:</th>
<th>&quot;Product&quot; means (a) all RPS Energy and Green Attributes generated and associated with the non-Greengate Resources in the Resource Pool, and (b) all Green Attributes associated with the Greengate Resources in the Resource Pool.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Quantity:</td>
<td></td>
</tr>
<tr>
<td>Contract Price:</td>
<td></td>
</tr>
<tr>
<td>Payment:</td>
<td>Seller shall invoice Purchaser on or before the 20th day of each calendar month in an amount equal to the quantity of Product delivered to Purchaser during the previous month multiplied by the Contract Price. With each invoice, Seller shall provide documentation to verify delivery of invoiced amounts of Product. Within ten (10) Business Days after the delivery of the invoice or the 20th day of each calendar month, whichever is later, Purchaser shall pay Seller the amount invoiced.</td>
</tr>
<tr>
<td>Resource Pool:</td>
<td>&quot;Resource Pool&quot; means the Long-Term Resource Pool set forth in Exhibit A. The Parties acknowledge that PG&amp;E may add or remove Resources to the Resource Pool from time to time pursuant to the PG&amp;E RPS Allocation Confirmation.</td>
</tr>
<tr>
<td><strong>Delivery Period:</strong></td>
<td></td>
</tr>
<tr>
<td>----------------------</td>
<td>---</td>
</tr>
<tr>
<td><strong>Delivery Point:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Purchaser Audit Rights:</strong></td>
<td>Upon reasonable request of Purchaser, Seller shall request that PG&amp;E provide documentation (which may include, for example, WREGIS reports) sufficient to demonstrate that Product has been conveyed and delivered to Purchaser.</td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Title and Reporting Rights:</strong></td>
<td>Title to the Product shall be deemed to pass from Seller to Purchaser at the Delivery Point. Purchaser has the exclusive right to Product for the Contract Quantity, including the right to account for or report Product equal to the Contract Quantity to a Governmental Entity.</td>
</tr>
<tr>
<td><strong>Conveyance of Green Attributes:</strong></td>
<td></td>
</tr>
</tbody>
</table>
3. **WREGIS Certificate True-Up.** A “WREGIS Certificate True-Up” means any deficit or surplus in WREGIS Certificates delivered to Purchaser for a calendar month as compared to 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 Purchaser, provided that no adjustments will be made for any WREGIS Certificate True-Up after twenty-four (24) months from the True-Up Month.

<p>| Seller Representations and Warranties: |  |</p>
<table>
<thead>
<tr>
<th>Limitation of Liability:</th>
<th>Notwithstanding any provision to the contrary in the Master Agreement or this Confirmation, Seller shall have no liability to Purchaser for the failure to deliver any portion of the Contract Quantity that was not delivered to Seller by PG&amp;E.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidentiality:</td>
<td>Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Each Party (a “Receiving Party”) acknowledges that the other Party (a “Disclosing Party”) may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information”), the Receiving Party</td>
</tr>
</tbody>
</table>
shall notify the Disclosing Party as soon as practical that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

**Governing Law:**
Notwithstanding Section 24 of the Master Agreement, this Transaction and governing law applicable to this Transaction shall as set forth in the following paragraph.

**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.

**Collateral/Credit Requirements:**

**No Resale:** Purchaser shall not resell the Product to any third party except pursuant to the prior written consent of Seller.

**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 its debts, obligations and liabilities accruing and arising out of this Confirmation. Each Party agrees that it shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the other Party’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of the other Party or the other Party’s constituent members, in connection with this Confirmation.

**Notices:**
Notwithstanding Section 12.1 of the Master Agreement, notices under this Confirmation shall be in writing and shall be deemed properly served, given or made if delivered by hand delivery, United States mail, overnight courier service, or email. The following names and addresses shall be used for notices.
## Counterparts:

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

## Entire Agreement; No Oral Agreements or Modifications:

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

## Definitions:

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

“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.

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

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-
Appendix A

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.

“Energy” means electrical energy, measured in MWh.

“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.

“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 Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Resource.
“Greengate Resources” means the Blackspring Ridge IA Wind Project, and Blackspring Ridge IB Wind Project (all affiliates of Greengate Power Corporation).

“Letter of Credit” has the meaning set forth in the Master Agreement.

“Long-Term Resource Pool” means Resources in Exhibit A reflecting power purchase agreements with terms that have more than 10 years remaining from the start of the Delivery Period.

“MW” means megawatt.

“MWh” means megawatt-hour.

“NP 15” means the transmission area north of Path 15.

“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.

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

“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” means generation units contracted for through power purchase agreements by Seller with PG&E.

“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.


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

“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.

“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.
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority

Sign: [Signature]
Print: Nick Chaset
Title: CEO

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: [Signature]
Print: Girish Balachandran
Title: CEO
## EXHIBIT A

### LIST OF RESOURCES IN LONG-TERM RESOURCE POOL

<table>
<thead>
<tr>
<th>Resource Name</th>
<th>Technology</th>
<th>CEC RPS ID</th>
<th>PCI A Vintage</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montezuma Wind Energy Center</td>
<td>Wind</td>
<td>60543</td>
<td>2010</td>
<td>1/27/2036</td>
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<tr>
<td>High Plains Ranch II</td>
<td>Solar PV</td>
<td>60603</td>
<td>2008</td>
<td>10/30/2038</td>
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<tr>
<td>Topaz Solar Farm</td>
<td>Solar PV</td>
<td>61698</td>
<td>2008</td>
<td>10/26/2039</td>
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<tr>
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<td>Solar Thermal</td>
<td>62273</td>
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<td>Ivanpah Unit 3</td>
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<tr>
<td>DTE Stockton</td>
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<td>Solar PV</td>
<td>60946</td>
<td>2010</td>
<td>3/7/2038</td>
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<tr>
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