



Liz Gibbons, Chair
City of Campbell

George Tyson, Vice Chair
Town of Los Altos Hills

Jon Robert Willey
City of Cupertino

Zach Hilton
City of Gilroy

Neysa Fligor
City of Los Altos

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

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

Wednesday, September 14, 2022
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

Teleconference Meeting
Webinar:

<https://cityofcupertino.zoom.us/j/93815130659>

Telephone (Audio Only):
US: +1 669-900-6833
Webinar ID: 938 1513 0659

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

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

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

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087

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

Liz Gibbons, Chair
City of Campbell

AGENDA

George Tyson, Vice Chair
Town of Los Altos Hills

Call to Order

Jon Robert Willey
City of Cupertino

Roll Call

Zach Hilton
City of Gilroy

Public Comment on Matters Not Listed on the Agenda

Neysa Fligor
City of Los Altos

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

Rob Rennie
Town of Los Gatos

Evelyn Chua
City of Milpitas

Consent Calendar (Action)

Javed Ellahie
City of Monte Sereno

1a) Approve Minutes of the August 10, 2022, Board of Directors Meeting

1b) Receive July 2022 Treasurer Report

Yvonne Martinez Beltran
City of Morgan Hill

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

Margaret Abe-Koga
City of Mountain View

1d) Approve Amendment No. 5 to Employment Agreement for Chief Executive Officer

Tina Walia
City of Saratoga

1e) Approve General and Administrative Policy #7: Chief Executive Officer Absence Policy

Larry Klein
City of Sunnyvale

1f) Authorize CEO to Execute a 5-Year Agreement with Adapt2 Solutions, Inc. for Deal Capture and Settlements Software

Otto Lee
County of Santa Clara

1g) Adopt Resolution Establishing October 5, 2022 as Clean Air Day

1h) Authorize the Chief Executive Officer to Execute a Two-year Agreement with Braun Blasing Smith Wynne P.C. ("BBSW")

1i) Authorize the Chief Executive Officer to Execute a Three-Year Agreement with Keyes and Fox, LLP for Legal Services

1j) Authorize the Chief Executive Officer to Execute Agreement with Maher Accountancy for Accountant Services

1k) Authorize CEO to Approve Agreement with Pisenti & Brinker, LLP for Financial Audit Services for the year ending September 30, 2022

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City of Morgan Hill

Margaret Abe-Koga
City of Mountain View

Tina Walia
City of Saratoga

Larry Klein
City of Sunnyvale

Otto Lee
County of Santa Clara

- 1l) Authorize the Chief Executive Officer to Execute an Agreement for FY22-23 with Richards, Watson & Gershon for Legal Services
- 1m) Executive Committee Report
- 1n) Finance and Administration Committee Report
- 1o) Audit Committee Report
- 1p) Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee Report
- 1q) California Community Power Report

Regular Calendar

- 2) CEO Report (Discussion)
- 3) Update on Strategic Plan and Adopt FY23 SVCE Strategic Focus Areas (Action)
- 4) Adopt the FY 2022-23 Recommended Operating Budget and Updated Reserves Policy (Action)
- 5) Authorize the Chief Executive Officer to Execute Necessary Agreements for a Resource Adequacy Resource from AES Clean Energy Development, LLC (Action)
- 6) Integrated Resource Plan Status Update (Discussion)
- 7) New Construction Reach Code Update (Presentation)

Board Member Announcements and Direction on Future Agenda Items

Adjourn

svcleanenergy.org

333 W El Camino Real
Suite 330
Sunnyvale, CA 94087



Silicon Valley Clean Energy Authority

Board of Directors Meeting

Wednesday, August 10, 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:

Chair Gibbons called the Regular Meeting to order at 7:00 p.m.

Roll Call

Present:

Liz Gibbons (Chair), Campbell
George Tyson (Vice Chair), Los Altos Hills
Jon Robert Willey, Cupertino (arrived at 7:35 p.m.)
Neysa Fligor, Los Altos
Rob Rennie, Los Gatos
Evelyn Chua, Milpitas
Javed Ellahie, Monte Sereno (arrived at 7:05 p.m.)
Yvonne Martinez Beltran, Morgan Hill
Margaret Abe-Koga, Mountain View
Tina Walia, Saratoga
Larry Klein, Sunnyvale

Absent:

Rebeca Armendariz, Gilroy
Otto Lee, Santa Clara County

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

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

- 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

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 Abe-Koga moved and Vice Chair Tyson seconded the motion to approve the Consent Calendar, Items 1a through 1m.

The motion carried unanimously by verbal roll call vote with Directors Ellahie, Lee, Willey and Alternate Director Armendariz absent.

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran welcomed board members and staff back from the July meeting hiatus, expressed his apologies that he would not be able to attend board meetings in person for the next couple of months, and noted he would be departing the meeting following his report and Monica Padilla, Acting CEO, would continue in her interim role for the remainder of the meeting. CEO Balachandran addressed the following in his CEO report:

- Announced SVCE staff would be meeting in-person Thursday and Friday for a retreat to meet within their departments and continue work on the FY 22-23 workplan;
- Introductions of the following new employees: Leslie Madarang, Marketing Specialist, and Kris Van Vactor, Wholesale Energy Markets Manager; both provided brief welcome comments;
- Reintroduced Colleen McCamy, Digital Engagement & Data Visualization Specialist, and announced her new part-time role as she returns to school to pursue a Master of Environmental Data Science; Digital Engagement & Data Visualization Specialist McCamy provided brief comments; and
- Provided an update on the Customer Focused Strategic Plan, which would be a more customer facing document based on the SVCE Strategic Plan.

Chair Gibbons opened Public Comment.

No speakers.

Chair Gibbons closed Public Comment.

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

Amrit Singh, CFO and Director of Administrative Services, presented a PowerPoint presentation on the proposed FY 22-23 Operating budget which included a summary of the proposed budget, revenue modeling, current and new proposed reserve targets, customer discount rate and funding for programs, power supply costs, and other cost drivers.

CFO and Director of Administrative Services Singh responded to board member questions regarding the proposed discount rate, customer participation rate, cost analysis, CCA comparisons on net position and discount rates, and anticipated PCIA charges.

Chair Gibbons opened Public Comment.

Bruce Karney applauded the consistent carbon-free decision and 1% customer discount, and noted SVCE has a 96-97% market share. Karney provided four things that could be done with profits: 1) give money back to customers through discounts, 2) use money for program expenses, 3) use the money for non-program expenses, and 4) use the money to increase the size of reserves. Karney noted he is interested in seeing the programs budget expanded, and inquired if it would be possible for SVCE to deploy programs quickly.

Chair Gibbons closed Public Comment.

Monica Padilla, Acting CEO, noted a summary report on the Inflation Reduction Act was included in the CEO report, and added staff would bring a discussion item to the August Executive Committee meeting.

Board members provided feedback and comments on the proposed operating budget; Director Ellahie suggested staff begin exploring how SVCE could help people generate energy at home.

4) New Construction Reach Code Update (Presentation)

Zoe Elizabeth, Deputy Director of Decarbonization Programs and Policy, presented a PowerPoint presentation on a status update and upcoming actions for member agency reach codes and responded to board member questions.

Chair Gibbons opened Public Comment.

No speakers.

Chair Gibbons closed Public Comment.

Board Member Announcements and Future Agenda Items

Director Ellahie announced the City of Monte Sereno would be hosting its annual picnic on August 21, 2022, noon, at Vasona Park and invited all to attend.

Director Klein announced a Mercury News article was published on August 7, 2022, addressing the City of Sunnyvale's new City Hall development, which will be net zero and will receive a platinum LEED rating.

Director Chua announced Congressman Ro Khanna visited the City of Milpitas to gather ideas for projects that he could speak with other congressmembers about. Director Chua noted the City of Milpitas requested \$3M to electrify approximately 200 homes, and anticipated the project would be approved in the fall.

Director Martinez Beltran announced the Children's Business Fair occurred on August 6, 2022, and suggested SVCE be involved in future children's business fair events. Director Martinez Beltran announced a Women's Walk & Open Mic on August 26, 2022 in Downtown Morgan Hill, and a brunch on August 27, 2022 with a panel discussing impacts of overturning Roe.

Chair Gibbons suggested expanding the SVCE engagement at community events to provide power through solar as opposed to gas generators, as was done at the City of Cupertino Earth Day event.

Director Abe-Koga thanked SVCE staff for their partnership in developing concepts for submission to the Metropolitan Transportation Commission transportation electrification program Call for Project ideas, which was a call for projects to solicit ideas on how to accelerate and expand access to electric mobility options. Dir. Abe-Koga noted the City of Mountain View and the City of Milpitas split the projects and represented the partnership and would continue to monitor the progress of the program. Dir. Abe-Koga noted she was hopeful there would be funding opportunities for the area.

Public Comment on Closed Session

This item was not heard.

Convene to Closed Session

Chair Gibbons announced the Board of Directors would convene to Closed Session at 8:34 p.m. to discuss the following:

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

The Board of Directors returned from Closed Session at 11:04 p.m.; Chair Gibbons noted there was nothing to report out on the following:

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

Adjourn

Chair Gibbons adjourned the meeting at 11:06 p.m.

ATTEST:

Andrea Pizano, Board Secretary



TREASURER REPORT

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

(Preliminary & Unaudited)

Issue Date: September 14, 2022

Table of Contents

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

SILICON VALLEY CLEAN ENERGY AUTHORITY

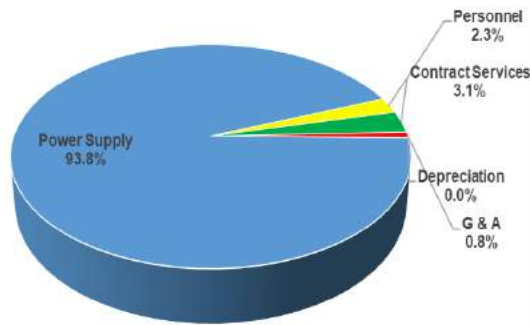
Financial Statement Highlights* (\$ in 000's)

Financial Highlights for the month of July 2022:

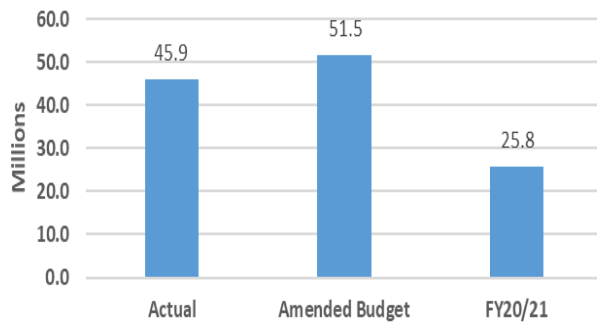
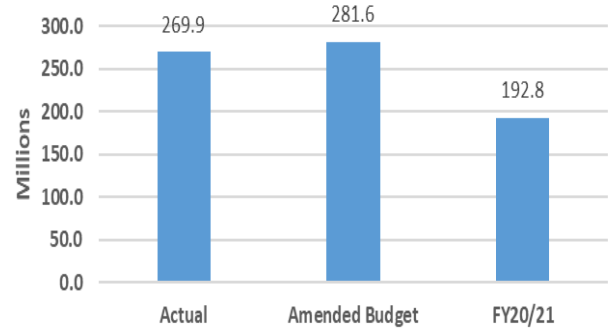
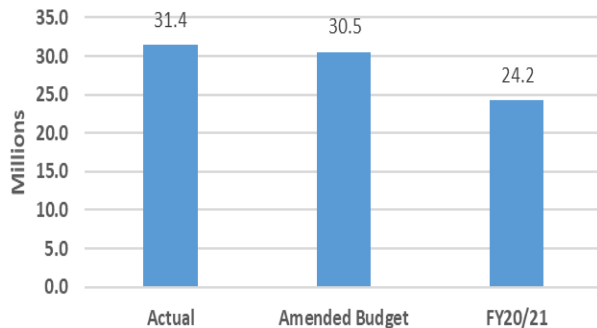
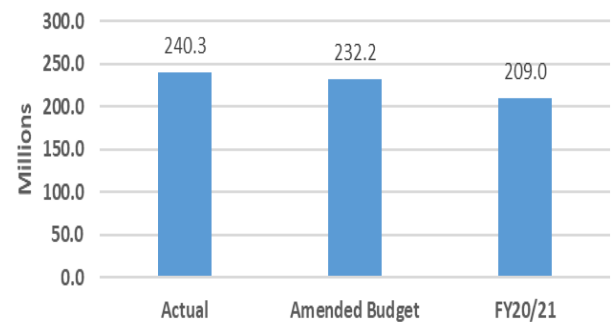
- > SVCE operations resulted in a change in net position for the month of \$15.8 million and fiscal-year-to-date (FYTD) change in net position of \$29.7 million.
- > Retail GWh sales for the month landed -0.9% below budget.
- > FYTD operating margin of \$47.2 million or ~17.3% is below budget expectations of 23.9% operating margin for the fiscal year to date.
- > FYTD Power Supply costs are 5.2% above budget.
- > SVCE is investing ~91.3% of available funds generating FYTD investment income of \$0.21 million.

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	1,532	(4,526)	(2,237)	(6,275)	(5,774)	1,734	10,904	6,764	13,067	15,819			31,007	61,611
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	11,938	15,483	13,478	17,209	15,665	20,556	11,419	14,537	15,435	17,504			153,225	
Wholesale Sales	(195)	(15)	-	(82)	(182)	(208)	(236)	(23)	(56)	(18)			(1,013)	
Capacity	2,890	2,207	2,324	3,281	3,557	3,544	3,923	4,236	4,965	5,550			36,477	
CAISO Charges	(1,301)	205	2,286	1,116	1,004	(328)	(1,124)	(2,066)	1,721	2,130			3,645	
NEM Expense	3	152	(187)	(200)	(30)	151	39	617	897	761			2,204	
Charge/Credit (IST/Net Rev)	1,189	(125)	759	1,855	2,020	3,029	4,966	5,864	7,316	3,955			30,829	
Net Power Costs	14,525	17,908	18,660	23,179	22,035	26,744	18,989	23,166	30,279	29,882	-	-	225,366	274,979
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	4	13	10	-	5	18	-	21.44	-	56			128	150
Energy Programs	68	123	116	220	114	134	121	172	112	179			1,359	8,582
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	302	288	327	322	286	306	284	294	322	347			3,078	
Retail Sales Budget	302	288	327	322	296	311	297	313	337	350	362	339	3,844	3,844

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

YTD EXPENSES**Other Statistics and Ratios**

Working Capital	\$203,550,258
Current Ratio	5.4
Operating Margin	16.5%
Expense Coverage Days	209
Long-Term Debt	\$0
Total Accounts	277,149
Opt-Out Accounts (Month)	72
Opt-Out Accounts (FYTD)	443
Opt-Up Accounts (Month)	(1)
Opt-Up Accounts (FYTD)	216

Retail Sales - Month**Retail Sales - YTD****Controllable O&M - Month****Controllable O&M - YTD**

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of July 31, 2022

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 162,474,421
Accounts Receivable, net of allowance	45,783,607
Accrued Revenue	30,966,901
Other Receivables	31,988
Prepaid Expenses	4,910,527
Deposits	5,546,882
Restricted cash	161,902

Total Current Assets	249,876,228
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Noncurrent assets

Capital assets, net of depreciation	363,354
Deposits	45,330

Total Noncurrent Assets	408,684
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Total Assets	250,284,912
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LIABILITIES

Current Liabilities

Accounts Payable	973,827
Accrued Cost of Electricity	31,921,546
Other accrued liabilities	855,422
User Taxes and Energy Surcharges due to other gov'ts	1,238,273
Supplier securit deposits	11,175,000

Total Current Liabilities	46,164,068
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Noncurrent Liabilities

Supplier security deposits	7,031,250
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Total noncurrent liabilities	7,031,250
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Total Liabilities	53,195,318
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NET POSITION

Net investment in capital assets	363,354
Restricted for security collateral	161,902
Unrestricted (deficit)	196,564,338

Total Net Position	\$ 197,089,594
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SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2021 through July 31, 2022

OPERATING REVENUES

Electricity Sales, Net	\$ 266,198,996
GreenPrime electricity premium	1,456,693
Other income	20,501
Liquidated damages	<u>2,224,250</u>
TOTAL OPERATING REVENUES	<u>269,900,440</u>

OPERATING EXPENSES

Cost of Electricity	225,363,294
Contract services	7,437,549
Staff compensation and benefits	5,451,691
General & Administrative	1,951,914
Depreciation	<u>81,477</u>
TOTAL OPERATING EXPENSES	<u>240,285,925</u>
OPERATING INCOME(LOSS)	<u>29,614,515</u>

NONOPERATING REVENUES (EXPENSES)

Grant Income	1,294,077
Interest Income	210,688
Financing costs	<u>(112,172)</u>
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>1,392,593</u>

CHANGE IN NET POSITION

	31,007,108
Net Position at beginning of period	<u>166,082,486</u>
Net Position at end of period	<u>\$ 197,089,594</u>

STATEMENT OF CASH FLOWS
October 1, 2021 through July 31, 2022

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 235,787,776
Receipts from liquidated damages	\$ 2,224,250
Other operating receipts	11,275,502
Payments to suppliers for electricity	(231,065,390)
Payments for other goods and services	(10,167,196)
Payments for staff compensation and benefits	(5,456,686)
Tax and surcharge payments to other governments	(4,298,554)
Net cash provided (used) by operating activities	<u>(1,700,298)</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Grant revenue received	1,294,077
Finance costs paid	<u>132,187</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(108,895)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>210,688</u>
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Net change in cash and cash equivalents	(172,241)
Cash and cash equivalents at beginning of year	<u>162,808,564</u>
Cash and cash equivalents at end of period	<u>\$ 162,636,323</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 162,474,421
Restricted cash	<u>161,902</u>
Cash and cash equivalents	<u>\$ 162,636,323</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2021 through July 31, 2022

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

Operating Income (loss)	\$ 29,614,515
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	81,477
Revenue adjusted for uncollectible accounts	(500,000)
(Increase) decrease in net accounts receivable	(19,293,423)
(Increase) decrease in energy settlements receivable	269,012
(Increase) decrease in other receivables	198,497
(Increase) decrease in accrued revenue	(16,556,281)
(Increase) decrease in prepaid expenses	(2,532,291)
(Increase) decrease in current deposits	(4,820,798)
Increase (decrease) in accounts payable	(582,719)
Increase (decrease) in accrued cost of electricity	(2,927,719)
Increase (decrease) in accrued liabilities	(30,980)
Increase (decrease) in energy settlements payable	4,022,174
Increase (decrease) in taxes and surcharges due to other governments	183,238
Increase (decrease) in supplier security deposits	11,175,000
Net cash provided (used) by operating activities	<u>\$ (1,700,298)</u>

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

	FYTD	FYTD	Variance		FY 2021-22	FY 2021-22
	Actual	Amended Budget	\$	%	Amended Budget	Remaining Budget
OPERATING REVENUES						
Energy Sales	\$268,928,136	\$280,671,928	-\$11,743,792	-4%	\$384,498,000	\$115,569,864
Green Prime Premium	1,456,693	921,347	535,346	58%	1,005,000	(451,693)
Liquidated damages	2,224,250		2,224,250			
TOTAL OPERATING REVENUES	272,609,079	281,593,275	(8,984,196)	-3%	385,503,000	115,118,171
ENERGY EXPENSES						
Power Supply	225,363,294	214,160,248	11,203,046	5.2%	274,979,000	49,615,706
Operating Margin	47,245,785	67,433,027	(20,187,242)	-30%	110,524,000	
					28.7%	
OPERATING EXPENSES						
Data Management	2,645,700	2,707,843	(62,143)	-2%	3,249,000	603,300
PG&E Fees	984,970	1,208,288	(223,318)	-18%	1,450,000	465,030
Salaries & Benefits	5,451,691	7,112,201	(1,660,510)	-23%	8,535,000	3,083,309
Professional Services	2,376,890	4,770,340	(2,393,450)	-50%	5,669,000	3,292,110
Marketing & Promotions	458,218	758,386	(300,168)	-40%	908,000	449,782
Notifications	105,975	109,375	(3,400)	-3%	131,000	25,025
Lease	416,620	437,500	(20,880)	-5%	525,000	108,380
General & Administrative	1,036,302	978,513	57,789	6%	1,225,000	188,698
TOTAL OPERATING EXPENSES	13,476,366	18,082,446	(4,606,080)	-25%	21,692,000	8,215,634
OPERATING INCOME/(LOSS)	33,769,419	49,350,581	(15,581,162)	-32%	88,832,000	55,062,581
NON-OPERATING REVENUES						
Other Income	20,501	41,667	(21,166)	-51%	50,000	29,499
Investment Income	210,688	250,000	(39,312)	-16%	300,000	89,312
TOTAL NON-OPERATING REVENUES	231,189	291,667	(60,478)	-21%	350,000	118,811
NON-OPERATING EXPENSES						
Financing	112,172	33,333	78,839	237%	40,000	(72,172)
CAPITAL EXPENDITURES, TRANSFERS, & OTHER						
Capital Outlay	128,157	125,000	3,157	3%	150,000	21,843
Transfer to Programs Fund	5,651,215	5,651,215	-	0%	6,781,000	1,129,785
Nuclear Allocation	500,000	500,000			600,000	100,000
Double Down Programs Allocation	14,166,667	14,166,667			17,000,000	2,833,333
Customer Bill Relief	1,435,063	2,500,000			3,000,000	1,564,937
TOTAL OTHER USES	21,881,102	22,942,882	(1,061,780)	-5%	27,531,000	5,649,898
NET INCREASE(DECREASE) IN AVAILABLE FUND BALANCE	\$12,007,334	\$26,666,033	-\$14,658,699	-55%	\$61,611,000	

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

	Amended BUDGET	ACTUAL	ADOPTED BUDGET REMAINING	ACTUAL/ ADOPTED BUDGET
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund	\$ 24,381,000	\$ 20,317,882	\$ 4,063,118	83%
EXPENDITURES & OTHER USES:				
Program expenditures	8,581,581	1,358,653	7,222,928	15.8%
Net increase (decrease) in fund balance	\$ 15,799,419	\$18,959,229		
Fund balance at beginning of period		5,837,711		
Fund balance at end of period		<u>\$24,796,940</u>		

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

	Amended BUDGET	ACTUAL	ADOPTED BUDGET REMAINING	ACTUAL/ ADOPTED BUDGET
REVENUE & OTHER SOURCES:				
Transfer from Operating Fund *	\$ -	\$ -	\$ -	
EXPENDITURES & OTHER USES:				
Program expenditures *	2,850,000	6,135	2,843,865	0.2%
Net increase (decrease) in fund balance	\$ (2,850,000)	(6,135)		
Fund balance at beginning of period		7,990,315		
Fund balance at end of period		<u>\$7,984,180</u>		

SILICON VALLEY CLEAN ENERGY AUTHORITY

OPERATING FUND

BUDGET RECONCILIATION TO STATEMENT OF

REVENUES, EXPENSES AND CHANGES IN NET POSITION

October 1, 2021 through July 31, 2022

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 12,007,334
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(81,477)
Subtract program expense not in operating budget	(1,358,653)
Subtract CRCR expense not in operating budget	(6,135)
Add back transfer to Program fund	20,317,882
Add back capital asset acquisition	128,157
Change in Net Position	<u>31,007,108</u>

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

	October	November	December	January	February	March	April	May	June	July	August	September	YTD
OPERATING REVENUES													
Electricity sales, net	\$ 17,365,080	\$ 14,621,707	\$ 17,815,729	\$ 17,228,581	\$ 16,277,554	\$ 29,781,167	\$ 31,256,974	\$ 31,334,686	\$ 44,768,429	\$ 45,749,089			\$ 266,198,996
Green electricity premium	80,961	\$ 60,556	\$ 95,594	\$ 462,687	\$ 103,634	\$ 131,601	\$ 116,747	\$ 141,505	\$ 131,322	\$ 132,086			1,456,693
Other income	1,000	\$ 2,500	\$ 1,000	\$ 3,500	\$ 2,250	\$ 5,251	\$ 1,000	\$ 2,000	\$ 1,000	\$ 1,000			20,501
Liquidated damages				922,250	\$ 1,302,000	\$ -	\$ -	\$ -	\$ -	\$ -			2,224,250
Total operating revenues	17,447,041	14,684,763	17,912,323	18,617,018	17,685,438	29,918,019	31,374,721	31,478,191	44,900,751	45,882,175	-	-	269,900,440
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	30,278,708	29,881,798			225,363,294
Staff compensation and benefits	448,844	465,162	593,320	572,350	538,861	551,232	540,655	555,023	630,611	555,633			5,451,691
Data manager	263,759	263,759	262,863	263,514	264,092	264,817	265,002	-	531,059	266,835			2,645,700
Service fees - PG&E	97,254	96,768	104,341	97,053	97,084	97,331	97,671	-	199,269	98,199			984,970
Consultants and other professional fees	370,413	341,404	376,273	473,924	393,452	363,558	395,856	744,189	28,855	318,955			3,806,879
General and administration	209,985	134,289	152,437	306,490	129,063	161,762	179,349	247,909	175,222	255,408			1,951,914
Depreciation	7,289	8,162	7,774	7,716	7,853	8,168	8,169	8,558	8,558	9,230			81,477
Total operating expenses	15,922,151	19,217,389	20,157,068	24,900,184	23,465,299	28,190,689	20,475,385	24,719,420	31,852,282	31,386,058	-	-	240,285,925
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	14,496,117	-	-	29,614,515
NONOPERATING REVENUES (EXPENSES)													
Grant income										1,294,077			1,294,077
Interest income	18,545	18,382	19,370	18,957	16,791	17,596	15,861	16,059	29,596	39,531			210,688
Financing costs	(11,042)	(11,626)	(12,027)	(11,042)	(11,226)	(11,042)	(11,042)	(11,041)	(11,042)	(11,042)			(112,172)
Total nonoperating revenues (expenses)	7,503	6,756	7,343	7,915	5,565	6,554	4,819	5,018	18,554	1,322,566	-	-	1,392,593
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	\$ 15,818,683	\$ -	\$ -	\$ 31,007,108

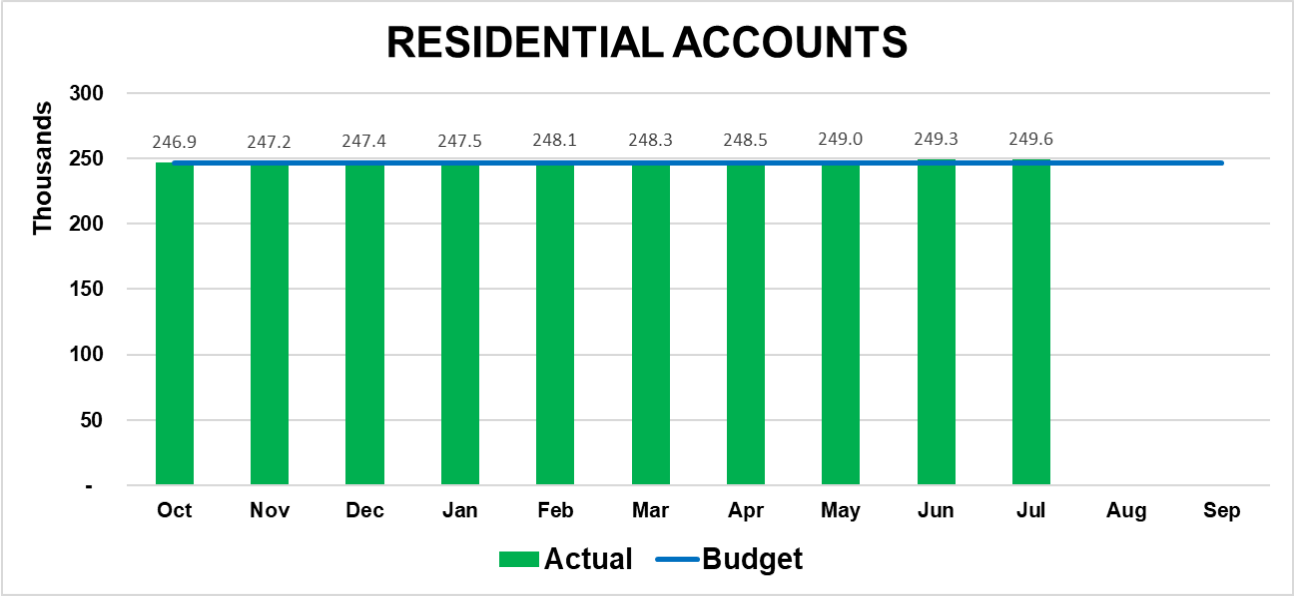
SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2021 through July 31, 2022

Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	YTD Total
	\$18,545	\$18,382	\$19,370	\$18,957	\$16,791	\$17,596	\$15,861	\$16,059	\$29,596	\$39,531	\$0	\$0	<u>\$210,688</u>
Portfolio Invested													
<i>Average daily portfolio available to invest*</i>	152,976,979	155,897,345	155,743,105	157,270,808	153,138,549	145,837,752	137,341,613	133,261,734	132,574,141	145,457,337			
<i>Average daily portfolio invested</i>	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	132,803,050			
<i>% of average daily portfolio invested</i>	92.8%	93.3%	95.4%	93.7%	94.9%	94.6%	93.2%	91.9%	94.3%	91.3%			
Detail of Portfolio													
	<u>Opening Rate</u>	<u>Current Rate</u>		<u>Carrying Value</u>		<u>Interest Earned</u>							
<i>Money Market - River City Bank</i>	1.26%	0.36%		\$145,907,048		\$39,482							

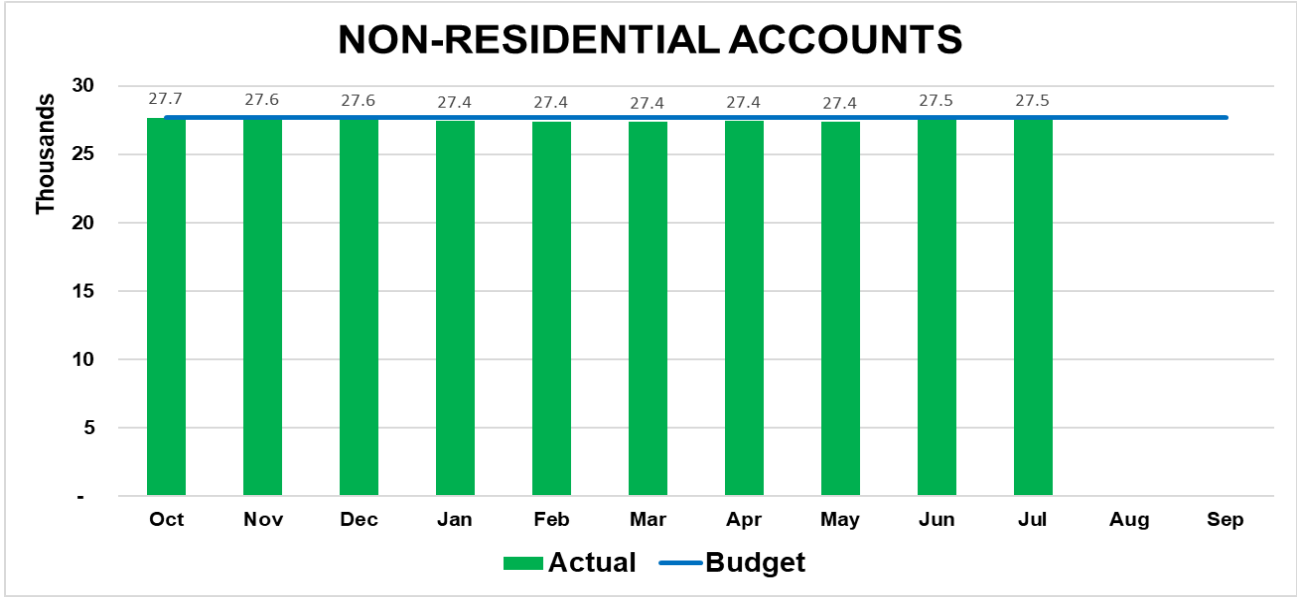
* Note: Balance available to invest does not include lockbox funds.

CUSTOMER ACCOUNTS

RESIDENTIAL ACCOUNTS

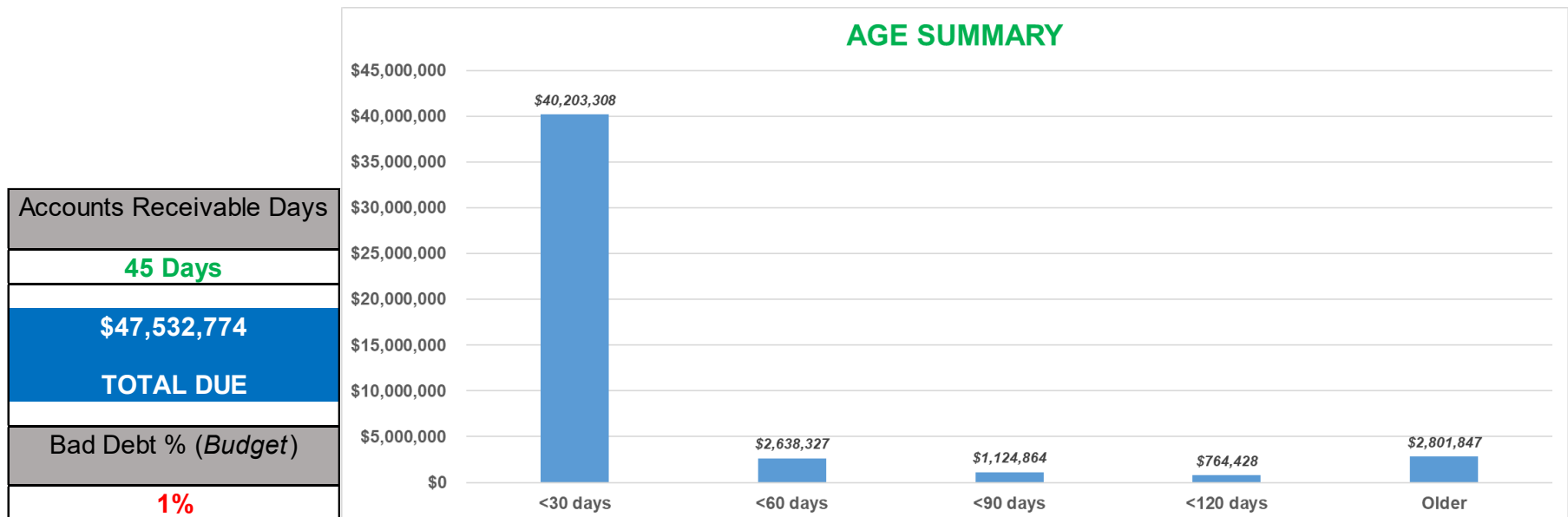


NON-RESIDENTIAL ACCOUNTS



SILICON VALLEY CLEAN ENERGY AUTHORITY ACCOUNTS RECEIVABLE AGING REPORT

	October	November	December	January	February	March	April	May	June	July	August	September
0 to 30 days	74.6%	66.6%	67.7%	70.4%	73.9%	77.7%	83.0%	80.6%	81.6%	84.6%		
31 to 60 days	8.3%	11.6%	9.1%	5.4%	6.9%	6.7%	4.5%	7.6%	7.6%	5.6%		
61 to 90 days	3.1%	3.7%	5.1%	3.9%	2.7%	2.7%	2.2%	2.0%	2.4%	2.4%		
91 to 120 days	2.0%	2.9%	3.0%	3.2%	2.5%	1.7%	1.7%	1.6%	1.3%	1.6%		
Over 120 days	12.0%	15.1%	15.0%	17.1%	14.1%	11.1%	8.6%	8.1%	7.1%	5.9%		





Staff Report – Item 1c

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

From: Trisha Ortiz, General Counsel

Prepared by: Trisha Ortiz, General Counsel

Date: 9/14/2022

RECOMMENDATION

To continue meetings to be held via teleconferencing pursuant to Government Code Section 54953(e), adopt the attached Resolution 2022-19 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.

Agenda Item: 1c**Agenda Date: 9/14/2022**

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;
June 8, 2022: 2022-14, and
August 10, 2022: 2022-17.

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 September 9, 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 2022-19 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. 2022-19**

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](#)

RESOLUTION 2022-19

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 September 9, 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 14th day of September 2022, by the following vote:

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

Chair

ATTEST:

Andrea Pizano, Board Clerk



Staff Report – Item 1d

Item 1d: Approve Amendment No. 5 to Employment Agreement for Chief Executive Officer

To: Silicon Valley Clean Energy Board of Directors

From: Trisha Ortiz, General Counsel

Date: 9/14/2022

RECOMMENDATION

The CEO Employment Agreement Ad Hoc Committee recommends approving Amendment No. 5 to the Employment Agreement for Chief Executive Officer ("Agreement").

BACKGROUND

Girish Balachandran was hired as the Chief Executive Officer ("CEO") on February 19, 2018 pursuant to the Agreement. In 2018, 2019 and 2020, the Board approved Amendment Nos. 1, 2, 3 and 4 to the Agreement providing for salary increases, changing the term of the Agreement and amending other provisions relating to the CEO evaluation process and certain Benefits. The 2022 performance evaluation of the CEO has been completed and a salary increase is being proposed along with granting additional management leave time.

ANALYSIS & DISCUSSION

Amendment No. 5 to the Agreement makes the following changes:

- Increases the annual salary from \$384,000 to \$422,400.
- Allows the CEO to elect to receive an additional \$1,000 per month in lieu of participating in SVCEA's group medical insurance plan, either as: (a) a contribution to his 457 Plan, or (b) compensation added to his base salary. Although the current agreement allows the CEO to elect to receive the payment instead of medical insurance, it does not provide a choice between either a contribution to the 457 Plan or additional salary. Rather, the current agreement allows only an election to take the \$1,000 as a contribution to the 457 Plan.
- Provides an additional 80 hours of management leave time to be used before September 30, 2023. The time cannot be accumulated and carried forward after September 30, 2023, and cannot be paid to the CEO if unused on September 30, 2023.

ATTACHMENTS

1. Amendment No. 5 to Employment Agreement for Chief Executive Officer

AMENDMENT NO. 5 TO EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

The Employment Agreement, dated December 13, 2017, between the Silicon Valley Clean Energy Authority (SVCEA or Employer) and Girish Balachandran, an individual, (Employee) as amended by Amendment Nos. 1, 2, 3 and 4 is further amended by this Amendment No. 5, effective October 3, 2022.

- A. SVCEA and Employee entered into an Employment Agreement (Agreement), as identified above, providing for the employment of Employee as Chief Executive Officer of SVCEA, commencing on February 19, 2018.
- B. In 2018, 2019, 2020 and 2021, the Board of Directors approved Amendment Nos. 1, 2, 3 and 4 to the Agreement providing for salary increases, changing the term of the Agreement and amending other provisions relating to the CEO evaluation process and certain benefits.
- C. The parties desire to further amend the Agreement with this Amendment No. 5 to provide for a salary increase.
- D. In entering into this Amendment No. 5, the parties expect to confer six months prior to its termination regarding any extension to the Term and the terms on which such extension would be provided, including but not limited to establishing goals and achievements for which Employee would be eligible to receive a bonus.

NOW, THEREFORE, the parties desire to amend the Agreement as follows:

1. Section 5, titled "Salary" is amended and restated to read as follows:

Salary. Effective October 3, 2022, SVCEA shall pay Employee a base salary of \$422,400 per year, prorated and paid on SVCEA's normal paydays, subject to legally permissible or required deductions. Employee's salary is compensation for all hours worked and for all services under this Agreement. Employee shall be exempt from overtime pay provisions of California law (if any) and federal law. Employee's salary may be adjusted periodically to reflect cost of living increases and merit increases.

2. The first paragraph of Section 7, titled "Benefits" is amended and restated to read as follows:

Benefits. During the Term of this Agreement, EMPLOYEE shall be entitled to participate in any group insurance plan (including medical, dental, vision, life and disability, if any), retirement program or similar plan or program of SVCEA established by the Board during the term of this Agreement to the extent EMPLOYEE is eligible under its provisions. EMPLOYEE may elect to receive a \$1,000 per month in lieu of participating in SVCEA's group medical insurance plan, either as: (a) a contribution to his 457 Plan, or (b) compensation added to the base salary described in

Section 5. Due to a statutory cap on contributions to SVCEA's 401(a) plan, EMPLOYEE will not receive the full benefit of the 10% salary match that is available to all employees. Therefore, SVCEA will provide an additional contribution to the Section 457 deferred compensation program for EMPLOYEE in an amount that equals half the difference between the statutory cap on the total contributions to Employee's 401(a) plan and total amount that would be contributed based on the EMPLOYEE's annual salary if such statutory cap did not exist. Such payments shall be divided and deposited on EMPLOYEE's behalf for each pay period. In the event SVCEA establishes a separate benefit program for executive and management employees, EMPLOYEE shall be entitled to participate only in such benefit program. SVCEA may establish additional benefit programs and may modify or eliminate any benefit plan or program in its discretion, in accordance with applicable law. Employee shall be entitled to any unpaid time off benefit granted to SVCE employees with any unpaid time off requested by Employee subject to the approval of the Board Chair. In addition, EMPLOYEE shall be entitled to the following benefits:

3. Section 7 (Benefits), sub-section (a) (Paid Time Off) is amended and restated to read as follows:

- a. Paid Time Off; Management Leave. EMPLOYEE will accrue paid time off (PTO) in the amount of 320 hours per year, prorated and credited each pay period. Except as otherwise provided in this Agreement, PTO shall be subject to any SVCEA PTO policy applicable to employees generally. In addition, EMPLOYEE shall be entitled to an additional 80 hours of management leave to be used before September 30, 2023. Such leave may not be accumulated and carried forward after September 30, 2023, and shall not be paid to EMPLOYEE if unused on September 30, 2023.

Except as expressly amended by this Amendment, all other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 5.

Silicon Valley Clean Energy Authority

Employee

Chair, Board of Directors

DATE: _____

Girish Balachandran

DATE: _____

APPROVED AS TO FORM:

Trisha Ortiz
General Counsel

ATTEST:

Secretary/Clerk



Staff Report – Item 1e

Item 1e: Approve General and Administrative Policy #7: Chief Executive Officer Absence Policy

From: Girish Balachandran, CEO

Prepared by: Kevin Armstrong, Deputy Director of Administrative Services

Date: 9/14/2022

RECOMMENDATION

Approve General & Administrative Policy #7 (GAP7) establishing a CEO absence policy authorizing the Chief Executive Officer (CEO) to delegate his duties during a temporary absence from regular work, either planned or unplanned, to one Department Director, for a period not exceeding 30 days.

BACKGROUND

Silicon Valley Clean Energy (SVCE) has been informally assigning limited CEO responsibility to Director-level staff during times when the CEO is unavailable.

ANALYSIS & DISCUSSION

Based on discussion with outside counsel, SVCE believes that it is prudent to have a board-adopted policy delegating authority to an Acting CEO during the CEO's unavailability. A board-adopted policy would formally allow for the temporary transfer of executive duties to another position within SVCE, rather than relying on unofficial practice. A formal policy would provide clarity and confirm authority should any question of legitimacy arise during such time of absence.

SVCE would like the CEO absence policy to provide the CEO the ability to designate any one of the Department Directors as Acting CEO. In cases where the CEO is unable to designate an Acting CEO, or should an absence extend beyond 30 days, a special meeting of the Executive Committee shall be called to appoint an Acting CEO.

STRATEGIC PLAN

Approval of a CEO Absence Policy will directly support Goal 1 of the Strategic Plan, which is to "Build and maintain a high-performing team".

ALTERNATIVE

SVCE would not implement a CEO absence policy and would continue to unofficially delegate duties during short-term CEO absences.

FISCAL IMPACT

There is no fiscal impact associated with this policy.

ATTACHMENTS

1. GA Policy #7 – CEO Absence Policy



GAP7

Category: GENERAL & ADMINISTRATIVE

CHIEF EXECUTIVE OFFICER ABSENCE POLICY

I. PURPOSE

To establish a procedure for conducting Silicon Valley Clean Energy (SVCE) business operations during a temporary absence of the Chief Executive Officer (CEO), lasting 30 days or less.

II. SCOPE

All SVCE functions regularly conducted by the Chief Executive Officer, including those delegated by the board.

III. DEFINITIONS

"Functions" shall mean any normal business function or decision requiring the input / authority of the SVCE Chief Executive Officer.

IV. POLICY

SVCE recognizes there will be times when the CEO is absent from work and unavailable to perform the regular functions of the role, whether due to planned or unplanned events. This policy establishes the method by which an Acting CEO is selected.

During any such absence of the CEO from regular work functions, whether planned (Management Leave, Paid-Time-Off, or other reason), or unplanned, the CEO shall designate one Department Director (currently Power Policy, Planning, Procurement, Regulatory and Operations, Finance and Administration, Energy Services and Community Relations, or Decarbonization Programs and Policy, but subject to future change) to serve as Acting CEO during his / her absence. The Acting CEO shall represent SVCE and perform the regular functions of the CEO role for the duration of any absence and shall return those functions to the CEO upon his / her return.

In cases where the CEO is unable to designate an Acting CEO, or should an absence extend beyond 30 days, a special meeting of the Executive Committee shall be called to appoint an Acting CEO.

The Acting CEO shall be subject to the same limits of authority as the CEO, as noted in Section 6.5.4 and Table 4 of SVCE's Energy Risk Management Policy, adopted November 10, 2021.



Staff Report – Item 1f

Item 1f: Authorize CEO to Execute a 5-Year Agreement with Adapt2 Solutions, Inc. for Deal Capture and Settlements Software

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO / Director of Administrative Services
Zakary Liske, Senior Manager of Power Operations

Date: 9/14/2022

RECOMMENDATION

Staff recommends that the Board authorize the CEO to execute the attached agreement with Adapt2 Solutions, Inc with non-substantive changes approved by the CEO and subject to final review and approval by the General Counsel. The agreement has a not to exceed cost of \$3,296,405 over 5 years to develop, implement, and maintain a deal capture and settlements software platform as part of phase 1 of the Business Process Optimization Project ("BPO").

BACKGROUND

In 2021 as part of one of the five strategic focus areas, staff initiated a comprehensive assessment of SVCE's business processes to move the operations from a startup phase to more mature processes leveraging technology. The high-level goals of BPO are to create auditable, automated, secure, and integrated business processes. Currently, a small group of staff manages multiple large transactions with monthly cashflow that can in absolute terms reach over \$75 million using labor-intensive and manual processes along with reliance on core functions with outside vendors/consultants. With BPO tools, these processes will align with industry best practices of using Energy Trading and Risk Management ("ETRM") tools to streamline, automate and gain the ability to efficiently and effectively make insightful data-driven decisions. Staff created a BPO roadmap that currently has three phases of implementation with this being phase one that is focused on deal capture and settlements system. Phase 2 will focus on portfolio and risk management integrations and phase 3 will be defined later and could cover functions of customer relationship management, decarbonization program design and implementation, meter data and load forecasting, and financial management and modeling.

Staff developed detailed functional requirements of SVCE's needs in a deal capture and settlements system. Using these requirements, Staff reached out to several vendors to learn about their systems and potential fit for SVCE's needs. Using the knowledge gained from the initial assessment, staff developed a Request for Proposals (RFP) and released that to the public in early February 2022. The RFP was structured to allow firms to respond to either or both elements of deal capture and settlements systems.

SVCE received responsive proposals from the following three firms in March 2022:

- Adapt2 Solutions
- Hitachi
- Power Settlements

Staff evaluated the three proposals and shortlisted Adapt2 Solutions and Power Settlements, inviting each to provide system demonstrations during late April and early May 2022. Staff's evaluation criteria included

assessment of functionality, ability to integrate between systems, ease of use, ease of implementation, relevant market experience, and cost/value.

Staff provided updates on the project to the Executive Committee on May 27, 2022, with a goal of bringing a negotiated contract to the Board of Directors (BOD) by September 2022. Staff finalized its evaluation process in late May, selecting Adapt2 Solutions as its preferred software provider. Contract negotiations launched in late May and progressed over the summer. SVCE has negotiated an agreement with Adapt2 Solutions to build and maintain SVCE's Adapt2 Green implementation over a period of 5 years, with the option to extend for an additional 5 years.

Adapt2 Green is a web-based, distributed software platform that focuses on portfolios with renewable energy resources. Adapt2 Solutions was founded in 2008 and is based in Houston, Texas. Adapt2's current customers include similar utilities with renewable portfolios, including NRG and AES, and another CCA - East Bay Community Energy.

ANALYSIS & DISCUSSION

SVCE operates in various wholesale electricity markets including bilateral markets directly with suppliers and the California Independent System Operator (CAISO) day-ahead and real-time markets. Participation in these markets is necessary to procure supply and develop SVCE's portfolio to meet internal and external targets, goals, and compliance mandates as part of SVCE's mission to decarbonize the grid and provide reliable electricity to SVCE's customers.

Traditional utilities and suppliers in the energy sector utilize systems called Energy Trading Risk Management (ETRM) software that can capture and store all of the relevant attributes of a wholesale portfolio including trades, contracts, forecasts, and related financial settlements.

Since SVCE's inception, various tools and models have been developed internally to capture SVCE's wholesale portfolio, most recently with a spreadsheet-based model that captures SVCE's portfolio at a monthly granularity. While this model was generated in-house and costs only staff time, it is not particularly scalable for the long-run and cannot capture the complexity that SVCE's portfolio is introducing with contracts for renewable resources including solar plus storage.

Through the RFP process SVCE determined that the product that Adapt2 offers will best-fit SVCE's needs and will best capture all of the wholesale transactions and contracts in SVCE's portfolio. In addition, this software will also address a key weakness of SVCE's current spreadsheet-based model: hourly and sub-hourly data. Spreadsheets typically hit their capability limits at approximately 1 million rows of data. The CAISO's settlements process can easily produce upwards of 35 million rows of data per month, which would quickly push the limits of a spreadsheet.

Further, procuring a Deal Capture and Settlements system also addresses a significant operational risk that SVCE has been facing. Current works processes rely on staff to ensure they minimize and catch mistakes when working with the portfolio in the spreadsheet model. Human error is unavoidable and using a spreadsheet model presents significant opportunities for an unintended error to create problems. SVCE also relies on a spreadsheet model to track power supply invoices, which has the ability to be altered intentionally or not. Adapt2's system will have strict permissions controls around what users have read/write access and on what aspects of the system. This will support SVCE's Energy Risk Management Policy through the segregation of duties between Front (procurement), Middle (risk management), and Back Office (settlements) staff.

For example: authorized Front office staff will be the only ones able to enter transactions and their attributes: price, quantity, etc. Back office staff will have the ability to receive invoices and track accordingly, but will not be able to modify transaction attributes. This ensures proper separation of duties and creates a workflow in which traders are not receiving or processing invoices for transactions that they make.

Agenda Item: 1f**Agenda Date: 9/14/2022**

Pending Board approval, staff will kick off implementation with Adapt2 and work together to transition portfolio tracking from the current spreadsheet-based model into a software platform supported by a database backend. Upon completion of implementation and significant parallel testing, SVCE will have completed the first phase of its larger Business Process Optimization project and will turn to subsequent phases.

STRATEGIC PLAN

The proposal supports SVCE's updated 2021-2022 Strategic Plan Goal 21, which is to "enable data-driven decision-making across the organization", by building and maintaining a centralized, secure deal repository that allows Staff to efficiently record transactions and settlements.

ALTERNATIVE

An alternative option to using third-party software would be to tackle the development and maintenance of a deal capture and settlements system in-house, including the development of tools and applications. This would require significant staff time to acquire expertise not currently found within the organization and significant time to design, build, and test such a system, increasing operational risk to the organization for an extended period of time.

FISCAL IMPACT

The proposed agreement has a not-to-exceed amount of \$3,296,405 for the implementation and software license over the 5-year term, with an estimated first year cost of \$1,084,026. The first-year cost, along with a 25% contingency to cover any changes or additional work identified during implementation, is included in the FY22-23 budget request (\$1,375,000 total). Appropriations of funds for subsequent years of the agreement will be requested in upcoming budgets.

ATTACHMENTS

1. Draft agreement with Adapt2 Solutions, Inc. for Deal Capture and Settlements Software

MASTER AGREEMENT

SOFTWARE AS A SERVICE

This agreement (“**Agreement**”) is entered into and is effective as of [Effective Date] (“**Effective Date**”), by and between Silicon Valley Clean Energy, an independent public agency located at 333 W. El Camino Real, Ste 330, Sunnyvale, California 94087 (“**SVCE**”) and Adapt2 Solutions, Inc., a Texas corporation located at 24 Greenway Plaza, Suite 725, Houston, Texas 77046 (“**Service Provider**”).

RECITALS

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

WHEREAS, SVCE requested a proposal from Service Provider for such Services, and “Services” means “Accelerated Services” as defined in the attached Exhibit “A”, which does not include the hosting or storage of data or the software, that hosting and storage to be provided to SVCE via the cloud by either MS Azure or AWS;

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

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

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

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

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

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

1. **Term.** This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein, the term (the “**Initial Term**”) shall commence on the Effective Date and continue for five years. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement may be renewed for up to five (5), successive one (1) year terms (each, a “**Renewal Term**”) upon mutual written agreement of the parties.

2. **Fees.** SVCE shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained in this Agreement, including, but not limited to, Section 9 Fees; Billing, below.
3. **The Services.** The terms and provisions of this Agreement and the Exhibits are intended to be construed in harmony. Nonetheless, the provisions of the Exhibit “A” Adapt2 Solutions Subscription Agreement shall exclusively control over all matters provided for in the Subscription Agreement. This Agreement sets forth the terms and conditions under which Service Provider agrees to license to SVCE and provide access to certain software (collectively referred to as the “***Accelerated Services***” or the “***Services***”).
 - 3.1 **Authorized Users.** As provided in Exhibit “A”.
 - 3.2 **Acknowledgement of License Grant.** For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that Exhibit “A” constitutes a grant of license to use intellectual property in software form, to SVCE by Service Provider.
 - 3.3 **Changes in Number of Authorized Users.** SVCE is entitled to increase or decrease the initial number of twenty (20) Authorized Users (“***Minimum Commitment***”), on an as-requested basis; provided, however, that SVCE shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should SVCE elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users specified in Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from SVCE’s written request.
 - 3.4 **Control and Location of Services.** Service Provider does not and will not host either SVCE’s data or environment. SVCE understands and agrees that Accelerated Services will be provided through a cloud-based service with either MS Azure or AWS. The contract for that cloud-based hosting service will be between SVCE and MS Azure or AWS, not Service Provider, and Service Provider’s role in that contract, including the performance of MS Azure or AWS under that contract, will be limited to administration.
 - 3.5 **Subcontractors.** Service Provider shall not assign or transfer any of its rights or obligations under this Agreement, without SVCE’s prior written consent, and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider’s use of subcontractors internally within Service Provider’s business shall not relieve Service Provider of any of its duties or obligations under this Agreement.
 - 3.6 **Storage.** Service Provider will not provide any software or data storage to SVCE.
 - 3.7 **Development and Test Environments.** Service Provider will not provide a test or development environment to SVCE following the first use in production of the Service by SVCE.

- 3.8 Documentation. The documentation for the Services (“**Documentation**”) will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by an experienced end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. SVCE shall have the right to make any number of additional copies of the Documentation at no additional charge. Documentation is Confidential Information.
- 3.9 Changes in Functionality. Exhibit “A” governs changes to functionality in Services.
- 3.10 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement.
- 3.11 Modification of the Services. SVCE’s Director of Information Technology shall be authorized to waive, in writing, any of the Service Provider’s obligations with respect to the Services, where deemed to be in SVCE’s best interests, provided that no such modification shall result in any increase in the amount of the Services Fees.
- 3.12 Compliance with All Laws. Service Provider shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may materially affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Service Provider shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, et seq. SVCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Service Provider to comply with this paragraph.

4. Service Levels.

- 4.1 Service Levels; Time is of the Essence. For the term of this Agreement, Service Provider shall provide the Services, force majeure events excepted, during the applicable Service Periods and in accordance with the applicable Service Level Standards, each as described in Exhibit A hereto. Time is of the essence in the performance of the Services.
- 4.2 Service Level Reporting. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting month, Service Provider shall provide reports to SVCE describing the performance of the Services and of Service Provider as compared to the Service Level Standards, which shall not include the performance or failure of the provider of the cloud-based service provider AWS or MS Azure; provided, however, that a SVCE

Satisfaction Service Level Survey shall be conducted by Service Provider each year on the anniversary of the Effective Date and the results shall be reported to SVCE by Service Provider no later than the fifteenth (15th) calendar day of the subsequent month following such anniversary date. The reports shall be in a form agreed-to by SVCE, and, in no case, shall contain less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; and (c) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved. Service Provider and SVCE will meet as often as shall be reasonably requested by SVCE, but no less than monthly, to review the performance of Service Provider as it relates to the Service Levels. Service Provider shall, without charge, make SVCE's historical Service Level reports available to SVCE upon request.

- 4.3 Failure to Meet Service Level Standards. In the event Service Provider does not meet a Service Level Standard, Service Provider shall use its best efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Service Provider will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service.
- 4.4 Termination for Material and Repeated Failures. SVCE shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement, and be entitled to a return of any prepaid fees where Service Provider fails to meet any Service Level Standard: (a) to such an extent that the SVCE's ability, as solely determined by SVCE, to use the Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.
- 4.5 Audit of Service Levels. No more than annually, SVCE or SVCE's agent shall have the right to audit Service Provider's books, records, and measurement and auditing tools to verify Service Level Standard achievement Support; Maintenance; Additional Services.
- 4.6 Technical Support. Service Provider shall provide the Technical Support as described in Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.
- 4.7 Maintenance. Service Provider shall provide, pursuant to the terms and conditions of Exhibit A, bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the three

prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

- 4.8 Customization / Integration Services. Service Provider will not provide Customization / Integration Services.
- 4.9 Training Services. Service Provider shall provide the Training Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.
5. **Audit Rights of Service Provider.** Service Provider shall have no right to conduct an on-premises audit of SVCE's compliance with the use of the Services. No more than once annually, Service Provider shall have the right to request from SVCE its certification of compliance with the permitted number of Authorized Users. Where the actual number of users exceeds the permitted number of Authorized Users, SVCE, at SVCE's sole election shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Service Provider; or, (b) acquire the appropriate number of Authorized Users' licenses at Service Provider's then listed rate so as to be in compliance with the permitted number of Authorized Users.
6. **Change Control Procedure.** SVCE may, upon written notice, request changes to the scope of the Services under Exhibit A. If SVCE requests an increase in the scope, SVCE shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify SVCE whether or not the change has an associated cost impact. If SVCE approves, SVCE shall issue a change order, which will be executed by the Service Provider.
7. **Termination; Renewals.**
- 7.1 Termination for Convenience. Without limiting the right of a party to terminate this Agreement as provided for in this Agreement, SVCE and Service Provider may each terminate this Agreement for convenience upon not less than one hundred eighty (180) days prior written notice to the other.
- 7.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.
- 7.3 Payments upon Termination. Upon the termination of this Agreement, SVCE shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to SVCE all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.

- 7.4 Return of SVCE Data. Service Provider will not host or store SVCE data. Upon the termination of this Agreement, Service Provider shall, within one (1) business day following the termination of this Agreement, provide SVCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of any SVCE Data possessed by Service Provider in the format specified by SVCE. Further, Service Provider shall certify to SVCE the destruction of any SVCE Data within the possession or control of Service Provider, in accordance with Section 13.5, but such destruction shall occur only after the SVCE Data has been returned to SVCE. This Section shall survive the termination of this Agreement.
- 7.5 Renewals. Should the Services continue beyond the Initial Term, the Services Fees for the Renewal Term may be increased to reflect Service Provider's costs.
8. Transition Services. Service Provider will provide to SVCE and/or to the service provider selected by SVCE ("**Successor Service Provider**") assistance reasonably requested by SVCE to effect the orderly transition of the Services, in whole or in part, to SVCE or to Successor Service Provider ("**Transition Services**") following the termination of this Agreement, in whole or in part. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.
9. Fees; Billing. Any sum due Service Provider for the Services for which payment is not otherwise specified shall be due and payable thirty (30) business days after receipt by SVCE of an invoice from Service Provider.
- 9.1 Billing Procedures. Service Provider shall bill to SVCE the sums due pursuant to Exhibit A by Service Provider's invoice, which shall contain: (a) SVCE's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d) taxes, if any; and, (e) total amount due. Service Provider shall forward invoices in hardcopy format to [**SVCE Accounts Payable Address**].
- 9.2 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that SVCE is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.
- 9.3 Credits. Not applicable.
- 9.4 Non-binding Terms. Any terms and conditions included in a Service Provider invoice shall be deemed to be solely for the convenience of the Service Provider, and no such term or condition shall be binding upon the SVCE.

- 9.5 Auditable Records. Service Provider shall maintain accurate records of all fees billable to, and payments made by, SVCE in a format that will permit audit by SVCE for a period of no less than three (3) years from when a fee was incurred, or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement. For the term of this Agreement, upon SVCE's written request, Service Provider shall provide SVCE with a copy of its annual American Institute of Certified Public Accountants Service Organization Control SOC 2 type 2 report.
- 9.6 Billing Reviews by Third-Parties. SVCE is not entitled to disclose to a third-party this Agreement, and any other data pertaining to fees paid or payable by SVCE to Service Provider.
- 9.7 No Suspension of Services. Service Provider shall not suspend any part of the Services where: (a) SVCE is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but undisputed amount due to Service Provider is less than ninety (90) business days in arrears.
10. **Representations and Warranties.**
- 10.1 Mutual. SVCE and Service Provider represent and warrant that:
- 10.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
 - 10.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
 - 10.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
 - 10.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
 - 10.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

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

- 10.2.1 it is in the business of providing the Services;
- 10.2.2 the Services are fit for the ordinary purposes for which they will be used;
- 10.2.3 it is possessed of superior knowledge with respect to the Services but that SVCE possesses superior knowledge of the business of SVCE and the use to which SVCE will employ the Services and that Service Provider is relying upon SVCE's due diligence and determination that SVCE understands the functionality of the Services, the expertise required of SVCE to use the Services as both documented and demonstrated by Service Provider to SVCE and that SVCE has determined that the Services, as documented and demonstrated, are appropriate for the business of SVCE;
- 10.2.4 it acknowledges that SVCE is relying on its representation of its experience and expert knowledge of the Services, and that any substantial misrepresentation may result in damage to SVCE;
- 10.2.5 it knows the particular purpose represented in writing by SVCE to Service Provider for the Services;
- 10.2.6 it is the lawful licensee or owner of the Services (which excludes any SVCE Data) and has all the necessary rights in the Services to grant the use of the Services to SVCE;
- 10.2.7 the Services and any other work performed by Service Provider hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;
- 10.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services, and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement;
- 10.2.9 it has the expertise to perform the Services as documented and demonstrated to SVCE in a competent, workmanlike, and professional manner and in accordance with the industry standards;
- 10.2.10 it will use its commercially reasonable efforts to ensure that no computer viruses, worms, malware, or similar items (collectively, a "**Virus**") are

introduced into SVCE's computing and network environment by the Services, and that, where it transfers a Virus to SVCE through the Services due to Service Provider's failure to adhere to Service Provider's software security protocols, it shall reimburse SVCE the actual cost incurred by SVCE to remove or recover from the Virus, including the costs of persons employed by SVCE to perform such services;

10.2.11 intentionally omitted;

10.2.12 in the case of SVCE's reasonable dispute of any Service Provider invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, or access to SVCE Data; and,

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

11. **SVCE Data.**

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

11.2 **Service Provider Use of SVCE Data.** Service Provider is provided a limited license to access SVCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display SVCE Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain SVCE Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose SVCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c) allow access to SVCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise

disclose or make available SVCE Data for Service Provider's own purposes or for the benefit of anyone other than SVCE without SVCE's prior written consent. This Section shall survive the termination of this Agreement.

- 11.3 Access to, and Extraction of SVCE Data. SVCE shall have full and complete access to the Services, 24 hours per day, 7 days per week, except during authorized periods of maintenance by Service Provider. Further, Service Provider shall, within one (1) business day of SVCE's request, provide SVCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any fees due to Service Provider), an extract, if any, of the SVCE Data possessed by Service Provider in the format specified by SVCE. In the event SVCE gives Service Provider written notice of a "litigation hold", then as to all data identified in such notice, SVCE shall be responsible for isolating and preserving all such data.
- 11.4 Backup and Recovery of SVCE Data. Service Provider will not store SVCE's data. SVCE is responsible for maintaining a backup of SVCE Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted.
- 11.5 Loss or Unauthorized Access to the Service. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Service, Service Provider shall, as applicable: (a) notify SVCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with SVCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by SVCE. If circumstances change and both parties agree that Service Provider should access SVCE's PII, prior to that access Service Provider and SVCE agree to negotiate in good faith provisions appropriate to governing PII.
12. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.
- 12.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "**Confidential Information**" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. Except for electric and gas usage information provided to Service Provider pursuant to this Agreement, the term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b)

developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, SVCE Data shall be deemed to be Confidential Information.

- 12.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement, or as required by law. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
- 12.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 6250 et seq.). If a request under the California Public Records Act is made to view Service Provider's Confidential Information, SVCE shall notify Service Provider of the request and the date that such records will be released to the requester unless Service Provider obtains a court order enjoining that disclosure. If Service Provider fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.
- 12.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of SVCE, at the sole election of SVCE, the immediate termination, without liability to SVCE, of this Agreement.
- 12.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or Exhibit A, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a

party on behalf of the other party, which is in such party's possession, custody, or control; provided, however, that Service Provider shall return SVCE Data to SVCE following the timeframe and procedure described further in this Agreement. Should Service Provider or SVCE determine that the return of any SVCE Data or non-SVCE Data Confidential Information is not feasible, Service Provider shall destroy the data comprising such Confidential Information in compliance with the most current version of NIST standard SP800-88, or other standard acceptable to the SVCE, and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

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

- 13.1 **Undertaking by Service Provider.** At SVCE's request, Service Provider shall be responsible for establishing, maintaining, and providing a written description to SVCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards. Service Provider will not store SVCE's Data. The Services do not include handling credit card information.,
- 13.2 **Audit by Service Provider.** No less than annually, Service Provider shall conduct a comprehensive independent third-party SOC 2 audit.
- 13.3 **Right of Audit by SVCE.** Without limiting any other audit rights of SVCE, SVCE shall have the right to review Service Provider's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, on an ongoing basis from time to time and without notice, SVCE, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider's data privacy and information security program. In lieu of an on-site audit, upon request by SVCE, Service Provider agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by SVCE regarding Service Provider's data privacy and information security program.
- 13.4 **Audit Findings.** Service Provider shall implement any required safeguards as identified by SVCE or by any audit of Service Provider's data privacy and information security program.
- 13.5 **Pattern of Violations.** It shall be considered a material breach of this Agreement if Service Provider engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Service Provider understands that if SVCE finds that Service Provider is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement SVCE shall promptly cease all disclosures of Confidential Information to Service Provider. Service Provider further understands that if SVCE receives a customer complaint about Service Provider's misuse of data or other violation of the Disclosure Provisions, SVCE shall promptly cease disclosing that customer's information to

Service Provider and shall notify the California Public Utilities Commission (“CPUC”) of the complaint.

- 13.6 CPUC Compliance. Service Provider shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
- 13.7 Injunction, Specific Performance or Such Other Relief. Service Provider acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Service Provider hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Service Provider or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.
- 13.8 SVCE’s Right to Termination for Deficiencies. SVCE reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if SVCE reasonably determines that Service Provider fails or has failed to meet its obligations under this Section.

14. **Proprietary Rights.**

- 14.1 Title. The copyright of Licensee’s software and documentation underlying the Subscription shall at all times remain the sole property of ADAPT2. ADAPT2 remains the sole owner of all right, title, and interest in the services and Subscription. Except as stated in the terms of this Agreement, ADAPT2 does not grant the LICENSEE any patents, copyrights, trade secrets, trademarks, or any other rights in respect to the services or Subscription and Licensee’s software and documentation underlying. ADAPT2 reserves all rights not granted under the terms of this Agreement.
- 14.2 Trademark Ownership. Any trademarks, trade names, services marks, brand names, logos, trademark and service mark registrations and applications, and other trade designations (including unregistered names and marks) (collectively, the “**Trademarks**”) owned by either Party shall remain the sole and exclusive property of that Party.
- 14.3 Patent and Copyright Information. ADAPT2 represents and warrants that it has full power and authority to enter into this Agreement, and that it owns the Licensee’s software and documentation underlying the Subscription and is entitled to grant both the Operational Subscription to LICENSEE to use the Subscription and all related materials, free and clear of all liens or other encumbrances. ADAPT2 will, at its own expense, defend, hold harmless and indemnify LICENSEE against any costs (including attorney fees for counsel pre-approved by ADAPT2) or damages

suffered by LICENSEE by virtue of claims that the Subscription, the related materials, or any element of either constitutes an infringement of any existing U.S. patent or copyright; PROVIDED, that LICENSEE gives reasonable written notice of such claims to ADAPT2; and permits ADAPT2 to defend or settle the claims in such a manner as ADAPT2 in its discretion shall determine.

- 14.4 Remedy. Furthermore, if any item of the Subscription or related materials is, or (in the reasonable opinion of ADAPT2) may become, the subject of a claim of infringement or misappropriation, ADAPT2 may, or if use of the Subscription is enjoined, ADAPT2 shall, at its expense, either: (i) obtain the right of continued use of the Subscription, and/or related materials for LICENSEE; or (ii) as soon as reasonably possible, replace or modify the Subscription and/or its use so that it becomes non-infringing, without adversely affecting the performance of the functions of the Subscription; PROVIDED, that if any such replacement or modification does not, in the opinion of LICENSEE, perform the functions of the Subscription before being replaced or modified, Customer may terminate this Agreement and the Operational License and seek reimbursement of the Total License Fee in a pro rata amount over 12 months relative to the date such replacement or modification is implemented.

15. **Indemnification; Limitation of Liability; Insurance.**

- 15.1 General Indemnification. Service Provider agrees to indemnify, defend, and hold harmless SVCE and its elected officials, officers, directors, agents, attorneys and employees (each, an “**Indemnitee**”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “**Claim**,” and collectively, the “**Claims**”), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any negligence by the Service Provider in the performance of this Agreement, or misconduct of Service Provider, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Service Provider; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of SVCE Data (collectively, “**cyber theft**”) or, (e) any material breach of any covenant set forth in this Agreement; provided, however, that to the extent that Claims are caused in whole or in part by Indemnities or third parties then the indemnity above shall be limited and costs, losses and damages of Claims shall be apportioned among the Service Provider, Indemnities and third parties on a contributory basis.
- 15.2 Indemnification Procedures. Promptly after receipt by SVCE of a threat, notice, or filing of any Claim against an Indemnitee, SVCE shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall

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

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

15.4 Insurance. Unless otherwise approved in writing by SVCE's risk manager, Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts stated on the attached Exhibit "B".

16. **General.**

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

16.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and

forum of the state and federal courts in the County of Santa Clara, State of California, in all questions and controversies arising out of this Agreement.

- 16.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 16.4 Compliance with Laws; SVCE Policies and Procedures. SVCE and Service Provider agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. SVCE and Service Provider shall comply with SVCE policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.
- 16.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder.
- 16.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Service Provider's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for SVCE to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan ("**Business Continuity Plan**") to SVCE upon SVCE's request. The Business Continuity Plan shall include: (a) Services and SVCE Data backup and recovery procedures, including procedures and resources for disaster recovery; (b) fail-over

procedures; and, (c) how Service Provider will interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to SVCE upon SVCE's request.

- 16.7 Advertising and Publicity. Service Provider shall not refer to SVCE directly or indirectly in any advertisement, news release, or publication, or use any SVCE logo, seal or mark, without prior written approval from SVCE.
- 16.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 16.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 16.10 Assignment of Agreement. SVCE and Service Provider, at their respective sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of the assigning party's business, provided that written notice must be provided to the non-assigning party not later than thirty (30) days following the assignment and the party receiving notice then shall have a thirty (30) day option period following receipt of notice during which the receiving party may elect to terminate this Agreement for convenience.
- 16.11 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.
- 16.12 Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.
- 16.13 Entire Agreement. This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between SVCE and Service Provider as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended

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

- 16.14 Cumulative Remedies. All rights and remedies of SVCE herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- 16.15 No Recourse against Constituent Members of Authority. SVCE is organized as a Joint Powers SVCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Service Provider shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE's constituent members in connection with this Agreement.
- 16.16 Non-Discrimination. In the performance of this Agreement, Service Provider, and any subcontractor of Service Provider shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Service Provider shall have responsibility for compliance with this Section.
- 16.17 Conflict Of Interest. Service Provider warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Service Provider and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Service Provider's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Service Provider may perform similar services for other clients, but Service Provider and its officers, employees, associates and subcontractors shall not, without the SVCE Representative's prior written approval, perform work for another person or entity for whom Service Provider is not currently performing work that would require Service Provider or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Service Provider shall incorporate a clause substantially similar to this Section into any subcontract that Service Provider executes in connection with the performance of this Agreement.

Service Provider understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Service Provider to make certain governmental decisions or serve in a staff SVCE, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

- 16.18 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 16.19 SVCE's Rights to Employ Other Consultants. SVCE reserves the right to employ other consultants in connection with the subject matter of the Services.
- 16.20 Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.
- 16.21 Captions and Terms. The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.
- 16.22 Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Service Provider's proposal, the provisions of this Agreement shall control.
- 16.23 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

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

SILICON VALLEY CLEAN ENERGY (SVCE)

By: _____

Name: _____

Title: _____

Date: _____

Address for Notice:

ADAPT2 SOLUTIONS, INC.

By: _____

Name: _____

Title: _____

Date: _____

Address for Notice:

EXHIBIT A
ADAPT2 SOLUTIONS, INC.
ANNUAL SUBSCRIPTION AGREEMENT

Adapt2 Solutions, Inc. (herein referred to as “**ADAPT2**” or “**LICENSOR**”) agrees to grant Silicon Valley Clean Energy (SVCE) (herein referred to as “**Customer**” or “**LICENSEE**”), and Customer agrees to accept, this non-exclusive annual subscription license, pursuant to the terms and conditions of this Annual Subscription Agreement (hereinafter “**Agreement**”), to use the Subscription as of the date set forth in the Master Software as a Service Agreement (“Master Agreement”) (the “**Effective Date**” of this Agreement). Customer and ADAPT2 may be sometimes hereinafter referred to collectively as the “**Parties**” or individually as a “**Party**.” That certain Software as a Service Agreement entered into by the Parties on the same date as this Agreement is the “**SaaS Agreement**”.

Article I. ANNUAL SUBSCRIPTION

I.1 Subscription(s)

Subscription(s) (herein called the “**Subscription(s)**”) consists of licensed access by LICENSEE to Adapt2 computer software made available by ADAPT2 to LICENSEE, that software entitled Adapt2 B2B and including the modules listed below:

- Adapt2 Green: Trade Capture, PPA/Contract Management
- Adapt2 B2B: Back Office Essential and Advanced

I.2 Licensee and Accelerated Services

ADAPT2 grants to LICENSEE an indivisible, royalty-free, nontransferable, nonexclusive right, privilege, and license, for twenty (20) named users, to access the Subscription, first on a temporary test license, which will automatically terminate when LICENSEE uses the Subscription in production, and which will then be automatically replaced by the annual “**Operational Subscription**”. LICENSEE shall use the Subscription(s) only for the benefit of LICENSEE, in the course of its normal internal business and governmental activities and not in competition with ADAPT2. LICENSEE shall not duplicate or disclose the Licensee’s software and documentation underlying the Subscription(s) to third parties without express written permission from ADAPT2, nor shall LICENSEE allow the Subscription(s) to be used by any other person or company. LICENSEE will use the Subscription(s) in conjunction with only one production database, defined as [include description] (“**Production Database**”).

Adapt2 provides Subscription only through “**Accelerated Services**”, as services to maintain software in hosted environment. Customer will pay to Adapt2 an annual Operational Subscription fee equal to \$526,250 USD, which is included in the following payment schedule, along with one time software fees equal to \$542,015 invoiced in three installments:

Due Date	Event	Amount
9/15/2022	Contract Execution	\$ 542,013
10/30/2022	One Time Software Fee #1	\$ 216,806
12/15/2022	One Time Software Fee #2	\$ 108,403
3/1/2023	One Time Software Fee #3	\$ 216,806
9/15/2023	Renewal	\$ 536,775
9/15/2024	Renewal	\$ 547,511
9/15/2025	Renewal	\$ 558,461
9/15/2026	Renewal	\$ 569,630

The annual fee charged for Accelerated Services is subject to adjustment in future years based upon increases in the cost to Adapt2 of providing the Accelerated Services and the fees charged for the cloud-based services.

However, notwithstanding the preceding and expressly excluded from the preceding, any suggestions, proposed enhancements, recommendations or other feedback provided by the Licensee to Adapt2 to improve Adapt2's software or services (collectively "Feedback") are made at Licensee's discretion and Licensee grants to Adapt2 a worldwide, perpetual, irrevocable, royalty-free license to use any Feedback.

Responsibility for (a) compliance with hosting legal requirements and (b) the security of Customer's data or environment while hosted by, or communicating with, MS Azure or AWS, is governed by the cloud service contract between Customer and MS Azure or AWS.

Adapt2 does not and will not host either Customer's data or environment. Customer understands and agrees that Accelerated Services will be provided through a cloud-based service with either MS Azure or AWS. The contract for that cloud-based hosting service will be between Customer and MS Azure or AWS, not Adapt2, and Adapt2's role in that contract, including the performance of MS Azure or AWS under that contract, will be limited to administration. Licensee will use part of the Accelerated Fee to pay the fees due to MS Azure or AWS under that contract. Licensee understands and agrees that any and all implementation services provided Licensee will be performed by Adapt2 Services LLC, not by Adapt2, under a separate agreement for Implementation Services between Licensee and Adapt2 Services LLC so that Licensee will look exclusively to Adapt2 Services LLC for all matters connected to Implementation Services.

I.3 Licensee Sites

LICENSEE shall make use of the Subscription at LICENSEE's sites under the condition that LICENSEE use the Subscription in conformance with the terms set forth in Section I.2.

Article II. FEES

Subscription fees will include the license to access the Subscription and any improvements or enhancements made by ADAPT2 to the service during the term of this Agreement which ADAPT2 in its sole discretion generally makes available to all licensees of the Subscription without additional charge (the "**General Enhancements**").

III.2

II.1

AND IN THE SaaS AGREEMENT
SaaS Agreement Applicable provisions are those contained in the SaaS Agreement.

These provisions are stated in the SaaS Agreement.

These provisions are stated in the SaaS Agreement.

11.2 These provisions are stated in the SaaS Agreement. These provisions are stated in the SaaS Agreement.

These provisions are stated in the SaaS Agreement. **IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be signed and delivered by its duly authorized representative as of the Effective Date.

LICENSOR:

Adapt2 Solutions, Inc.
24 Greenway Plaza, #725
Houston, TX 77046

CUSTOMER:

Silicon Valley Clean Energy (SVCE)
333 W. El Camino Real, Ste 330
Sunnyvale, CA 94087

Signature: _____

Name: Francisco Diaz

Title: President

Date: _____

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B

Certificate of Insurance

[Attached]



CERTIFICATE OF LIABILITY INSURANCE

Item 1f
DATE (MM/DD/YYYY)
Attachment 1
8/29/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ARTHUR J GALLAGHER RISK MANAGEMENT SERVICES INC. 2850 GOLF ROAD ROLLING MEADOWS IL 60008		CONTACT NAME: Chubb Customer Service Center PHONE (A/C, No, Ext): 877-858-9486 E-MAIL: Chubbcscc@chubb.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: ACE Fire Underwriters Insurance Company INSURER B: FEDERAL INSURANCE COMPANY INSURER C: ACE Property and Casualty Insurance Company INSURER D: Chubb National Insurance Company INSURER E: INSURER F:	
INSURED ADAPT2 SOLUTIONS INC., ADAPT2 SERVICES LLC 24 Greenway Plaza Ste. 725 Houston TX 77046		NAIC # 20702 20281 20699 10052	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			TECTXD527260493N	06/25/2022	06/25/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY			7360-2962	06/25/2022	06/25/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☒ UMBRELLA LIAB EXCESS LIAB DED ☒ RETENTION \$ 0			UMBTXD527311613N	06/25/2022	06/25/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y	N/A	7176-7628	06/25/2022	06/25/2023	☒ PER STATUTE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. The insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies.

CERTIFICATE HOLDER

CANCELLATION

Silicon Valley Clean Energy 333 W. El Camino Real, Ste 330 Sunnyvale, CA 94087	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Jane Fogel</i>
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CONFIGURATION TASK ORDER (“Task Order”):

Issued by: Silicon Valley Clean Energy (“SVCE”)

Issued to: to Adapt2 Services LLC

For purposes of clarity, SVCE understands that this Task Order is independent of the agreements between SVCE and Adapt2 Solutions, Inc. and is a separate agreement between SVCE and Adapt2 Services LLC.

INCORPORATION OF SAAS PROVISIONS INTO TASK ORDER

When used in this Task Order (“Task Order”) the terms (a) “SAAS AGREEMENT” shall mean that certain Master Agreement Software As A Service by and between Silicon Valley Clean Energy and Adapt2 Solutions, Inc. dated _____, 2022 and (b) “Service Provider” appearing in provisions of the SAAS Agreement incorporated by reference into this Task Order shall mean Adapt2 Services LLC.

The following provisions of the SAAS Agreement are incorporated into this Task Order as fully as if stated within this Task Order: Parts 2.3, 2.8, 2.9, 8, 9.1, 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.9, 11, 12.6, 12.7, 12.8, 13.2, 14 and 15.

DESCRIPTION OF WORK

Adapt2 Services LLC (“Adapt Services”) will provide services for installation and configuration of Adapt2 Solutions Inc.’s (“Adapt2”) B2B Front Office, B2B Back Office, and Green software for the CAISO market which has been separately licensed to SVCE by Adapt2.

SCOPE OF SERVICES

Adapt2 Services will allocate resources as required to perform the services for the scope of work listed below.

Configuration Details:

- Finalize Project Schedule
- Implement Adapt2 B2B Front Office
 - Bids – submission of demand bids
 - Offers – submission of generation offers
 - Schedules – submission of bilateral schedules
 - Awards and Schedules – view cleared awards and bilateral schedules

- Prices – view market prices
 - Financial Bilateral Transactions
 - Import/Export bids
- Implement Adapt2 B2B Back Office
 - Market Link – job scheduler and market data interface
 - Settlement Statements
 - Invoices
 - Market Awards
 - Unit Offers
 - Demand Bids
 - Production Month – view settlement statements
 - Prior Period Adjustments – compare settlement statements
 - Invoice Review – view invoices
- Implement Adapt2 Green
 - Trade Capture
 - Trade Settlements
 - PPA/Contract Management



Staff Report – Item 1g

Item 1g: Adopt Resolution Establishing October 5, 2022 as Clean Air Day

From: Girish Balachandran, CEO

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

Date: 9/14/2022

RECOMMENDATION

Staff recommends the Silicon Valley Clean Energy (SVCE) Board of Directors adopt Resolution 2022-20 declaring October 5, 2022 as Clean Air Day.

BACKGROUND

Clean Air Day is a somewhat new statewide event built on the idea that shared experiences unite people to action to improve our community health. By joining together for a unified day of action, we can create new habits to clear the air for all members of California's diverse communities. California Clean Air Day is a project of the Coalition for Clean Air.

ANALYSIS & DISCUSSION

While air quality concerns have traditionally been dominated by thoughts about tailpipe and smokestack emissions and smoke, recent studies have shown that contributions from water heaters, space heaters, and stoves are responsible for significant emissions and generate measurable impacts. With this in mind, focusing on air quality and health concerns represents an entirely new way for SVCE to communicate with customers about the need to electrify their world.

Staff intends 2022 to be SVCE's initial entrance into this area with the opportunity to expand participation and efforts in 2023 and beyond. For 2022, staff plans to take the following three actions:

- Create social media posts for customers around the "Clean Air" message
- Encourage employees to engage
- Encourage other agencies to adopt resolutions, sponsor events, push out social media posts, etc.

Adopting the attached resolution is a foundational step for this effort.

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

ALTERNATIVE

The Board may choose to decline the opportunity to adopt the resolution or edit its contents.

FISCAL IMPACT

N/A

Agenda Item: 1g

Agenda Date: 9/14/2022

ATTACHMENTS

1. Recommended Resolution 2022-20 Declaring October 5, 2022 Clean Air Day

**SILICON VALLEY CLEAN ENERGY AUTHORITY
RESOLUTION NO. 2022-20**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
SILICON VALLEY CLEAN ENERGY AUTHORITY DECLARING
OCTOBER 5, 2022 CLEAN AIR DAY**

WHEREAS, air pollution contributes to higher rates of cancer and heart and lung diseases, which adversely affect health; and

WHEREAS, the Silicon Valley Clean Energy region remains a nonattainment area for ozone and has some of the worst air quality in the Bay Area; and

WHEREAS, it is vital that we protect the health and well-being of our residents, visitors, and workforce; and

WHEREAS, emissions from vehicles, industry, and even household sources significantly affects the natural environment, air quality and well-being of local residents; and

WHEREAS, individual actions such as electrifying space and water heating and replacing gas ranges with induction cooktops can directly improve air quality in our region; and

WHEREAS, agency employees, vendors and directors have tremendous power to help lower emissions; and

WHEREAS, pledges by individuals have shown to result in action; and

WHEREAS, education about air quality can raise community awareness, encourage our community to develop better habits, and improve our community health; and

WHEREAS, Californians will be joining together across the state to clear the air on October 5, 2022; and

WHEREAS, Silicon Valley Clean Energy is committed to the health of our residents, workforce, visitors, and community at large.

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve that the first Wednesday of October be declared "Clean Air Day" in the district; and be it further

RESOLVED, that our departments ask their employees to take the clean air pledge for California Clean Air Day; and be it further

RESOLVED, that we encourage all residents, businesses, employees, and community members to participate in Clean Air Day and help clear the air for all Californians.

PASSED AND ADOPTED this 14th day of September, 2022, by the following vote:

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

Chair

ATTEST:

Andrea Pizano, Board Secretary



Staff Report – Item 1h

Item 1h: Authorize the Chief Executive Officer to Execute a Two-year Agreement with Braun Blaising Smith Wynne P.C. ("BBSW")

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Resources
Maren Wenzel, Senior Manager of Energy Policy and Regulatory Analysis

Date: 9/14/2022

RECOMMENDATION

Staff recommends that the Board approve and authorize the CEO to execute an agreement with Braun Blaising Smith Wynne P.C. ("BBSW") for regulatory legal counsel services for an amount not to exceed \$330,000 over two years.

BACKGROUND

BBSW has been SVCE's primary provider of regulatory counsel services since 2016. As one of the earliest firms serving CCAs in that capacity, their team has extensive knowledge about CCA regulatory issues. This agreement would refresh SVCE's contract with BBSW, which will now provide for \$165,000/year over the next two fiscal years. This reflects a continuation of current services to address new emerging issues in the regulatory space. The current, expiring agreement was originally signed in 2019 for two years, and extended for an additional year in 2021.

ANALYSIS & DISCUSSION

BBSW provides "bread and butter" legal services for SVCE's regulatory activities. This includes monitoring CPUC activities; drafting, editing, and/or filing regulatory and compliance documents; legal research and advising on topics of interest to SVCE staff and leadership; and coordinating joint filings with other CCAs. BBSW's history with the CCA community gives them a great depth of knowledge on CCA issues, and their work with other CCAs in the region facilitates the regulatory collaboration that has been an important part of CCAs' approach at the CPUC.

As the California regulatory space continues to grow more complex, SVCE will continue to benefit from BBSW's expertise and proactive engagement in the regulatory space, including outreach to stakeholders across various regulatory and state agencies such as the CPUC, CEC and CAISO. Staff expects that BBSW will provide support in numerous key regulatory proceedings impacting SVCE. For the Power Supply team this includes Resource Adequacy, Integrated Resource Planning and Renewable Portfolio Standards among others. BBSW is also utilized to support on regulatory proceedings impacting Finance and Programs, such as the Provider of Last Resort and the Higher DER proceeding. Additionally, BBSW provides valuable insights and tracking for proceedings which may not have immediate impact to SVCE but increase our Staff's awareness of the broader regulatory space and emerging trends.

STRATEGIC PLAN

Approving this contract will directly support Goal 16 of SVCE's Strategic Plan, "Engage regulators, legislators, and local elected officials in representing SVCE priorities."

Agenda Item: 1h**Agenda Date: 9/14/2022**

ALTERNATIVE

If the Board does not approve this contract, SVCE will have a significant need for regulatory counsel services that cannot be filled by current SVCE staff. SVCE would need to either issue an RFP and identify a different legal firm to provide these services or hire more internal staff with legal expertise in CCA regulatory matters.

FISCAL IMPACT

The total fiscal impact of these services is \$330,000, equally divided over two fiscal years. The first-year cost is included in the FY22-23 budget request (\$165,000). Appropriations of funds for subsequent years of the agreement will be requested in upcoming budgets, and subject to Board approval.

ATTACHMENTS

1. Draft Agreement with Braun Blaising Smith Wynne P.C.

Third Legal Services Agreement

This **Third Legal Services Agreement** (Agreement), effective as of latest date set forth in the signature block, is entered into by and between **Silicon Valley Clean Energy Authority** (Client), and **Braun Blaising & Wynne, P.C.**, a California professional corporation (Firm). The Firm and the Client shall be collectively referred to herein as the Parties.

- A. The Firm provides regulatory and legal services related to, among other things, rates, rules, policies and regulations affecting Community Choice Aggregation (CCA) programs.
- B. The Parties entered into legal services agreements, dated January 1, 2017 (First Agreement) and September 13, 2019 (Second Agreement), by which the Firm has been providing legal and regulatory services in support of the Client's CCA program, including the provision of certain joint services provided by the Firm to the Client and other CCA clients (CCA Group).
- C. The Parties are interested in entering into this Agreement to replace the currently effective Second Agreement and to set forth the terms and conditions, and budgetary limitation, associated with the Firm's provision of legal and regulatory services.

- Agreement -

The Parties agree as follows:

1. **Term and Termination.** This Agreement shall be effective on October 1, 2022 and shall continue in effect through September 30, 2024, unless earlier terminated as described below. The Second Agreement shall terminate on the effective date of this Agreement. For the avoidance of doubt, it is the intention of the Parties that this Agreement shall succeed and replace services provided under the Second Agreement, such that there is no lapse in services provided by the Firm to the Client. Either Party may terminate this Agreement by providing no less than 30 days written notice.

2. **General Scope of Services.** The Firm shall provide (a) regulatory and legal services, as directed and authorized by the Client, in support of the Client's CCA program, as described further in Section 3(a), (b) joint representation of Client and other participants in the CCA Group on matters before California regulatory agencies, as described further in Section 3(b), and (c) joint reporting services provided by the Firm to the Client and to the CCA Group, as described further in Section 3(c).

/

3. Fees and Description of Services.

(a) Individual Client Services: For services provided under this Agreement directly to the Client, as requested and authorized by the Client, the Client shall pay the Firm in accordance with the following hourly rates for the following categories:

Senior Shareholders:	\$450
Junior Shareholders:	\$400
Senior Attorney:	\$370
Senior Associates:	\$345
Junior Associates:	\$300
Paralegal / Law Clerk:	\$170
Administrative Assistant:	\$65

(b) Joint Representation: As authorized by the Client and other clients in the Firm's CCA Group, the Firm shall provide joint representation on various regulatory matters at the California Public Utilities Commission (CPUC). The Client's share of such joint services shall generally be its pro-rata share, but in any event shall be described to and authorized by the Client. Costs associated with joint representation shall generally be setup as a separate matter in the Firm's accounting system. Further information regarding joint representation is described in Section 8.

(c) Regulatory Reports and Summaries: The Firm provides a variety of regulatory reporting services. On a fixed-fee basis, the Firm shall continue to provide regulatory reports on the same basis as provided under the Second Agreement, namely (1) a bi-weekly, comprehensive regulatory report, (2) alternate week email regulatory bulletins (3) agenda summaries of energy-related items on the CPUC's meeting agenda and (4) an email report on the outcome of energy-related items on the CPUC's meeting agenda. The current monthly fee for this service is \$1,750 but may be adjusted upward or downward based on mutual written agreement of the Parties. In addition to these regulatory reports, the Firm also provides regulatory summaries of issues and activities of interest to the CCA Group. The cost of this service will be shared on a pro-rata basis among participating clients. At any time, upon written notice from the Client, the Client may suspend or modify the scope of either the regulatory reports or the regulatory summaries.

(d) Hourly Rates: All office, research, travel and meeting time shall be billed at the hourly rates set forth above; provided, however, travel time shall be billed at 50% of actual time.

(e) Annual Adjustment: The hourly rates for services provided under this Agreement, including the hourly rate for any contract attorney(s), are reviewed annually by the Firm on or about June 1, and are subject to adjustment on no less than 30 days written notice.

(f) Not to Exceed Budget: The total amount of charges under this Agreement shall not exceed \$165,000 per contract year (or a total of \$330,000) without the express written consent of the Client.

(g) **Other Attorney(s):** As needed and as authorized by the Client, the Firm may contract with other attorney(s) to provide services under the guidance and direction of the Firm's assigned attorney (Scott Blaising). The Firm will provide advance notice to the Client of the hourly rates for attorneys with whom the Firm has contracted for services provided under this Agreement. The Client will be billed at the specified hourly rate for the contract attorney(s) regardless of the amount of charge to the Firm for services provided by the contract attorney(s).

(h) **Other Providers:** As needed and as authorized by the Client, the Firm may contract with electric industry professionals (*e.g.*, rate consultants, *etc.*) (Other Provider(s)) in order to perform Client-directed tasks. In the event that such tasks are authorized and the Client wishes the Firm to pay Other Providers on the Client's behalf, the Client and the Firm will agree on a reasonable administrative fee for consolidated billing, not to exceed 10%.

4. **Costs and Expenses.** In addition to the fees set forth above, the Client shall reimburse the Firm for all pre-approved out-of-pocket costs and expenses actually incurred by the Firm in connection with the legal services provided by the Firm. Out-of-pocket costs and expenses include, but are not necessarily limited to, travel expenses, and reproduction and postage costs associated with representation of the Client in regulatory or other legal proceedings. Reproduction and postage costs otherwise incurred in the normal course of business are considered Firm overhead and will not directly be charged to the Client.

5. **Billing and Payment.** The Firm shall provide monthly invoices to the Client for all fees and expenses. The invoice shall be itemized to include, at a minimum, the time spent by each service provider, the total time spent by each service provider, a description of services performed, and a description and itemization of costs and expenses. The Firm shall bill the Client in minimum increments of 1/10th of an hour. Invoices shall be considered due and payable upon receipt, and shall be overdue after 30 days of receipt.

6. **Notices.** All notices, invoices, reports or other communication required herein shall be properly given if delivered via electronic mail, or other mutually acceptable means, to the following addresses:

Client: **Silicon Valley Clean Energy Authority**
Attention: Maren Wenzel
maren.wenzel@svcleanenergy.org

Firm: **Braun Blaising & Wynne, P.C.**
Attention: Scott Blaising
blaising@braunlegal.com

7. **Independent Contractor.** The Firm is and shall be considered an independent contractor with respect to the performance of services under this Agreement.

8. **Joint Representation and Conflict Waiver.**

(a) The Firm currently represents several clients that have operational CCA programs. The Firm also represents the California Community Choice Association, an

association of CCA programs. (See Exhibit A, which reflects the Firm's current list of clients.) Together with the Client, these CCA clients shall be referred to below as "CCA Clients." The Firm anticipates that it will from time to time provide joint representation of the CCA Clients before the CPUC, whether directly or indirectly through a coalition or other organizational structure. This section generally describes the contemplated joint representation and requests written consent to the Firm's joint representation. This section also describes potential conflicts and requests written consent to the Firm's continuing representation in such circumstances.

(b) The Firm does not believe that the Firm's joint representation of the CCA Clients presently involves any *actual* conflicts of interest. The Client should be aware, however, that such representation may involve *potential* conflicts and that the interests and objectives of each of the participants individually on certain issues may, at some time in the future, become inconsistent with the interests and objectives of the other participants. The Firm's joint representation has implications, which the Client should consider. For example, rather than vigorously asserting a single participant's interest on an issue, it is likely that the Firm will balance interests between the participants represented. Because individual participants may have different talents, energy, personal goals, and financial resources, sole representation of one participant could result in more aggressive advocacy, and hence more favorable treatment, for that participant compared to the more even-handed approach the Firm may follow in representing multiple interests. Joint representation may also result in the loss of the attorney-client privilege for communications between you and members of the Firm, because anything disclosed by one participant on a matter of common interest could be disclosed to a jointly represented client in a civil proceeding between the two participants.

(c) The Firm will make every effort during the course of joint representation to confirm that the participants continue to have a commonality of interest in connection with the positions asserted. If interests diverge during the course of joint representation, further disclosure and waiver of the conflict, or withdrawal from representation, could be necessary.

(d) In addition to the joint representation described above, the Firm also represents numerous public agencies in California on diverse matters of energy law and regulation. Therefore, it is possible that, while the Firm is representing the Client, certain types of conflicts may arise in matters unrelated to the present engagement for which the Firm requests the Client's consent and waiver now. Present or future clients, including clients who rely upon the Firm for general representation, may ask the Firm to represent them in transactions or litigation adverse to the Client. The Firm would decline the other representation if the Firm believes there is a risk of misuse of the Client's confidential information.

(e) By signing this Agreement, the Client confirms (i) that the Client has been informed as to the nature of potential conflicts that may arise as a result of the Firm's joint representation and the Firm's representation of other clients; (ii) that the Client has been provided a reasonable opportunity to seek the advice of independent counsel regarding potential conflicts and waiver thereof; (iii) that the Client understands an actual conflict may arise in the future that would require an additional disclosure and waiver, or, alternatively, withdrawal by the Firm; (iv) that the Client agrees that the Firm may represent other clients as described herein, including clients in *unrelated* matters adverse to the Client; and (v) that the Client hereby waives any claim of conflict of interest arising from such representation.

9. Insurance

(a) Malpractice Insurance. Without limiting the provisions of this Agreement relating to indemnification and defense, the Firm, at its expense, shall maintain in full force and effect during the period of performance of this Agreement and for three years thereafter, professional malpractice insurance that covers the services provided pursuant to this Agreement in the amount of not less than \$1,000,000, with an insurance carrier authorized to do business in California.

(b) Other Insurance. The Firm, at its expense, shall also maintain during the period of performance of this Agreement and for three years thereafter, insurance as follows:

- (1) General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- (2) Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for “any auto”) coverage in an amount not less than \$1,000,000 per accident for personal injury, including death, and property damage.
- (3) Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California.

(c) Primary. The Firm's insurance is primary to any other insurance available to the Client with respect to any claim arising out of this Agreement. Any insurance maintained by the Client shall be excess of the Firm's insurance and shall not contribute with it. The Firm's endorsement of insurance shall include a waiver of any rights of subrogation against the Client, and its directors, officers, employees and agents.

10. Miscellaneous

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, exclusive of conflict of laws provisions.

(b) This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof.

(c) This Agreement may not be modified or amended without the express written agreement of the Parties.

(d) This Agreement may be executed in any number of counterparts, including through facsimile signatures, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original document and as if the Firm and the Client had signed the same document. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any

signatures thereon, and may be attached to another counterpart of this Agreement identical in form but having attached to it one or more signature pages.

(e) This Agreement may be scanned and stored in electronic format. Neither Party shall object to the admissibility of an electronic version of this Agreement on the basis that such was not originated or maintained in documentary form.

11. **Signature.** In witness whereof, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Client

Firm



Girish Balachandran

Scott Blaising

Title: CEO

Title: Principal/Shareholder

Date: _____

Date: _____

APPROVED AS TO FORM:

Counsel for Client

ATTEST:

Client's Clerk

Exhibit A

Representative List of Clients Braun Blasing & Wynne, P.C. (September 2022)

Balancing Authority of Northern California (BANC)
California Choice Energy Authority (CalChoice)
 Cities of Lancaster, Pico Rivera, Pomona, Rancho Mirage, San Jacinto, and Santa Barbara
California Community Choice Association (CalCCA)
California Community Power (CC Power)
California Municipal Utilities Association (CMUA)
Central Coast Community Energy
Clean Energy Alliance
Clean Power Alliance of Southern California
City of Cerritos
City of Colton
City of Corona
East Bay Community Energy
Eastside Power Authority
City of Escondido
Friant Power Authority
City of Indio
City of Industry
Kirkwood Meadows Public Utilities District
Lamb Energy (City of Coachella)
Lathrop Irrigation District
City of Los Angeles, Department of Water and Power
Marin Clean Energy
Merced Irrigation District
Minter Field Airport District
City of Moreno Valley
City of Needles
Orange Cove Irrigation District
City of Pasadena
City of Pittsburg (Pittsburg Power Company)
Peninsula Clean Energy Authority
Pioneer Community Energy
Port of Stockton
Power and Water Resources Pooling Authority (PWRPA)
City of Rancho Cucamonga
City of Redding
Redwood Coast Energy Authority
City of Roseville
Sacramento Municipal Utility District (SMUD)
Salt River Project
San Diego Community Power
San Luis and Delta-Mendota Water Authority
Seattle City Light
City of San Jose
City of Shasta Lake
Silicon Valley Clean Energy
Sonoma Clean Power Authority
Southern California Public Power Authority
Turlock Irrigation District
University of California (Office of the President)
City of Victorville



Staff Report – Item 1i

Item 1i: Authorize the Chief Executive Officer to Execute a Three-Year Agreement with Keyes and Fox, LLP for Legal Services

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO / Director of Power Resources
Kevin Armstrong, Deputy Director of Administrative Services

Date: 9/14/2022

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy Authority Board ("Board") authorize the Chief Executive Officer ("CEO") to execute an agreement with Keyes and Fox, LLP ("K&F") for legal services for a total amount not to exceed ("NTE") \$300,000 from October 1, 2022 through September 30, 2025.

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. The agreement was amended in August 2022 to add an additional \$25,000 to the agreement NTE amount.

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 new agreement with Keyes and Fox to provide additional capacity over the next three years, 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".

Agenda Item: 1i**Agenda Date: 9/14/2022**

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 an estimated fiscal impact of \$100,000 during Fiscal Year 2022-23, with similar impacts estimated for fiscal years 23-24 and 24-25, subject to annual approval by the Board. SVCE also has a separate, ongoing agreement with Keyes and Fox for legislative and regulatory representation, with a separate NTE amount of \$216,100. The total fiscal impact across both agreements is \$516,100 across multiple fiscal years.

ATTACHMENTS

1. Letter of Engagement with Keyes & Fox LLP for FY22-25 transactional legal services



1580 Lincoln Street, Suite 880
Denver, CO 80203

August 29, 2022

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 continue representing 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”). The Legal Services and this Engagement Letter exclude work that K&F is currently performing for SVCE under a separate representation agreement related to regulatory proceedings before the California Public Utilities Commission.

Upon the later to occur of October 1, 2022 and SVCE’s execution of this Engagement Letter, this Engagement Letter will replace the engagement letter entered on September 9, 2021 and amended on August 11, 2022 between K&F and SVCE with respect to the same scope of Legal Services. This Engagement Letter will have a three (3) year term beginning October 1, 2022 and ending September 30, 2025. 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.

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 [one hundred thousand dollars (\$100,000)] per year (beginning on the later to occur of October 1, 2022 and SVCE's execution of this Engagement Letter and each anniversary thereof) without prior 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 2022 rates. K&F shall not increase hourly rates charged for work performed during calendar year 2022 for 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,



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: _____
Girish Balachandran

Title: Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

By: _____
Counsel for Authority

ATTEST:

By: _____
Authority Clerk

Attachment A

Rates for Professionals

Hourly Rates and Other Terms

<i>Kevin Fox, Partner</i>	<i>\$445</i>
<i>Sheridan Pauker</i>	<i>\$420</i>
<i>Caryn Lai, Counsel</i>	<i>\$380</i>
<i>Julia Kantor, Associate</i>	<i>\$280</i>
<i>Beren Argetsinger, Partner</i>	<i>\$285</i>
<i>Alicia Zaloga, Paralegal</i>	<i>\$110</i>

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 1j

Item 1j: Authorize the Chief Executive Officer to Execute Agreement with Maher Accountancy for Accountant Services

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO / Director of Administrative Services
Kevin Armstrong, Deputy Director of Administrative Services

Date: 9/14/2022

RECOMMENDATION

Staff recommends the Board of Directors approve and authorize the Chief Executive Officer to execute an agreement with Maher Accountancy for \$273,500 through September 30, 2023.

BACKGROUND

SVCE has been utilizing the services of Maher Accountancy since March 2017 with the current agreement expiring on September 30, 2022. There is a modest increase in cost (\$18,000) between the proposed agreement and the current agreement, to adjust for inflation (7.3% year over year – in line with Bay Area Consumer Price Index data from the Bureau of Labor Statistics). In addition to service costs, the contract includes a \$10,000 contingency for business continuity support services. This contingency is in place to provide ad hoc support, should staff become unavailable due to leave, separation, or another event.

Maher Accountancy services strengthen internal controls and provide institutional knowledge based on years of experience with other Community Choice Aggregators.

ANALYSIS & DISCUSSION

Maher Accountancy shall provide accounting services and financial operational assistance to the Authority for a fixed monthly fee. Services include (See Exhibit A of Attachment 1):

1. Maintenance of the General Ledger including reconciling customer data management reports of customer activity and accounts receivable and reconciliation of the agency's financial institution for cash activity and balances.
2. Assist staff with the development of the operating budget.
3. Manage accounts payable by providing a cloud-based accounts payable document management system that enhances internal controls.
4. Manage compliance with fiscal provisions of vendor contracts including the verifying of time periods, rates, and financial limits before payment is released.
5. Monitor expenditures budget compliance and make timely suggestions and budget amendments when necessary.
6. Financial reporting including periodic and year-to-date accrual basis financial statements.
7. Present financial information to Board of Directors, as needed.
8. Assist the treasury function.
9. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports
10. File annual information returns such as 1099's/1096's.
11. Provide hosting and portal to assist with contracts management.

Agenda Item: 1j**Agenda Date: 9/14/2022**

Maher Accountancy shall also assist with coordination of an independent auditor for the annual audit and prepare annual financial statements. In addition, Maher Accountancy developed and manages an online contract portal, allowing staff to track open contracts and expenditures.

STRATEGIC PLAN

The recommendation supports the financial goals of the Strategic Plan.

ALTERNATIVE

Staff is open to alternatives from the Board.

FISCAL IMPACT

This recommendation results in a \$273,500 fiscal impact to the agency but is offset with the avoidance of SVCE hiring internal staff to perform these duties. The recommended contract is an increase of \$18,000 consisting solely of the inflationary adjustment.

ATTACHMENTS

1. Draft Agreement with Maher Accountancy

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MAHER ACCOUNTANCY
FOR
ACCOUNTING SERVICES**

THIS AGREEMENT ("Agreement"), is entered into this 1st day of October, 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and MAHER ACCOUNTANCY, a California Corporation whose address is 1101 Fifth Avenue, Suite 200, San Rafael, CA 94901 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

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

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

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

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed two hundred seventy-three thousand four hundred ninety-seven dollars and no/100 (\$273,500.00), based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

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

5. **STANDARD OF CARE**

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

6. **INDEPENDENT PARTIES**

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

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

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

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for

employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

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

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

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

10. **INSURANCE**

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

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

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

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

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

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

11. **CONFLICT OF INTEREST**

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

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

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

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance

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

14. **REPORTS**

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

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

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

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

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

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

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

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

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

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

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

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

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

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

18. **NOTICES**

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

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

TO CONSULTANT:
Michael Maher, CPA
Maher Accountancy
1101 Fifth Avenue, Suite #200
San Rafael, CA 94901

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

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

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Authority that it has all licenses,

permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

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

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

32. **ATTORNEY FEES**

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

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

RECOMMENDED FOR APPROVAL

Enter Your Name, Enter Your Title

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME

Enter Consultant's Name

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

Monthly Financial Operational Assistance:

1. Assist in development of operating budget in collaboration with management and technical consultants.
2. Maintain the general ledger by:
 - a. Posting billings, accrued revenue, cash receipts, accounts payable, cash disbursements, payroll, accrued expenses, etc.
 - b. Prepare or maintain the following monthly analysis regarding general ledger account balances:
 - i. Reconciliation to statements from Authority's financial institution for cash activity and balances;
 - ii. Reconcile customer data manager reports of customer activity and accounts receivable;
 - iii. Estimated user fees earned but not billed as of the end of the reporting period;
 - iv. Schedule of depreciation of capital assets;
 - v. Aged schedule of accounts payable;
 - vi. Schedules of details regarding all remaining balance sheet accounts.
3. Manager accounts payable: Consultant utilizes a cloud-based accounts payable document management system to provide for documentation of management review, proper segregation of duties, and access to source data. Consultant ensures that required authorization is documented, and that account coding is correct. SVCEA staff then authorizes the release of payment by an independent payment service in order to provide an additional safeguard.
4. Manage compliance with fiscal provisions of vendor contracts: Before submitting vendor invoices for management approval, Consultant verifies that a vendor invoice with contract provisions regarding time periods, rates, and financial limits.
5. Monitor expenditure budget compliance. Consultant monitors budget available and will make timely suggestions for any necessary budget amendments.
6. Provide periodic and year-to-date accrual basis financial statements with comparison to projections.
7. Provide modified accrual basis financial statement with comparison to budget.
8. Filing annual information returns such as form 1099/1096's.
9. Present financial information to Board of Directors, as needed.

10. Assist the treasury function.
11. Provide services to meet the requirements of applicable laws and regulations relating to the provisions of accounting services for Authority.
12. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports
13. Provide hosting and portal management for the contracts management portal. Prepare annual financial statements and coordination with independent auditor

Exhibit B
Schedule of Performance

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

Task	Begin	Complete
1. Accounting Services Monthly	October 2022	September 2023
2. Prepare annual financial statements and coordinate with external auditor (Annual)	October 2022	September 2023
3. Contract Portal Management (Annual)	October 2022	September 2023
4. Business Continuity Support	October 2022	September 2023

Exhibit C **Compensation**

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of two hundred seventy-three thousand five hundred dollars and no/100 (\$273,500.00) as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task	Estimated Budget
1. Accounting Services (monthly)	\$19,500
2. Prepare annual financial statements and coordinate with external auditor (annual)	\$16,000
3. Contract Portal Management (annual)	\$13,500
4. Business Continuity Support	\$10,000
Total	\$273,500

Invoices

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

Reimbursable Expenses

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

Additional Services

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

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of

their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Authority; (c) in the case of Confidential Information, at Authority's sole election, (i) notify the affected individuals who comprise the Confidential Information as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the

absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent

with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report – Item 1k

Item 1k: Authorize CEO to Approve Agreement with Pisenti & Brinker, LLP for Financial Audit Services for the year ending September 30, 2022

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO / Director of Administrative Services
Kevin Armstrong, Deputy Director of Administrative Services

Date: 9/14/2022

RECOMMENDATION

Authorize the CEO to approve agreement with Pisenti & Brinker, LLP for financial audit services for a not to exceed ("NTE") amount of \$32,900 to audit the financial statements for the fiscal year ending September 30, 2022 ("FY21-22").

AUDIT COMMITTEE RECOMMENDATION

At the August 31, 2022 meeting, the Audit Committee voted unanimously to accept the staff proposal and recommend that the Board approve this agreement with Pisenti & Brinker, LLP.

BACKGROUND

Board Policy FP1 states that an independent certified public accountant shall perform an annual audit of basic financial statements that are accompanied by required supplemental information.

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue for SVCE:

- A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles
- If applicable, a report of deficiencies in internal control

In addition, FP1 contains (Section II.3) the requirement that the outside auditor be selected through a competitive solicitation at least every 5 years. SVCE's original agreement with Pisenti & Brinker was signed in November 2017, for three years, and then extended in 2020 for two additional years, necessitating this year's competitive solicitation.

In addition, CA Government Code Section 12410.6.(b) requires local agencies to engage lead audit partners for no more than six consecutive fiscal years, meaning that a change in partners would be required soon as well.

ANALYSIS & DISCUSSION

In June 2022, a Request for Proposals was sent to firms that have provided audits to SVCE and other CCAs, firms recommended by our outside accountancy, Maher, and the general SVCE solicitations list. Four proposals were received, from:

- Baker Tilly US, LP
- Eide Bailly LLP
- Maze & Associates

Agenda Item: 1k**Agenda Date: 9/14/2022**

- Pisenti & Brinker, LLP

Proposals included quotes for both an audit of financial statements, and a Single Audit, due to SVCE's having received pass-through federal funding as part of the California Arrearage Payment Program ("CAPP"). The audit of SVCE's financial statements is to be conducted to Governmental Accounting Standards Board ("GASB") standards, as in past years, with the single audit to be conducted according to Uniform Code standards.

The four proposals were reviewed against criteria recommended by the American Institute of Certified Public Accountants ("AICPA"), which included state licensure, firm independence from the client, and industry experience and professional development. Based on these standards, SVCE staff shortlisted Baker Tilly, LLP and Pisenti & Brinker, LLP, given their extensive experiences auditing Community Choice Energy associations. After interviewing each firm, SVCE staff recommends continuing with Pisenti & Brinker, LLP, as SVCE's outside auditor. Pisenti & Brinker is proposing a new engagement partner with their firm, Kellin Gilbert, who has extensive Single Audit experience, and who will bring fresh eyes to the audit process. Pisenti & Brinker will be utilizing our past engagement partner, Brett Bradford, in a quality-assurance, quality control role, to provide oversight and continuity as the engagement transfers to a new partner. SVCE staff believes that this offers a "best of both worlds" scenario, with a firm that has a solid work history with SVCE, and a partner that brings new perspective to the audit.

Staff presented an overview of the process and made a recommendation to the members of the Audit Committee at the August 31, 2022 meeting. The Committee agreed with the staff recommendation and is recommending to the Board to engage with Pisenti & Brinker, LLP through a new agreement. A copy of the Audit Committee presentation is provided for reference.

Compensation is not to exceed \$32,900 for the term of the agreement. Upon successful completion of the audit, staff anticipates returning to the Board with a recommendation to extend the agreement for up to four additional fiscal years, which would provide continuity and adhere to the solicitation requirements in FP1.

Timeline

- Late September 2022 – Audit Committee kick-off meeting
- November 2022 – Preliminary Audit Work commences
- January 2023 – Draft report presented to Audit Committee
- March 2023 – Final report presented to Board of Directors
- Progress reports will be made to SVCE management throughout the audit

STRATEGIC PLAN

The proposal supports SVCE's updated 2021-2022 Strategic Plan Goal 13, to "Commit to maintaining a strong financial position", by achieving an unqualified audit opinion.

ALTERNATIVE

Staff is open to alternatives from the Board, including the selection of an alternate audit firm.

FISCAL IMPACT

The proposed agreement has a total not-to-exceed amount of \$32,900 for the audit of SVCEs financial records (\$27,600) and the single audit of CAPP funding (\$5,300) for FY21-22.

ATTACHMENTS

1. Copy of the June 2022 Request for Proposals
2. Staff presentation to Audit Committee – August 31, 2022
3. Draft Agreement with Pisenti & Brinker, LLP for Financial Audit Services



REQUEST FOR PROPOSALS
FOR
FINANCIAL AUDIT SERVICES

RFP Release Date: June 10, 2022
RFP Submittal Deadline: Friday, July 8, 2022 at 5:00 PM
Pacific Time

1 Contents

2 - Silicon Valley Clean Energy Overview.....	3
3 - RFP Overview.....	3
4 - RFP Tentative Timeline	4
5 - High Level Scope of Work.....	5
6 - Proposal Submittal.....	7
7 - Review and Selection Process	9
8 - Agreement Terms	9
9 - Inclusion of Non-Participating Agencies.....	9
10 - California Public Records Act.....	10
11 - Ex Parte Communication	10
12 - Insurance Requirements.....	10
13 - Conflict of Interest/Statement of Non-Collusion	11
14 - Addenda	11
15 - Certifications.....	11
16 - Rights of SVCE.....	12
Attachment A – Standard Contract.....	13

2 - Silicon Valley Clean Energy Overview

Silicon Valley Clean Energy (SVCE), a Community Choice Energy agency, is redefining the local electricity market and providing our residents and businesses with new clean energy choices—renewable and carbon-free electricity at competitive rates. SVCE was formed as a Joint Powers Authority in 2016, and now serves approximately 270,000 residential and commercial electricity customers across a service area comprised of the following thirteen communities: Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County. 97% of electricity customers in SVCE's service area receive their electricity from SVCE. For more information on SVCE, please visit: <https://www.svcleanenergy.org/>.

As SVCE was formed to support our communities in reducing their greenhouse gas emissions, we aim to provide our customers with resources that can help them understand their energy use and how it relates to their carbon footprint, discover ways to reduce their carbon footprint and find products and contractors to help them save energy and money. SVCE is also in the process of launching a broad set of programs supporting decarbonization efforts and needs an online resource to enable customers to engage with these programs and related activities. For more information on SVCE's overarching program strategy and planned programs, please visit: <https://www.svcleanenergy.org/programs/>.

3 - RFP Overview

With this request for proposals (RFP), SVCE seeks proposals from qualified firms (Bidder) to audit its financial statements as described in this RFP's scope of work. Bidders should provide one proposal in response to this RFP. SVCE reserves the right to award work to multiple Bidders, or to award work to no Bidders.

SVCE contemplates an initial one-year term, and reserves the right to extend for additional years, subject to the annual review, the satisfactory negotiation of terms (including a price acceptable to both SVCEA and the selected firm), the concurrence of the Board of Directors and the annual availability of an appropriation.

With this RFP, SVCE is soliciting the services of qualified firms of certified public accountants to prepare and present an audit of its basic financial statements, accompanied by required supplemental information, encompassing the fiscal period(s) commencing October 1, 2022, through September 30, 2023. Additional years / periods may be negotiated through an extension to the agreement. This audit is to be performed in accordance with U.S. generally accepted auditing standards.

GENERAL EXPECTATIONS OF THE ENGAGEMENT

It is expected that the firm will have good standing in the community regarding integrity of work, independence of SVCE as defined by generally accepted auditing standards, no pending investigations, and preferably no pending litigations.

The firm will be expected to work directly with SVCE's accountant, Maher Accounting, SVCE's Chief Financial Officer, Amrit Singh, SVCE's Deputy Director of Administrative Services, Kevin Armstrong, and possibly other SVCE staff on a regular and professional basis. Regular consultations may be required. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

4 - RFP Tentative Timeline

This tentative schedule is provided for the convenience of Bidders but may be subject to change at any time by SVCE. Any such changes will be stated in an addendum to this RFP or otherwise communicated to Bidders.

Date	Event
June 10, 2022	RFP Released
June 24, 2022	Deadline for questions, clarifications (see below)
July 1, 2022	Responses to Questions posted
July 8, 2022 @5:00 PM PT	Deadline for Bidders to submit proposals
July 22, 2022	Last day of possible interviews, if requested by SVCE
July 29, 2022	Anticipated date SVCE will notify awardees
August 2022 (tbd)	Staff presents recommendation to Audit Committee
August 31, 2022	Anticipated date contract finalized (to be sent to Board for approval)
September 9, 2022	Board Meeting – contract approval
Late September 2022 (tbd)	Audit Committee kick-off meeting (work begins)

Notes:

- Questions: Bidders may submit questions concerning the RFP to solicitations@svcleanenergy.org. All questions and answers will be shared with all Bidders and will be posted in the same location as the RFP, at <https://www.svcleanenergy.org/solicitations/>. Questions must be emailed and received by SVCE no later than June 24, 2022 @ 5:00 PM PT. SVCE shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by SVCE or its representatives.
- Proposal Review: SVCE may request clarifications of submitted proposals by email or phone. Prompt responses will be requested.
- Bidder Interviews: SVCE may choose to conduct in-person/phone interviews of the top Bidders, to occur no later than July 22, 2022.

5 – Minimum Qualifications

All proposers should be legally certified to perform financial auditing services for government agencies within in the State of California or be able to show certification will be attained by the August 2022 start date. In addition, the firm should affirm all staff to be assigned to the project are properly licensed and legally able to practice in California.

6 - High Level Scope of Work

NATURE OF SERVICES REQUIRED

A. Scope of Work to be Performed

SVCEA desires the auditor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. SVCEA will provide the auditor with full disclosure financial statements be presented in accordance with current Governmental Accounting Standards Board pronouncements, as well as any subsequent pronouncements over the course of the agreement term. SVCEA will prepare supporting schedules and required documentation for use by the auditors.

B. Reports to be Issued

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue for SVCEA:

- a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles. This report shall include, at a minimum, Management's Discussion and Analysis, the Basic Financial Statements, and Notes to the Basic Financial Statements.
- b. If applicable, a report or letter outlining any deficiencies in internal control.

C. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditors' expense, for a minimum of seven (7) years, unless the firm is notified in writing by the SVCEA of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:

Silicon Valley Clean Energy Authority

In addition, the firm(s) shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

D. Conferences and Meeting Attendance

The firm may be required to meet independent of SVCE staff with SVCE Board members to discuss details of scope, intent, or expectations on behalf of the Board. This may be done by phone or video conference. However, the Consultant shall be prepared to attend an in-person final presentation of the audited financial statements to the Board at the end of the project. This presentation will likely be held at a Board meeting in the City of Cupertino. Additional meeting attendance may be required. Sufficient advance notice will be provided by SVCE staff.

DESCRIPTION OF THE ENTITY

Names and Contact Information

The auditors' principal contacts with the SVCEA will be Amrit Singh, Chief Financial Officer and Director of Administrative Services, and Michael Maher, CPA, Accounting Consultant. Girish Balachandran, CEO, and other staff will be available as needed.

Background Information

The Silicon Valley Clean Energy Authority was created as a California Joint Powers Authority on March 31, 2016. SVCEA was established to provide electric power and related benefits within Santa Clara County, including developing a wide range of renewable energy sources and energy efficiency programs.

SVCE began providing electric power to customers in April 2017. Electric power is delivered to SVCEA's customers through a contractual arrangement with Pacific Gas & Electric Company (PG&E). PG&E is also responsible to read electric meters, to send invoices to customers and to collect payments on behalf of SVCE. SVCE contracts with another service provider for customer account data management and a customer service call center. SVCE currently is under contract to purchase electric power from several suppliers. It is anticipated that purchases from additional suppliers will occur in future periods. SVCE currently has thirty employees and does not expect to have more than fifty during the term of this contract.

The accounting and financial reporting functions SVCE are the responsibility of Maher Accountancy.

SVCE operates as an enterprise-type fund. Financial accounting is maintained on the accrual basis of accounting. Budgets are prepared on the modified accrual basis. Employees are eligible to participate in a defined contribution retirement plan and there is no obligation for other post-employment benefits.

PROPOSED PROJECT TIMELINE

September 2022	Kick-Off Meeting with SVCE Audit Committee – date TBD
December 1, 2022	SVCE to have records ready for audit and key personnel available to meet.
Progress Reports	Routine progress reports to be provided to SVCE and Maher Accountancy, or their designated representatives, at regular intervals, but no less than monthly.
Mid-January, 2023	Auditor shall have draft audit report and recommendations available for review by SVCE
February 1, 2023	Auditor shall have final report and recommendations available for SVCE to present at
Mid-February, 2023	SVCE and Auditor present report to Audit Committee – date TBD

2/2022 Version

Early March, 2023 SVCE and Auditor to present report to Board of Directors – date TBD

Subsequent distribution to the public shall be the responsibility of SVCE.

7 - Proposal Submittal

Proposals must be received on or before the above deadline and submitted by email to solicitations@svcleanenergy.org with the subject "Proposal - <Organization> - FINANCIAL AUDIT SERVICES".

Only electronic submittals in PDF format will be accepted.

Proposals must include the following sections (to be submitted in this order only):

1. Title Page with Administrative Information

- Provide administrative information, including at a minimum: date of proposal, firm name, mailing address, phone number, and email of designated point of contact.

2. Proposal summary

- Briefly discuss the highlights, key features and distinguishing points of the proposal.

3. Technical Proposal:

- An outline of the Scope of Work to be done
- Staff to be assigned to the project, with qualifications
 - Identify the principal supervisory and management staff, including engagement partners, managers, supervisors and others, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in California. Provide information on the government auditing experience of each person, including information on continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of the audit(s).
 - Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.
 - Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of SVCEA.
 - Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of SVCEA.

2/2022 Version

- Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.
- Proposer qualifications and related experience
 - The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement.
 - The firm is required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.
 - The firm shall provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. The firm shall also provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations, or litigation whereby a court has ruled against the firm. In addition, the firm is asked to describe the nature, magnitude, and status of any litigation current or pending against the firm in any manner related to the firm's professional activities.
 - Proposer must disclose any debarment or other disqualification as a vendor for any federal, state or local entities. Proposer must describe the nature of the debarment/disqualification, including where and how to find such detailed information.
- A statement regarding the extent and duration of any direct experience with other CCA's

4. Description of Qualifications (can be an appendix)

- The firm should provide an affirmative statement that it is independent of SVCE as defined by generally accepted auditing standards.
- An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California.
- Acknowledgement of understanding of the General Expectations stated in section 3, above
- A description of any subcontractors that may be used in relation to this project and the capacity in which they will be employed
- Years of operation and directly related experience, or most significant engagements similar to this, performed in the last five (5) years, for government clients.
- Three (3) references
- Sample of work

5. Project Timeline: Not to exceed the absolute deadline in SVCE's project timeline listed above

6. Project Budget: With a not to exceed, staffing cost table, subcontractor passthroughs (if applicable), and estimated hours

7. Confirmation of acceptance of contract terms or explanation of proposed contract modifications (see Section 7 of this RFP)

- List all exceptions or requested changes that Bidder has to SVCE's standard contract. Items not excepted will not be open to later negotiation.

8. Inclusion of non-participating agencies (see Section 10 of this RFP)

- Indicate Bidder's willingness to extend the terms of resulting contracts to other similar entities.

8 - Review and Selection Process

In addition to, or in reiteration of, the aforementioned minimum proposal requirements, all of which are mandatory, proposals will be evaluated based on the following non-exclusive list of criteria:

- Qualifications and experience of the Bidder providing similar products and services, including the capability and experience of key personnel as well as experience with other public and/or private agencies in similar capacities
- History of successfully performing services for public and/or private agencies and other Community Choice Energy agencies
- Financial viability of the Bidder
- Cost to SVCE for the products and services identified in this RFP
- Proposed approach, including a clearly-demonstrated understanding of the intended scope of products and services to be provided
- Ability to meet any required timelines or other requirements
- Existence of and circumstances surrounding any claims or violations of law or governmental regulations against the Bidder, its representatives and/or partners
- Pertinent references
- Acceptance of SVCE's standard contract terms and conditions

SVCE reserves the right to consider factors other than those specified above and to request additional information from any/all Bidders as a part of the selection process.

9 - Agreement Terms

Awardees will be required to enter into a contract using SVCE's standard contract terms. Modification of the contract terms may be proposed by the Bidder for consideration by SVCE but are not guaranteed to be accepted. Rejection of the final terms from SVCE is grounds for disqualification.

SVCE's standard contract terms are available for review in Appendix A.

10 - Inclusion of Non-Participating Agencies

SVCE is asking all responding Bidders to indicate their willingness to extend the terms of resulting contracts, inclusive of price, to other interested California-based municipalities, municipally-owned utilities and community choice energy programs. While this clause in no way commits these agencies to contract with SVCE's awarded consultant, nor does it guarantee any additional orders will result, it does allow other agencies, at their discretion, to make use of SVCE's competitive process (provided said process satisfies their own procurement guidelines) and enter into a contract directly with the awarded consultant. All contracts entered into by other agencies shall be understood to be transactions between that

2/2022 Version

agency and the awarded consultant; SVCE shall not be responsible or liable in any manner for any such contracts.

11 - California Public Records Act

All parties acknowledge that SVCE is a public agency subject to the requirements of the California Public Records Act, Cal. Gov. Code section 6250 et seq. ("CPRA"). SVCE will not disclose any part of any proposal before it announces a recommendation for an award, on the ground that there is a substantial public interest in not disclosing proposal during the evaluation process. After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure, with the exception of those elements in each proposal which are exempt from disclosure pursuant to the CPRA.

If a Bidder believes there are portion(s) of the proposal which are exempt from disclosure, the Bidder must plainly mark it as "Confidential", "Proprietary", or "Trade Secret." SVCE may also request that the Bidder state the specific provision of the CPRA which provides the exemption, and the factual basis for claiming the exemption. Any proposal which contains language purporting to render all or significant portions of the proposal as "Confidential," "Trade Secret," or "Proprietary," will be considered non-responsive and a public record in its entirety.

Although the CPRA recognizes that certain confidential trade secret information may be protected from disclosure, SVCE may not be in a position to establish that the information a Bidder submits is a trade secret. If a public records request is made for information marked "Confidential," "Proprietary," or "Trade Secret," SVCE will provide the Bidder(s) who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. The Bidder shall be solely responsible for taking such legal steps; if the Bidder takes no such action after receiving notice of the public records request, SVCE will disclose all records it deems subject to disclosure, even if marked "Confidential," "Trade Secret," or "Proprietary."

12 - Ex Parte Communication

Please note that to insure the proper and fair evaluation of a proposal, SVCE prohibits ex parte communication (i.e., unsolicited) initiated by the Bidder to an SVCE Official or Employee evaluating or considering the proposals prior to the time a bid decision has been made. Communication between Bidder and SVCE will be initiated by the appropriate Agency Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the proposal. Ex parte communication may be grounds for disqualifying the offending Bidder from consideration or award of the proposal, then in evaluation, or any future proposal.

13 - Insurance Requirements

All insurance shall be secured from or countersigned by an agent or surety company recognized in good standing and authorized to do business in the State of California.

All proposers should be able to show the following minimum insurance requirements will be maintained through the duration of the project:

- \$1,000,000 of Commercial General Liability and a general aggregate limit of \$2,000,000 per project or location
- \$1,000,000 of Automobile Liability for any owned, non-owned, or hired vehicle to be used in connection with the performance of this project
- \$1,000,000 of Worker's Compensation as required by the State of California
- \$2,000,000 of Professional Liability/Errors & Omissions

The Bidder shall, within thirty (30) days of notification of award and prior to commencement of work, take out and maintain in full force and effect minimum insurance coverage as specified in the attached requirements. This insurance shall remain in force and effect throughout the duration of the contract.

A certificate of existing insurance coverage should be submitted with the proposal as proof of insurability. If the current coverage does not meet the RFP requirements, then the Bidder should request an affidavit of insurability from the Bidder's insurance agent that certifies the requirements can and will be met. Failure to provide adequate insurance coverage may be cause for disqualification as non-responsive to the RFP requirements.

14 - Conflict of Interest/Statement of Non-Collusion

All bidders must disclose with their proposal the name of any officer, director, or agent who is also an employee of SVCE. Further, all bidders must disclose the name of any SVCE employee who owns, directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches.

The Bidder shall certify that he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the proposal and that the bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same land or improvements.

15 - Addenda

It is the Bidder's responsibility to contact SVCE prior to submitting a proposal to ascertain if any addenda have been issued, to obtain all such addenda and return executed addenda with the proposal.

The failure of a Bidder to submit acknowledgement of any addenda that affects the proposal price(s) may be considered an irregularity and may be cause for rejection of the proposal.

16 - Certifications

The submission of a proposal shall be deemed a representation and certification by the Bidder that it:

- Has read, understands and agrees to the information and requirements set forth in this RFP.
- Has the capability to complete the responsibilities and obligations of the proposal being submitted
- Represents that all information contained in the proposal is true and correct

2/2022 Version

- Acknowledge that SVCE has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants SVCE permission to make these inquiries
- Will provide any and all documentation related to the proposal in a timely manner
- Is eligible to submit a proposal because he/she is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal, State, or local department or agency

17 - Rights of SVCE

SVCE is not obligated to respond to any proposal submitted as part of the RFP. **SVCE at its sole discretion reserves the right to waive technicalities or irregularities, to reject any or all proposals, and/or to accept that proposal which is in the best interest of SVCE.** The award of this proposal, if made, may be based on considerations other than total cost and may be awarded based on various considerations, including without limitation; Bidder's experience and/or qualifications, past experience, administrative cost, standardization, technical evaluation and oral and/or written presentations as required. SVCE reserves the right to accept all or part, or to decline the whole, and to award this RFP to one (1) or more Bidders. There is no obligation to buy. The RFP, if awarded, will be in the judgement of SVCE the most responsive to the agency's needs.

Attachment A – Standard Contract

(See Attached Contract Template)

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
FOR
S**

THIS AGREEMENT ("Agreement"), is entered into this [Click here to enter DAY.](#) day of [ENTER MONTH., ENTER YEAR.,](#) by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and [Click here to enter Consultant's name.,](#) a [Click here to enter entity type \(California corporation, partnership, etc.\).](#) whose address is [Click here to enter address.](#) (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for [Click here to enter a description of work to be performed.](#) upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. TERM

The term of this Agreement shall commence on [Click here to enter beginning of term.,](#) and shall terminate on [Click here to enter end of term.,](#) unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

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

3. COMPENSATION TO CONSULTANT

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed [Click here to enter amount of compensation in words.](#) dollars (\$[Click here to enter amount of compensation in numerals..00](#)) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. TIME IS OF THE ESSENCE

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

5. STANDARD OF CARE

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

6. INDEPENDENT PARTIES

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

7. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members.

2/2022 Version

Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. NON-DISCRIMINATION

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

9. HOLD HARMLESS AND INDEMNIFICATION

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

B. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold

2/2022 Version

Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation.

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

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

10. **INSURANCE**

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

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

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

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

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

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

11. **CONFLICT OF INTEREST**

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

12. **PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written

consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by Consultant.

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

13. **SUBCONTRACTOR APPROVAL**

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

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

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

14. **REPORTS**

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

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

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

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

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

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

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer (“Authority Representative”) shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. [Click here to enter the name of Consultant representative.](#) (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by

Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

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

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

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

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

18. **NOTICES**

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

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

TO CONSULTANT:

2/2022 Version

[Click here to enter consultant name.](#)
[Click here to enter company name.](#)
[Click here to enter street number and street name.](#)
[Click here to enter city, state, and zip code.](#)

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

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

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

approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

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

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts'

fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

RECOMMENDED FOR APPROVAL

2/2022 Version

Enter Your Name, Enter Your Title

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME

Enter Consultant's Name

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

[Click here to enter text.](#)

Exhibit B
Schedule of Performance

[Click here to enter text.](#)

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

Task	Begin	Complete
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Exhibit C **Compensation**

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

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

Task	Estimated Budget
1.	\$ XX,000
2.	\$ XX,000
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
Total	

Rates

Personnel	Title	Hourly

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked,

2/2022 Version

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

Reimbursable Expenses

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

Additional Services

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

[Review insurance coverage and amounts to confirm they are appropriate for each scope of service]

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.
- (5) **Privacy and Cybersecurity Liability** **[May be reduced or eliminated based on scope of services]**

Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs of at least \$5,000,000 US per occurrence.

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of

their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services. No less than annually, Consultant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Authority. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Consultant shall provide the audit findings in the form of an SAS-70 Type II report.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise

required by Authority; (c) in the case of Confidential Information, at Authority's sole election, (i) notify the affected individuals who comprise the Confidential Information as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or

representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.

Financial Audit RFP Recommendation

Kevin Armstrong, Deputy Director of Admin Services
Audit Committee | August 31, 2022



FP1 – Accounting Policy & History

Section II.3 – Requirement to competitively solicit at least every 5 years

- 1) SVCE originally conducted an RFP in 2017, and selected Pienti & Brinker, LLP as financial auditor;
- 2) Pienti & Brinker, LLP was contracted to audit SVCE's financials for 3 years, from the partial fiscal year 2016-17 through the full fiscal year 2018-19;
- 3) In 2020, SVCE extended Pienti's contract for an additional 2 years, through the audit of SVCE's financials for fiscal year 2020-21
- 4) CA Govt Code Section 12410.6.(b) requires local agencies to engage lead audit partners for no more than six consecutive fiscal years.



Request for Proposals

SVCE released the Audit RFP in June 2022

The RFP was shared with auditors with direct CCA experience, as well as the general SVCE solicitations list

- Proposals were received from four firms:
 - Pimenti & Brinker, LLP
 - Baker Tilly US, LP
 - Eide Bailly LLP
 - Maze & Associates
- Proposals included both American Institute of Certified Public Accountants (AICPA) and Single (Uniform Code) audit elements (due to SVCE's receipt of California Arrearage Payment Program (CAPP) funding in 2022).
- Audits to be conducted to GASB standards



Evaluation Standards

- The AICPA recommends the following standards when selecting an auditor:
 - Licensure by the appropriate state regulatory agency
 - Independence of the firm
 - Experience and professional development

Pisenti & Brinker, LLP

- CA Licensed
- Santa Rosa, CA
- Previous CCA experience
- Smaller firm (~50 staff)

Eide Bailly, LLP

- CA Licensed
- Menlo Park, CA
- Previous Municipal Utility experience
- Larger firm (~2,500 staff)

Baker Tilly, LLP

- CA Licensed
- Madison, WI
- Previous CCA Experience
- Larger Firm (~6,000 staff)

Maze & Associates

- CA Licensed
- Pleasant Hill, CA
- Previous Municipal Utility experience
- Smaller firm (~60 staff)



Shortlisted Firms

Staff identified two firms for shortlisting, based on standards that match those recommended by the AICPA

Staff conducted interviews with each firm to finalize a recommendation

Both Firms

- Extensive experience with CCAs, Maher CPA, and Calpine
- Due to SVCE's staggered FY, both would have Single Audits of CAPP funds underway with other CCAs before starting with SVCE

Baker Tilly, LLP

- Firm would provide a fully-new audit team to review SVCE financials
- Firm has extensive energy & utility industry experience nationwide
- Firm currently conducting over 500 single audits
- Total Cost - \$40,000

Pisenti & Brinker, LLP

- Firm would be rotating partners in advance of the CA Govt Code deadline, to provide overlap before full transition – new partner to sign off on audit, but with benefit of past partner experience
- New partner is firm lead for Single Audits
- Total Cost - \$33,000



Staff Recommendation – Pimenti & Brinker

Staff recommends that the Audit Committee recommend to the Board of Directors that:

Pimenti & Brinker, LLP be selected as the financial auditor for SVCE's financial statements for fiscal year 2022-23

- Pimenti has extensive previous CCA experience, having prepared audits for SVCE, 3CE, and SCP for numerous fiscal years, working with Maher and Calpine.
- The rotation in lead partner will provide SVCE with the best of both worlds – new eyes / attention to our financials, with a firm familiarity from prior work, ideally allowing them to focus on matters of significance quickly, without dwelling on routine items.
- Pimenti's new partner on the engagement is their single audit lead, bringing extensive experience to our upcoming CAPP audit.

Next Steps

Staff will present an agreement on consent to the Board for approval at the September 14th Meeting.

- Agreement will be for an initial one-year term, with the option to extend for additional years upon completion of a successful engagement.

Staff will schedule a committee meeting to kick-off the audit process in late September (date tbd).

After the close of SVCE's financials, audit work will commence in October 2022.

Recommendations to the Board

- Approve an agreement with Pimenti & Brinker, LLP to audit SVCE's financial statements for fiscal year 2021-22, with an option to extend for additional years (not to exceed the 5-year limit).

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PISENTI & BRINKER, LLP
FOR
FINANCIAL AUDIT SERVICES**

THIS AGREEMENT ("Agreement"), is entered into this 14th day of September, 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Piseni & Brinker, LLP, a California corporation whose address is 3562 Round Barn Circle, Suite 200, Santa Rosa, CA 95403 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

C. Authority and Consultant desire to enter into an agreement for financial audit services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on September 15, 2022, and shall terminate on September 30, 2023, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Thirty-two thousand, nine hundred dollars (\$32,900.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

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

5. **STANDARD OF CARE**

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

6. **INDEPENDENT PARTIES**

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

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

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members.

Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

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

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. Consultant agrees to accept responsibility for loss or damage to any person or entity, including the Authority, and to defend, indemnify, hold harmless, and release the Authority, its officers, agents, and employees, from and against any and all actions, claims, damages, liabilities, or expenses, that may be asserted by any person or entity, including Consultant, arising out of or in connection with the negligent performance or willful misconduct of Consultant hereunder, whether or not there is concurrent negligence on the part of the Authority, but excluding liability arising out of or due to the Authority's active negligence or willful misconduct. This indemnification obligation is limited to the total professional fees paid to and/or incurred by Consultant hereunder; provided, however, that such indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers compensation acts, disability benefits acts, or other employee benefit acts. The parties hereto understand and agree that the foregoing is not intended to abrogate, limit or violate any terms and conditions of Consultant's existing general and professional liability insurance coverages, nor reduce or limit the amount otherwise payable from such policies relating to or on account of a claim falling within the scope of this section.

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

attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation.

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

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

10. **INSURANCE**

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

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

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

D. **Additional Insured.** Authority, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not

affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

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

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

11. CONFLICT OF INTEREST

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

12. PROHIBITION AGAINST TRANSFERS

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from

Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by Consultant.

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

13. **SUBCONTRACTOR APPROVAL**

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

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

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

14. **REPORTS**

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

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the

original project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

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

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

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

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

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

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

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Authority. Authority shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the Authority Representative or unless

requested in writing by the Authority Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the Authority. Response to a subpoena or court order shall not be considered “voluntary,” provided Consultant gives Authority notice of such court order or subpoena.

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

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

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

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

18. **NOTICES**

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

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

TO CONSULTANT:
Kellin Gilbert, CPA, Partner
Pisenti & Brinker, LLP
3562 Round Barn Circle, Ste 200

Santa Rosa, CA 95403

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

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

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

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement

and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

32. **ATTORNEY FEES**

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

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME

Pisenti & Brinker, LLP

By: _____

Name: _____

Title: _____

Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY

A Joint Powers Authority

By: _____

Name: Girish Balachandran

Title: Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A **Scope of Services**

Perform audits of the basic financial statements of the Silicon Valley Clean Energy Authority (Authority) as set forth below for the period October 1, 2021 to September 30, 2022. Perform the audit in accordance with auditing standards generally accepted in the United States of America as set forth by the American Institute of Certified Public Accountants. If necessary, perform a Single Audit of the California Arrearage Payment Program (CAPP) according to Uniform Guidance.

Reports to be prepared include:

- Report on the fair presentation of the financial statements of the Authority;
- Management letter of comments;
- Report on significant deficiencies or material weaknesses in internal control, if any are identified;
- Other communications to those charged with governance as required by professional standards.
- Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with Government Auditing Standards (if a single audit is required);
- Report on compliance for each major federal program and report on internal control over compliance required by the Uniform Guidance (if a single audit is required);
- Schedule of findings and questioned costs and schedule of prior audit findings and responses (if a single audit is required).

PISENTI & BRINKER, LLP will retain all working papers and reports for a minimum of seven years. Working papers are available upon request to the government agencies with oversight over the Authority.

During the audits, PISENTI & BRINKER, LLP will observe the adequacy of the system of internal control relevant to the basic financial statements of the Authority. At the conclusion of the audits, PISENTI & BRINKER, LLP will make a presentation to the board or other representatives of the Authority if requested and present the audit report, findings, and make other communications as required by professional standards.

During the audits, PISENTI & BRINKER, LLP will provide routine progress reports to the audit committee, SVCE staff and outside accountant on the status of the engagement.

The Management Letter of Comments will address the following:

- Areas where the Authority's internal controls can be enhanced;
- Areas where operational processes can be streamlined and made more efficient;
- Compliance with other laws and regulations applicable to the Authority.

Should any irregularities or illegal acts come to the attention of the audit team during the course of the audits, PISENTI & BRINKER, LLP will make an immediate written report to Management and the Governing Board, unless they are clearly inconsequential.

Exhibit B **Schedule of Performance**

We propose to perform the services according to the following timeline for the audit of the period October 1, 2021, through September 30, 2022. Subsequent years will be modified as mutually agreed upon.

September 2022:

- Execute contract and provide arrangement letter to SVCE
- Provide SVCE staff with a preliminary list of documents for the audits
- Kick-off meeting with audit committee

Early December 2022 – Entrance Conference and Preliminary Planning Phase:

- Planning meetings with SVCE management and finance staff
- Provide SVCE with a preliminary audit plan and discuss questions regarding documents and audit procedures

Mid-December 2022 - Fieldwork – Risk Assessment and Testing:

- Perform "walk-throughs" in order to obtain an understanding of the significant processes and related internal controls of finance and accounting functions
- Testing of significant year end balances and transaction cycles
- Perform compliance testing in connection with laws and regulations
- Perform compliance testing in connection with the Single Audit, if applicable;

Prior to January 16, 2023 – Complete Post Fieldwork & Deliver Draft Reports:

- Deliver to SVCE management:
 - Draft of audited financial statements
 - Draft of management letter and other communications
- Meet with SVCE management as needed to discuss draft reports

Prior to January 31, 2023 – Reporting and Wrap Up:

- Meet with SVCE finance committee to discuss draft reports
- Present and report on audit to SVCE board of directors (at a time and place to be designated by SVCE)
- Deliver all final reports and communications
- Completed Single Audit reports, if applicable.

Please note that this timeline is contingent upon our timely receipt of all documents, schedules, and other information necessary to complete the audits. Additionally, we will work with SVCE staff to fine-tune a mutually agreeable schedule.

Exhibit C **Compensation**

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of thirty-two thousand nine hundred dollars (\$32,900), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Task	Estimated Budget
1. Financial Statement Audit (incl Management Letter)	\$ 27,600
2. Single Audit (if necessary)	\$ 5,300
3.	
Total	\$ 32,900

Rates

Personnel	Title	Hourly
Kellin Gilbert	Partner	390
Brett Bradford	Partner	390
Jenna Blanchard	Supervisor	220
Aliandra Schaffer	Senior	180

Invoices

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

Reimbursable Expenses

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

Additional Services

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

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of

their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services. No less than annually, Consultant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Authority. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Consultant shall provide the audit findings in the form of an SAS-70 Type II report.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise

required by Authority; (c) in the case of Confidential Information, at Authority's sole election, (i) notify the affected individuals who comprise the Confidential Information as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.

8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.
9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report – Item 11

Item 11: Authorize the Chief Executive Officer to Execute an Agreement for FY22-23 with Richards, Watson & Gershon for Legal Services

From: Girish Balachandran, CEO

Prepared by: Amrit Singh, CFO / Director of Administrative Services
Kevin Armstrong, Deputy Director of Administrative Services

Date: 9/14/2022

RECOMMENDATION

Staff recommends that the Board authorize the CEO to execute a new FY22-23 agreement with Richards, Watson & Gershon (RWG) for legal services from October 1, 2022 through September 30, 2023, for an amount not to exceed \$215,000.

BACKGROUND

Silicon Valley Clean Energy (SVCE) has been utilizing the services of RWG since the Agency's formation with the current agreement expiring on September 30, 2022. Staff continues to have a successful working relationship with Richards, Watson, and Gershon as General Counsel to SVCE, and recommends continuing the partnership.

Compensation for the upcoming agreement for fiscal year 2022 – 2023 is to not exceed \$215,000 for the term of the agreement. This compensation cap matches the amended agreement amount from FY20-21 and is slightly under the amount from FY 21-22 (\$235,000), as current utilization is running under projections. While staff recognizes that consultation with RWG has increased over the past several years due to increasing program and contractual needs, staff and RWG believe that this slightly lower amount will still provide enough headroom to lessen the possibility of an amendment later in the fiscal year.

ANALYSIS & DISCUSSION

The scope of work for fiscal year 2022 – 2023 is included in Exhibit A to the Agreement with RWG (see Attachment 1) and includes:

- Attendance at the monthly SVCE Board of Directors meetings and any special meetings and workshops as required by the CEO or Chair of the Board.
- Brown Act, Conflict of Interest and Public Records Act advice and representation.
- Preparation or review of consultant and vendor contracts.
- Advice to the CEO and designated staff on administrative and operational matters.
- Research and advice on legal questions asked by the Board, CEO and designated staff.
- Advice and assistance on other legal matters as may be assigned by the CEO.

STRATEGIC PLAN

The recommendation supports staff in all areas of the Strategic Plan.

ALTERNATIVE

Staff is open to alternatives from the Board.

Agenda Item: 11**Agenda Date: 9/14/2022**

FISCAL IMPACT

The recommendation results in a fiscal impact of \$215,000 for Fiscal Year 2022-23. The recommended contract is \$20,000 less than the current agreement expiring on September 30, 2022.

ATTACHMENTS

1. Agreement with Richards, Watson & Gershon for FY22-23 legal services.

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
RICHARDS, WATSON & GERSHON
FOR
LEGAL SERVICES**

THIS AGREEMENT ("Agreement"), is entered into this 8th day of September, 2022, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and RICHARDS, WATSON & GERSHON, a professional corporation whose address is 44 Montgomery St., Suite 3800, San Francisco, CA 94104 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

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

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

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

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

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

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed two hundred and fifteen thousand and 00/100 dollars (\$215,000.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

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

5. **STANDARD OF CARE**

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

6. **INDEPENDENT PARTIES**

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

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

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

8. **NON-DISCRIMINATION**

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for

employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. **HOLD HARMLESS AND INDEMNIFICATION**

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

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

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

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

10. **INSURANCE**

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

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

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

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

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

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

11. **CONFLICT OF INTEREST**

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

12. **PROHIBITION AGAINST TRANSFERS**

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

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

13. **SUBCONTRACTOR APPROVAL**

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

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

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance

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

14. **REPORTS**

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

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

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

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

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

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

15. **RECORDS**

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

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer (“Authority Representative”) shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Richards, Watson & Gershon (Consultant Representative”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION AND DOCUMENTS**

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

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

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

D. Consultant agrees to comply with the confidentiality and data protection provisions set forth in Exhibit “E,” attached hereto and incorporated herein by this reference.

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

18. **NOTICES**

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

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

TO CONSULTANT:
Richard, Watson & Gershon
Attn: Trisha Ortiz
44 Montgomery St., Suite 3800
San Francisco, CA 94104

19. **TERMINATION**

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

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

20. **COMPLIANCE WITH LAWS**

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

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Authority that it has all licenses,

permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

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

22. **ADVERTISEMENT**

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

23. **WAIVER**

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

24. **INTEGRATED CONTRACT**

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

25. **AUTHORITY**

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

26. **INSERTED PROVISIONS**

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

27. **CAPTIONS AND TERMS**

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

28. **AUTHORITY'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

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

29. **EXHIBITS**

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

30. **FORCE MAJEURE**

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

31. **FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

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

32. **ATTORNEY FEES**

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

33. **SEVERABILITY**

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

34. **SUCCESSORS AND ASSIGNS**

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

of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

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

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

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

37. **DRAFTING PARTY**

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

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

RECOMMENDED FOR APPROVAL

Amrit Singh, Chief Financial Officer/Director of Administrative Services

CONSULTANT NAME
RICHARD, WATSON & GERSHON

By: _____
Name: _____
Title: _____
Date: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By: _____
Name: Girish Balachandran
Title: Chief Executive Officer
Date: _____

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

As General Counsel for SVCEA, Richards, Watson & Gershon shall provide the general legal services typically required by a joint powers authority in addition to those general legal services related more specifically to the operation of a community choice aggregation program as described below. These legal services shall include the following:

- Attendance at the monthly SVCEA Board of Directors (“Board”) meetings and any special meetings and workshops as requested by the CEO Or Chair of the Board.
- Brown Act, Conflict of Interest and Public Records Act advice and representation.
- Preparation or review of consultant and vendor contracts.
- Advice and preparation of documents related to personnel matters.
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters.
- Research and advice on legal questions asked by the Board, CEO and designated staff.
- Advice and assistance on other legal matters as may be assigned by the CEO.

Legal services will not include matters in which Richards, Watson & Gershon has a conflict of interest that precludes the law firm from representing SVCEA. General Counsel services also will not include energy contracts or regulatory matters before the California Public Utilities Commission (CPUC) that require specialized legal services in these areas of law.

Exhibit B
Schedule of Performance

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

Task	Begin	Complete
1. Legal Services	October 2022	September 2023

Exhibit C **Compensation**

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of two hundred and fifteen thousand dollars and no/100 (\$215,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

Rates

Personnel	Hourly
Shareholders	\$335/Hour
Associates	\$285/Hour
Paralegals	\$180/Hour

Invoices

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

Reimbursable Expenses

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

Additional Services

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

Exhibit D
Insurance Requirements and Proof of Insurance

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

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

Exhibit E
Confidentiality and Data Security Requirements

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Authority regarding customers of Authority (“Authority Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Authority Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Authority-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Authority Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Authority, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of their duties with respect to the Consultant program and who agree to be bound by the

nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Authority. Without limiting Consultant's obligation of confidentiality as further described herein, Consultant shall be responsible for establishing, maintaining, and providing a written description to Authority of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the Authority's Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect Data be less stringent than the safeguards used by Consultant for its own data. If the services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Consultant agrees and warrants that it is responsible for the security of "cardholder data" that Consultant possesses, stores, processes or transmits on behalf of the Authority, and for any impact on the security of Authority's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the services. No less than annually, Consultant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to Authority. The required audit shall be a SAS-70 (or successor standard) compliant audit, and Consultant shall provide the audit findings in the form of an SAS-70 Type II report.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that Consultant notifies Authority immediately upon receipt thereof to allow Authority to seek protective treatment for such Confidential Information.
6. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of the Authority's Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of the Data, Consultant shall, as applicable: (a) notify Authority as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Authority in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Authority; (c) in the case of Confidential Information, at Authority's sole

election, (i) notify the affected individuals who comprise the Confidential Information as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse Authority for any costs in notifying the affected individuals; (d) in the case of Confidential Information, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the Confidential Information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Consultant's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless Authority for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from Authority in connection with the occurrence; (g) be responsible for recreating lost Data in the manner and on the schedule set by Authority without charge to Authority; (h) provide to Authority a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at Authority's request, provide to Authority a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by Authority, which shall be executed by Consultant and may be relied upon by Authority as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Authority finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Authority shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Authority receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Authority shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or

prevent any actions by Authority directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Authority in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate the Authority to monitor or enforce the Consultant's compliance with the terms of this Agreement.

9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Authority's written request, and at Authority's option, Consultant will either return to Authority all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Authority with written certification that all such tangible Confidential Information of Authority has been destroyed.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Authority and/or Authority Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the Authority shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Authority, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Authority, its officers, employees, or agents from and against claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Authority requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Authority itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Authority. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.



Staff Report – Item 1m

Item 1m: Executive Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: George Tyson, Executive Committee Chair

Date: 9/14/2022

The Executive Committee met August 26, 2022 and received information on the Inflation Reduction Act, an update on SVCE's FY22-23 Strategic Focus Areas, a status update on SVCE's Integrated Resource Plan, and information on the GridShift EV Charging program.

Bena Chang, Sr. Government Affairs Manager, presented information on the Inflation Reduction Act and highlighted some of the programs included in the act, including those related to EV investments, building decarbonization investments, community funds, and other additional investments and policies.

CEO Girish Balachandran presented an update on the five Strategic Focus Areas, noting two previous employee related focus areas had been combined and an area was added to address the Inflation Reduction Act. The Executive Committee was supportive of these focus areas, which will be presented to the Board of Directors for consideration of approval.

Maren Wenzel, Senior Manager of Energy Policy and Regulatory Analysis, presented a status update on the Integrated Resource Plan (IRP) which included background, filing requirements, draft results and next steps. Senior Manager of Energy Policy and Regulatory Analysis Wenzel will be presenting a similar presentation to the Board of Directors.

Rebecca Fang, Senior Data Analyst, provided a presentation on SVCE's GridShift: EV Charging program, which allows users to set a "ready-by-time" to automate EV charging and save money and reduce emissions.

Materials from this meeting can be found on SVCE's website: [SVCE Executive Committee Meeting, August 26, 2022](#)

The next meeting of the Executive Committee will be September 23, 2022 at 10:00 a.m.; materials will be posted no later than 72 hours in advance of the meeting.

**Staff Report – Item 1n**

Item 1n: Finance and Administration Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Piano, Board Clerk/Executive Assistant

Date: 9/14/2022

No report as the Finance and Administration Committee has not met since 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 1o

Item 1o: Audit Committee Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Bryan Mekechuk, Audit Committee Chair

Date: 9/14/2022

The Audit Committee met on August 31, 2022 to review staff's process for selecting and recommending an external Financial Auditor, make a recommendation to the Board of Directors to select an audit firm, and receive an update on the IT Audit and security assessments.

Kevin Armstrong, Deputy Director of Administrative Services, presented the Audit Committee with background information on the Request for Proposals process to select an Audit firm. Deputy Director of Administrative Services Armstrong outlined the evaluation standards for the respondents and identified the two shortlisted firms. Staff proposed that the Audit Committee recommend that the Board of Directors select Pimenti & Brinker LLP as the financial auditor for SVCE's financial statements for the fiscal year 2022-23 with the option to extend for additional years not exceeding a total of five years. The Audit Committee discussed staff's recommendation and voted unanimously to support it. The agreement for Pimenti & Brinker LLP will be included on the consent calendar of the September 14, 2022 Board of Directors meeting for the Board's consideration.

Deputy Director of Administrative Services Armstrong provided an update on SVCE's IT Audit, and an overview of contracting for services of a Virtual Chief Information Security Officer (VCISO) and an IT Security assessment. Staff noted they would return in early 2023 with prioritized recommendations of any additional IT security measures to implement based on VCISO's assessment.

Materials from the August 31, 2022 Audit Committee meeting can be found here: [SVCE Audit Committee Meeting, August 31, 2022](#)

The next meeting of the Audit Committee is to be determined and is expected to occur in late September; materials will be posted no later than 72 hours prior to the meeting date.

**Staff Report – Item 1p**

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

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 9/14/2022

No report as the Legislative and Regulatory Response to Industry Transition 2022 Ad Hoc Committee has not met since June 14, 2022.

The next meeting of the Committee will be held in early October 2022 and will be scheduled based on member availability.

**Staff Report – Item 1q**

Item 1q: California Community Power Report

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Date: 9/14/2022

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, August 17, 2022.

Attached is a summary report from Interim General Manager Timothy Haines; materials from the August board meeting can be found here on the CC Power website: [CC Power Meeting, 8/17/22](#)

The next meeting of the board will be September 21, 2022 at 1:00 p.m.; meeting materials can be found on the CC Power website: <https://cacomunitypower.org/meetings/>

ATTACHMENTS:

CA Community Power Board Meeting Summary from Interim General Manager Timothy Haines, August 17, 2022

California Community Power

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

TO: CC Power Board of Directors and Alternates **DATE:** 8/17/2022
FROM: Tim Haines – Interim General Manager
SUBJECT: **Report on CC Power Special Board of Directors Meeting – August 17, 2022**

The CC Power Board of Directors held its regularly scheduled meeting on Wednesday, August 16, 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:

- **Consent Calendar** - The Board unanimously approved the following items:
 - Minutes of the Regular Board Meeting held on June 15, 2022.
 - Resolution 22-08-01 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
- **Resolution 22-08-02 Acceptance of Marin Clean Energy Withdrawal from California Community Power.** MCE provided CC Power with a notice of intent to withdraw from CC Power. The stated reasons are MCE has not participated in CC Power projects and has been successful contracting directly. MCE does note that it anticipates the pause is temporary and expects to rejoin CC Power in the future subject to market and technology needs. The remaining debts that MCE will pay are \$5,000.
- **Update from Strategic Business Plan ad hoc Committee.** Interim General Manager informed the Board that the ad hoc Committee is close to selecting a consultant with extensive experience with California public utilities at the Board and executive management level. Mr. Haines explained how the plan will reflect the Board's ideas for future projects, organization, and leadership.
- **Open Discussion on Inflation Reduction Act and Potential Impacts.** The Board discussed the potential significant opportunities that the IRA creates for CC Power and its members. The Chair asked the Interim GM to work with the Budget ad hoc committee and return to the Board with a budget plan to staff up CC Power at a future Board meeting. This will compliment the Strategic Business Plan.
- **General Manager's Report**
 - Follow-up on CC Power Discussion with California Independent System Operator. The Interim GM informed the Board that the CC Power had initiated outreach with the CAISO. The report discussed the next steps in the education and engagement process.

A Joint Powers Agency whose members are:

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

- Resolution 22-08-03 Approval of 2022 Budget Amendment and Cash Calls. The Interim General Manager proposed, and the Board adopted the 2022 budget amendment and the associated cash calls to members.



Staff Report – Item 2

Item 2: CEO Report

To: Silicon Valley Clean Energy Board of Directors

Prepared by: Girish Balachandran, CEO

Date: 9/14/2022

REPORT

SVCE Staff Update

Juliette Pascual joined SVCE September 8, 2022 as a Community Outreach Fellow through Climate Corps. Juliette graduated from UC Berkeley with a B. S. in Conservation & Resource Studies and a minor in Creative Writing in 2019. After graduating, she joined Peace Corps Philippines as an English education volunteer in secondary schools. Before joining this fellowship, Juliette worked with an urban forestry nonprofit in San Jose in outreach and community development.

Alhad Dighe joined SVCE September 8, 2022 as a Fleet Electrification Fellow through Climate Corps. Alhad graduated from UC Santa Cruz with a B.S. in Environmental Studies and Biology, and a minor in Sustainability Studies. After working in Climate Tech after college, Alhad served as a CivicSpark Fellow at the Bay Area Regional Collaborative, working on Climate Adaptation Policy, Sea Level Rise resilience, and decarbonization efforts.

Personnel Officer Update

After an intensive search, SVCE has selected a candidate for the role of Energy Services and Community Relations Director, who will be publicly announced shortly. SVCE has also just recently onboarded two new Climate Corps fellows, Juliette Pascual and Alhad Dighe. Juliette will be a Community Outreach fellow with the Marketing and Communications team, and Alhad will be a Fleet Electrification Fellow with the Decarbonization team.

In addition, SVCE continues to recruit for several open positions, including a Senior Regulatory Analyst, Human Resources Generalist, and Decarbonization Data Engineer. Staff has begun internal discussions around implementing the proposed employee benefit enhancements, pending board approval of the FY22-23 budget. Finally, staff is working to update the recruitment policy to ensure that SVCE remains competitive within the hiring market and will share that updated policy with the Board once complete.

Second Prepay Project

SVCE, along with EBCE, spent over two years executing its first Prepay with Morgan Stanley. This first transaction was for 50 MW (~10% of SVCE's load), and saves SVCE about 10% of the energy cost of the initial transaction assigned into the Prepay. Power delivery under the Prepay began 1/1/2022, and we are successfully settling each month and realizing the savings.

SVCE would like to leverage the two years of work put into this structure by replicating it for another Prepay. The details of this second Prepay are still being worked out, but it could be another 10% of the load. After this, there will be room for additional Prepays, but we will likely engage in another RFP to reassess our current structure and test the market. We will also first need to assess IRA's economics of owning generation assets, likely through CC Power. Details on the development of this second Prepay will be discussed with the Finance and Administration Committee at their next meeting.

Agenda Item: 2**Agenda Date: 9/14/2022**

CEO Agreements Executed

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

- 1)** Make Media Studios, Agreement: Photography and Videography Services, not to exceed \$105,000, 10/1/22 – 9/30/24
- 2)** Joseph F. Wiedman, Agreement: Legal Services, not to exceed \$12,000
- 3)** SMUD, Amendment: FutureFit Fundamentals Contractor Rebate Program Support, not to exceed \$195,600
- 4)** Keyes & Fox, Amendment: Legal representation, not to exceed \$75,000
- 5)** Creative F5, Agreement: Graphic and web design services, not to exceed \$105,000, 10/1/22 – 9/30/24
- 6)** Ion Translations, LLC, Agreement: Translation Services, not to exceed \$90,000, 10/1/22 – 9/30/24
- 7)** Community Resilience Program – City of Sunnyvale, Agreement: Capital Project Grant, not to exceed \$327,680
- 8)** ZappyRide, Amendment: Master Subscription Agreement, not to exceed \$44,000
- 9)** Buro Happold, Scope of Work: Energy Resilience Planning, Analysis, and Support, not to exceed \$52,339
- 10)** Community Resilience Program – City of Morgan Hill: Capital Project Grant, not to exceed \$209,003
- 11)** Flynn Resource Consultants Inc., Agreement: General Consulting Services, not to exceed \$60,000, 9/1/22 – 9/30/25

CEO Power Supply Agreements Executed

Counterparty Name	Execution/Effective Date	Transaction Type	Product	Start Date	End Date	Notional Value
City of Riverside	7/19/2022	Sale	Import Allocation Rights	1/1/2023	12/31/2023	\$266,580.00
Peninsula Clean Energy	7/26/2022	Sale	Resource Adequacy	11/1/2022	11/30/2022	\$3,000.00
East Bay Community Energy	7/19/2022	Purchase	Resource Adequacy	10/1/2022	12/31/2022	\$44,500.00
San Diego Community Power	8/16/2022	Sale	Import Allocation Rights	10/1/2022	10/31/2022	\$18,000.00
City of Vernon	8/5/2022	Sale	Resource Adequacy	11/1/2022	11/30/2022	\$11,000.00
City of Riverside	8/22/2022	Sale	Resource Adequacy	11/1/2022	11/30/2022	\$30,000.00
High Desert Power, LLC	8/18/2022	Purchase	Resource Adequacy	1/1/2024	12/31/2025	\$16,920,000.00
Exelon	8/9/2022	Purchase	Hedge Energy	4/1/2023	12/31/2024	\$23,373,726.00
PG&E	7/25/2022	Purchase	Renewable Energy PCC-1	1/1/2023	12/31/2032	\$119,470,561.56 (Estimated)

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, August 17th, report included on the Consent Calendar
- Participated in California Community Choice Financing Authority Board of Directors Special Meeting, August 26, 2022
- Welcome remarks, Silicon Valley Business Journal's Business of Climate Change Series – Electrifying Silicon Valley

ATTACHMENTS

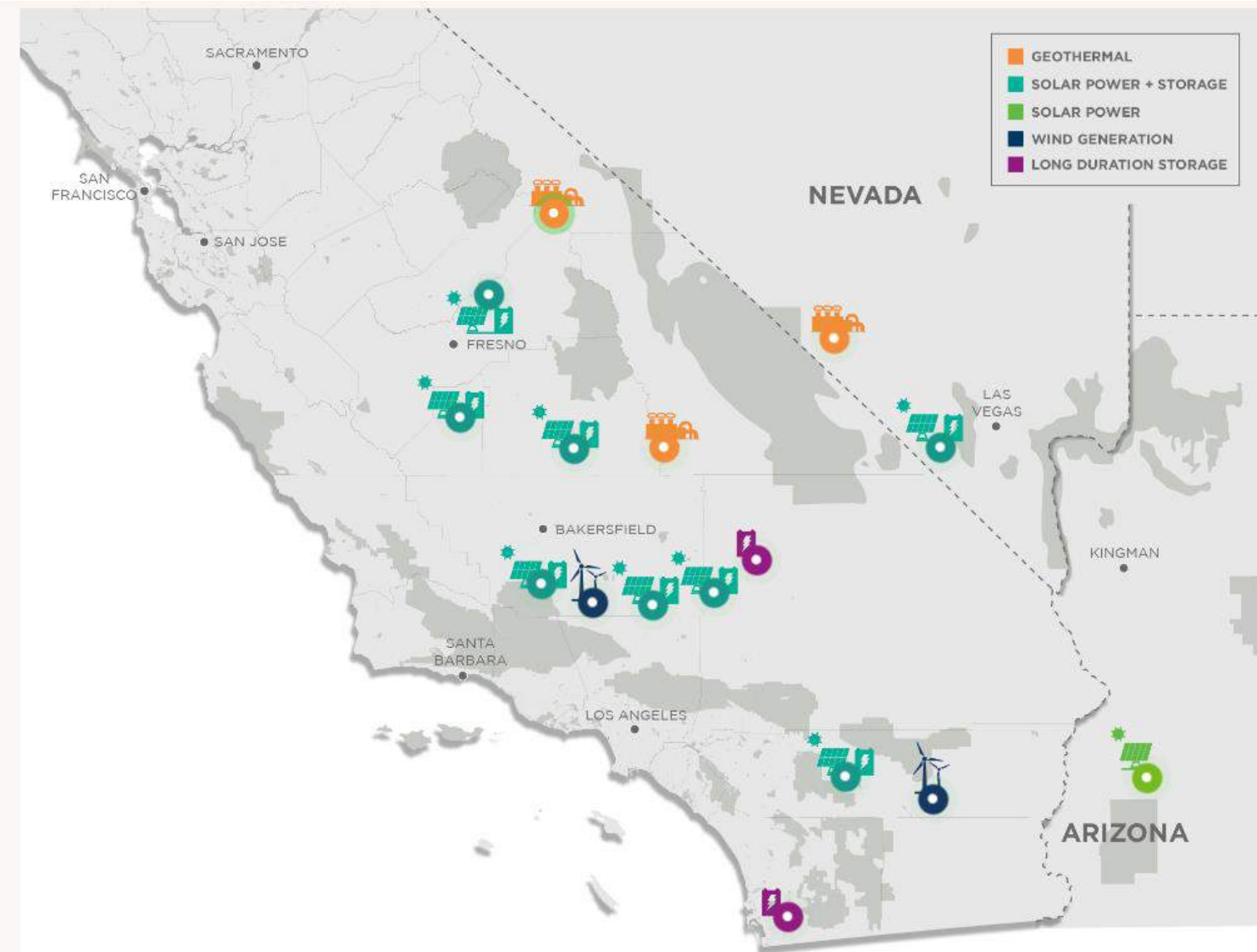
1. Clean Power Update, September 2022
2. Decarb Programs & Policy Update, September 2022
3. Energy Services & Community Relations Update, September 2022
4. Legislative and Regulatory Update, September 2022
5. Agenda Look Ahead, September 2022 – January 2023
6. Board Action Requested, September 2022 Update

CEO Report Clean Power Update

SVCE Board Meeting
September 14, 2022



Clean Long-term Power Agreements



- \$1.9B+ in commitments
- 16 PPAs signed
 - 13 new build projects
- 676 MW of Renewable Power
- 151 MW lithium-ion storage paired with 445 MW of Solar PV
- 29 MW of Long-duration storage

4 Projects now delivering to SVCE meeting ~20% energy needs:

- COSO geothermal - January 2022
- Slate Solar + Storage – January 2022
- Casa Diablo geothermal – September 2022
- Mountain View wind – July 2022



SVCE Long-term Clean Energy Contracts

	Seller	Project Name	Technology	Generation MW	Storage MW	Approximate % of Annual load in 2025	Term (years)	Lifetime Not to Exceed Authority (MM\$)	SVCE Board Approv al	Status
1	Goldman Sachs	Slate	Solar + Storage	93.0	46.5	6.7%	17	\$198	Oct-18	on-line
2	Ormat	Casa Diablo	Geothermal	7.0		1.4%	10	\$43	Feb-20	on-line
3	Atlantica	Coso	Geothermal	43.8		9.6%	15	\$331	Mar-20	on-line
4	Leeward	Rabbitbrush	Solar + Storage	40.0	8	3.0%	15	\$64	Apr-20	construction
5	NextEra	Yellow Pine	Solar + Storage	50.0	26	4.1%	20	\$128	May-20	construction
6	8 Minute Energy	Aratina	Solar + Storage	80.0	20	6.6%	20	\$174	Jun-20	Pre-construction
7	174 Power Global	Atlas	Solar	50.0	0	3.8%	10	\$27	Jan-21	Pre-construction
8	SB Energy	Angela	Solar + Storage	20.0	10	1.4%	15	\$35	Mar-21	Pre-construction
9	AES	Mountain View	Wind	62.5	15.625	3%	20	\$128	Apr-21	on-line
10	Origis	San Luis West	Solar + Storage	33.5		4%	15	\$74	Apr-21	Pre-construction
11	Clearway	Victory Pass	Solar + Storage	100.0	25	8%	15	\$149	May-21	Pre-construction
12	Terra-Gen	Cameron Crest	Wind	77.7		5%	15	\$150	May-21	existing
13	LS Power	Tumbleweed	Long Duration Storage		14.6	n/a	15	\$100	Feb-22	Pre-construction
14	Onward	Goal Line	Long Duration Storage		14.2	n/a	15	\$100	Mar-22	Pre-construction
15	Ormat	Geothermal Portfolio	Geothermal	16.75		3.3%	20	\$256	Jun-22	Pre-construction
16	OME	Fish Lake	Geothermal	1.82		0.4%	20	\$30	Jun-22	Pre-construction



Clean Energy Resources On-line Progress

2022 – Q3

- Casa Diablo Geothermal – **achieved COD in mid-July 2022**
- Mountain View Wind – **achieved COD in late-July 2022**
- Rabbitbrush Solar + Storage – **delivering test energy**

2022 – Q4

- Atlas Solar – **Pre-Construction - delayed**

2023 – Q1

- Cameron Crest Wind – **Existing project**

2023 – Q2, Q3

- Yellow Pine Solar + Storage – **Construction mode - delayed**
- Angela Solar + Storage – **Pre-construction - delayed**
- Aratina Solar + Storage – **Pre-construction - delayed**

2023 – Q3, Q4

- Victory Pass Solar + Storage – **Pre-construction - delayed**
- San Luis West Solar + Storage – **Pre-construction - delayed**

2024+

- FCR: Ormat and Fish Lake – **Pre-construction**
- LDS: Goal Line and Tumbleweed – **Pre-construction**



Project Construction Updates



Rabbitbrush Solar + Storage 40 MW
COD October 2022

Yellow Pine Solar + Storage 50 MW
COD June 2023



THANK YOU!



DECARBONIZATION PROGRAMS UPDATE

AUGUST HIGHLIGHTS



Applications Open for Priority Zone DC Fast Charging (DCFC) 2.0 Program

SVCE has opened the application window for incentives of up to \$50,000 per DC fast charger installed in high priority zones near dense areas of multifamily housing. The goal of this program is to accelerate electric vehicle adoption by residents of multifamily developments in SVCE territory who may otherwise lack access to on-site EV charging at home. Applications will be evaluated, and best-fit projects will be selected for funding. The application window is open now open through November 15, 2022.



GridShift: EV Charging App Refresh

The GridShift EV Charging app, powered by ev.energy, allows SVCE's residential customers to automate their electric vehicle (EV) charging, while saving money and reducing emissions. SVCE and ev.energy released a refresh of the GridShift: EV Charging app on August 1, which includes new features such as solar-powered charging, smarter scheduling, and an improved user interface. SVCE ran a promotional campaign providing \$50 sign-up bonus per user, which helped to increase the number of users from 400 in July to 580 in August.



Community Decarbonization Programs Launch

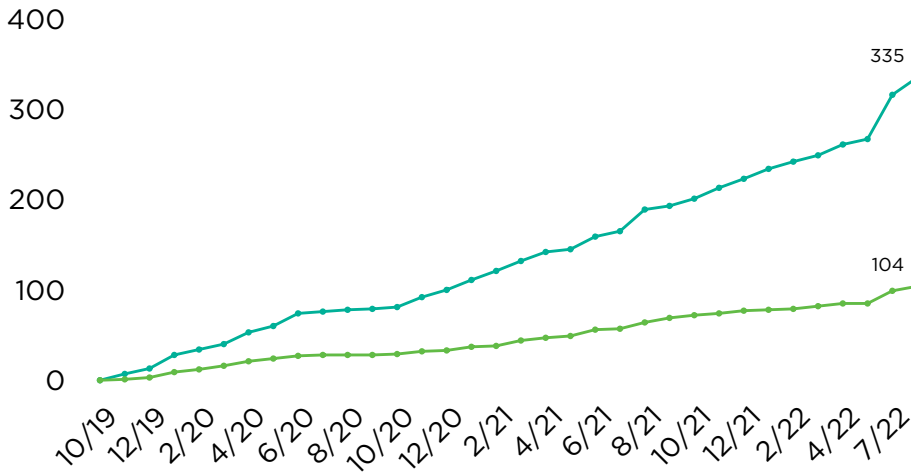
Applications for the Community Decarbonization Demonstration Grants program and Community Decarbonization Engagement Grants programs, approved by the Board in June, will be open in September. Both programs promote the practicality and feasibility of decarbonization practices. The Demonstration Grants, totaling \$1.2 million, are designed to assist local agencies and organizations in making capital investments in decarbonization technologies that the public can see and experience. The Engagement Grants, totaling \$350,000, will provide local agencies with resources to engage their communities on a variety of decarbonization topics. Applications for both programs will be due in October with award announcements scheduled for December.

ONGOING METRICS

AUGUST 2022

Heat Pump Water Heater

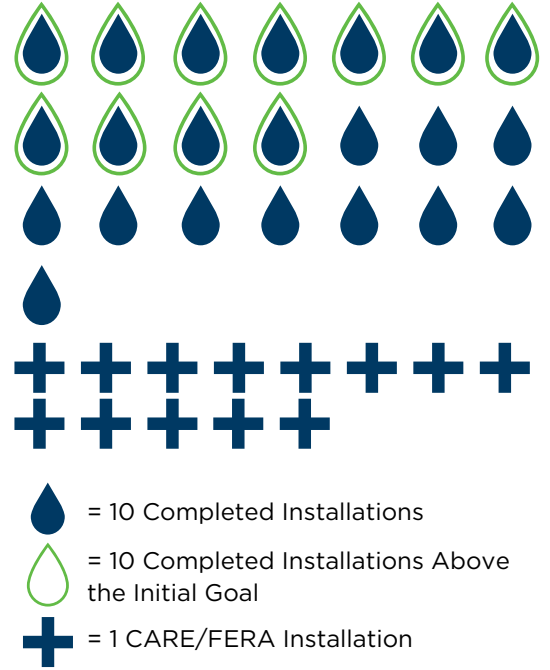
Provide incentives for electric heat pump water heaters and service panel upgrades to residents using gas or electric resistance heaters



- Cumulative HPWH Installations
- Cumulative Service Panel Upgrades

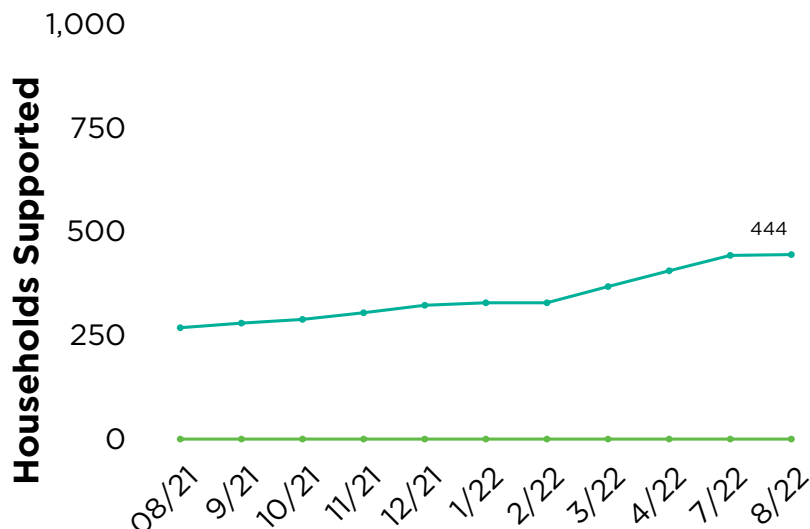
Funding: \$1.15M

Goal: 220 HPWH by 2022



Lights On Silicon Valley

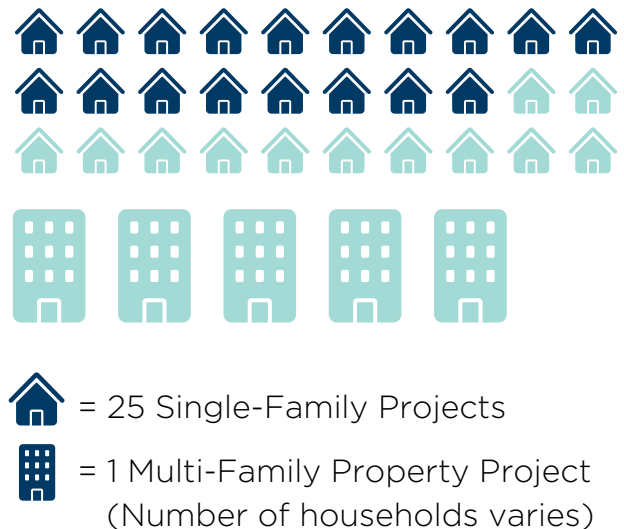
Provide incentives for enrolling solar and battery systems in the SVCE grid services program



- Single-Family
- Multi-Family

Funding: ≤ \$7.4M

Goal: 750 Single-Family + 5 Multi-Family Projects Completed by 2023

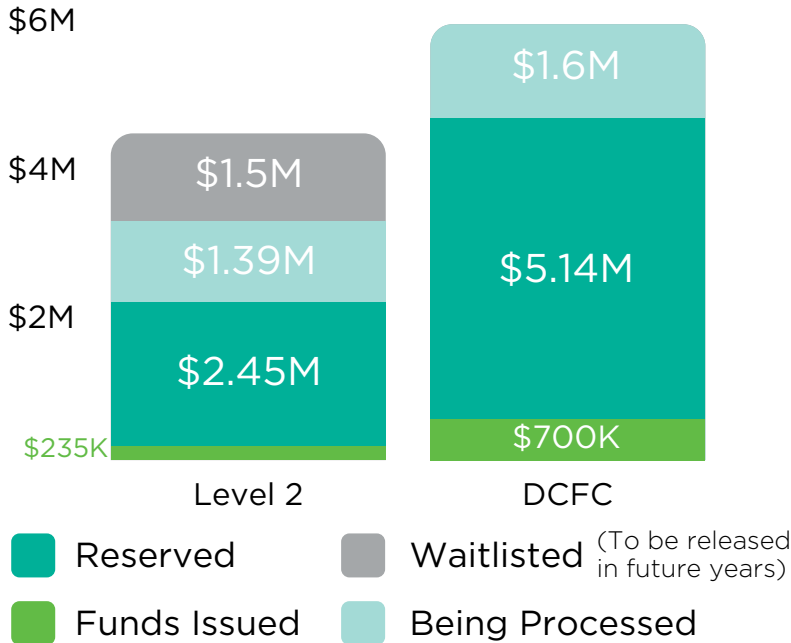


ONGOING METRICS

AUGUST 2022

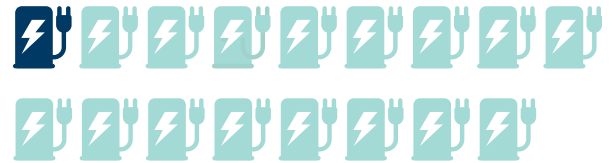
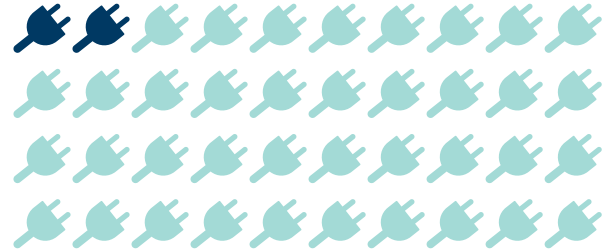
CALeVIP

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



Funding: \$11.58M

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

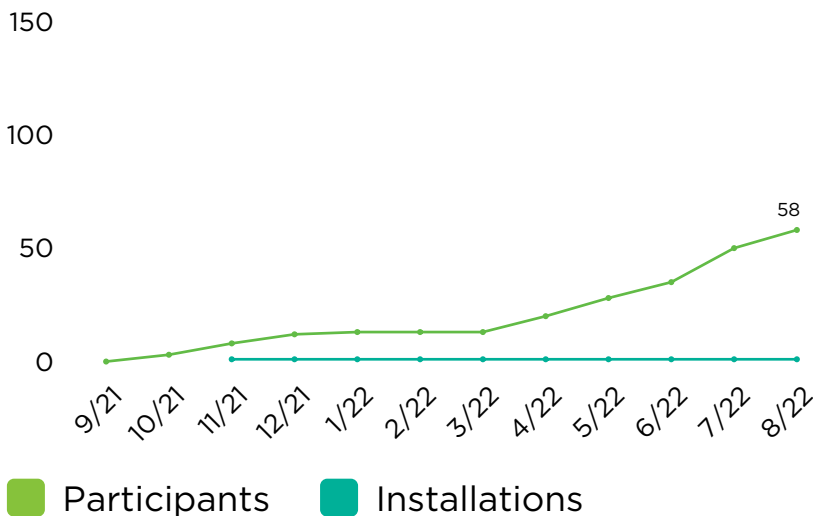


🔌 = 25 Level 2 Installations

⚡ = 5 DCFC Installations

FutureFit Fundamentals

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



Funding: \$1.5M

Goal: 150 Participants Complete the Course (Phase 1)



🎓 = 5 Participants Complete Course

PROGRAMS AT A GLANCE

AUGUST 2022

[Click for More Information](#)

● Active

● In Development

● Complete

POWER SUPPLY	● C&I Clean Power Offerings
BUILT ENVIRONMENT	● FutureFit Fundamentals ● FutureFit Heat Pump Water Heater ● Permit Simplification Effort ● Resilience at Community Facilities ● Medical Baseline Battery Program ● CRCR Bill Relief ● Reach Codes ● All-Electric Showcase Awards ● Building Decarb Joint Action Plan ● Accessible Financing ● Feasibility Assessment - Natural Gas Phase Out By 2045 ● FutureFit Homes & Buildings ● Local Policy to Decarbonize Existing Buildings ● Regional Coordination
MOBILITY	● CA Electric Vehicle Infrastructure Project (CALeVIP) ● MUD Technical Assistance & Incentives ● Priority Zone DCFC ● SV Transportation Electrification Clearinghouse (SVTEC) ● EV Infrastructure Strategy & Plan ● Regional Recognition ● Fleet Electrification Grants
GRID INTEGRATION	● GridShift EV Charging ● Lights On Silicon Valley ● Other Virtual Power Plant
EDUCATION & OUTREACH	● Customer Resource Center (eHub) ● Data Hive ● Community Engagement Grants
INNOVATION	● Innovation Onramp Pilots ● Innovation Partners



1. Outreach Events & Sponsorships

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

Date	Time	Description	Location
September 17	10:00 AM – 3:00 PM	Veggie Fest (Regional Event) - <i>sponsorship & Tabling</i>	Discovery Meadow Park, San Jose
September 17	10– 6 PM	Kiwanis Club of Los Gatos Art & Wine Festival: Fiesta de Artes – <i>sponsorship & tabling</i>	Los Gatos Civic Center Lawn
September 24	10 AM – 4 PM	Silicon Valley Green Home Tour – <i>branding sponsorship</i>	8 homes in SVCE territory
September 24	1:00 - 4:00 PM	Assemblymember Berman’s Children and Families Health and Wellness Fair – <i>tabling</i>	500 Toft St, Mountain View
September 24	10 AM – 6 PM	Silicon Valley Fall Festival- <i>sponsorship and tabling</i>	Memorial Park, Cupertino
September 30	6:00 - 9:00 PM	Sierra Club Regional Guardians of Nature – <i>sponsorship</i>	Mitchell Park Community Center, Palo Alto

2. Customer Participation

	Participation Rate	Overall Participation Rate
Residential	96.43%	96.44%
Commercial	96.60%	

3. Customer Credit Updates

CARE and FERA Rate Relief Bill

- SVCE began crediting customer bills in April, and as of August 29, 2022, has applied over 142,000 bill credits of \$12.50, totaling \$1.782M. These credits will continue monthly for income-qualified CARE and FERA customers through November 2022.

4. Member Agency Working Group June Update

The recent MAWVG meeting was held virtually on August 26, 2022 and was attended by 12 different agencies and organizations with a total of 24 participants.

The following agenda items were presented and discussed:

- Inflation Reduction Act (IRA) Update
- BlocPower & Existing Building Decarb
- External Grant Opportunities & Resources/New SVCE Grants
- GridShift: Electric Vehicle App Revamp
- Reach Code Update
- Clean Air Day

5. Media

- [San Mateo moving to all-electric future](#), *San Mateo Daily Journal*, 08-29-22
- [CAISO's First Geothermal Plant in 30 Years Comes Online](#), *POWER Magazine*, 08-25-22
- [Taking Part in the Fight Against Climate Change](#), *American Infrastructure*, 08-11-22

AMERICAN
INFRASTRUCTURE
Informing Municipal Management Professionals

By PENINSULA PUBLISHING
BUSINESS MEDIA FOR U.S. BUILDING PROFESSIONALS

HOME MUNICIPAL NEWS AI WEEKLY FEATURES EVENTS MUNICIPAL MART MAGAZINE



City Official's Message In This Issue Infrastructure New This Week Newsletter

Taking Part in the Fight Against Climate Change

The Smart City Infrastructure Program for Milpitas

By Rich Tran

THE DAILY JOURNAL

San Mateo moving to all-electric future

Officials to discuss ways to eliminate natural gas in all of homes by 2030

Doris Driscoll Daily Journal staff 7 hrs ago 0



SVCE Legislative and Regulatory Update

September 14, 2022



Policy Updates

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)

Legislative Update:

1. Federal Inflation Reduction Act
2. State Budget Update
3. Bill Position Matrix
4. Legislative Timeline



Regulatory Update



Key Regulatory Proceedings

Proceeding	Purpose	Status
Resource Adequacy Reform	Update resource adequacy rules and accounting methodology to ensure system reliability. Key proposals include 24-slice and 2-slice methods.	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.
Integrated Resource Plan (IRP)	Ensure long-term system planning is on track to meet state's climate and reliability goals.	The CPUC has released the required materials to develop internal portfolios. SVCE has begun developing and modeling scenarios.
Provider of Last Resort (POLR)	To pro-actively develop rules and regulations for a POLR should a CCA fail.	Initial workshops and comments have been filed in the proceeding. Expected next step will be a staff proposal for Phase 1.



Key Regulatory Proceedings

Proceeding	Purpose	Status
Net Energy Metering ("NEM 3.0")	Update compensation structure for rooftop solar owners.	On May 9, the CPUC reopened the NEM Successor Tariff proceeding ("NEM 3.0"), 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. The ruling makes no changes to the PD and SVCE's position on the NEM 3.0 PD remains unchanged. In mid-August the CPUC extended the statutory deadline for the proceeding to August 27, 2023. While the CPUC is unlikely to use the full extension, the new PD is unexpected in the imminent future. 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.



Legislative Update



Federal Inflation Reduction Act – Historic Investments in Decarbonization and Clean Energy

Largest single federal investment in clean energy. Carrot approach to decarbonizing the economy.

Clean Energy:

- Extends Production Tax Credit and Investment Tax Credit for renewable energy projects. Expands Tax Credits to new technologies like stand-alone storage and microgrid controllers.
- Tax-exempt entities, like CCAs, can access tax credits.

Decarbonization Programs:

- Supercharges building and transportation electrification efforts through consumer rebates and tax credits.



Clean Energy and Domestic Production

Stability in tax credits reduces market uncertainty.

Program	Amount	Notes
Clean Energy Tax Credits	\$139 billion	Extends Production Tax Credits for electricity from renewable resources including solar, wind, and geothermal. Extends and expands Investment Tax Credits for solar, wind to cover storage, biogas, microgrids. Additional tax credits for projects that use prevailing wage, domestic parts/materials, and for those located in brownfield/coal/gas communities. Technology neutral after 2024.
Clean Energy Manufacturing	\$60 billion	Includes \$30 billion for manufacturing solar panels, wind turbines, batteries, and critical materials. \$10 billion for clean tech manufacturing facilities.
EV Manufacturing Loans	\$3 billion	Loans for advanced technology vehicle manufacturing.
EV Manufacturing Grants	\$2 billion	Grants to convert existing vehicle manufacturing facilities to EV facilities.



EV Charging Station Investments in Infrastructure Investment and Jobs Act

Program	Amount	Notes
Clean Vehicles – includes EVs and hydrogen fuel vehicles	\$12 billion	Tax credits/point-of-sale rebates of up to \$7,500 for new vehicles and \$4,500 for used vehicles (depending on domestic battery and critical minerals). \$150k income limit, limit of \$80k sale price for vans, trucks, SUVs, \$55k all other vehicles. Commercial clean vehicle tax credits of \$7,500 for light-duty and \$40,000 for heavy-duty.



Building Decarbonization Investments

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

Program	Amount	Notes
Building Decarbonization – High-efficiency Electric Home Rebate Program	\$4.275 billion	Grants to states: \$8,000 heat pump cooling/heating, \$1,750 heat pump water heaters, \$840 heat-pump clothes dryer/electric stoves, \$4,000 electric panel upgrades, \$2,500 electrical wiring. Max \$14k credit per homeowner, 150% AMI income limit.
HOMES Rebate Program	\$4.3 billion	Grants to states: \$2,000-\$4,000 depending on energy savings (limit of 30% of project costs). \$4,000-\$8,000 for low-income (limit of 80% of project costs). Applies to multifamily.
Home Energy Efficiency Contractor Training Grants	\$200 million	Grants to states: contractor training for residential energy efficiency and electrification installation.
Zero Building Energy Code Adoption	\$1 billion	Grants to states for local governments to adopt building codes that meet or exceed 2021 International Conservation Code.



Community Funds

Funds to non-profits, local governments, and schools in low-income and disadvantaged communities.

Program	Amount	Notes
Environmental and Climate Justice Block Grants	\$3 billion	Grants to nonprofits that partner with local govt's or higher ed institutions for zero emission technologies and infrastructure to address climate resilience and reduce indoor air pollution. Funds can be used on outreach/engagement and workforce development.
Climate Pollution Reduction Grants	\$5 billion	Funds to low-income and disadvantaged communities to plan and implement programs, policies, and projects to reduce GHG pollution.
Air Pollution in Schools	\$50 million	Grants to monitor and reduce air pollution and GHG emissions at schools in low-income and disadvantaged communities. Includes school environmental quality plans with standards for school building, design, and mitigation funding for ongoing air pollution hazards.



Federal Inflation Reduction Act – Additional Investments

Funding for fed procurement, environmental justice, and domestic manufacturing.

Program	Amount	Notes
Federal Clean Technology Procurement	\$9 billion	Includes \$3 billion for Postal Service to purchase ZEVs.
Green Bank	\$27 billion	Clean Energy Technology Accelerator to support deployment of emissions-reduction technology in disadvantaged communities.
Defense Production Act	\$500 million	Supports President's Defense Production Act Executive Order for production of domestic heat pumps and solar.



Federal Inflation Reduction Act – Additional Policies

Methane Emissions Reduction and “all of the above” strategy.

Program	Amount	Notes
Methane Emissions Reduction Program	\$850 million	Fee on excess methane emissions paired with grants to industry to monitor and reduce methane. Charge for methane begins at \$900 per ton in 2024 and increased to \$1,500 per ton in 2026.
Public Land/Water Renewable Energy tied to Gas and Oil Production	N/A	Requires oil and gas lease sales each year before any utility-scale renewable energy projects (including offshore wind) on public lands or waters.



State Budget – Governor and Legislature agree on additional investments

Distributed \$22 billion in climate funding, which includes additional energy/decarb funding

Program	Amount	Notes
Diablo Canyon Nuclear Power Plant	\$1.4 billion	Loan to PG&E for extending operations at Diablo Canyon to 2035.
Equitable Building Decarb Program	\$162 million	New CEC direct-install program for wiring/panel upgrades, heat pumps, energy efficiency projects for mod/low-income. Additional \$800 million in future years. \$50 million to TECH program.
Offshore Wind	\$45 million	For offshore wind infrastructure



Additional State Budget Investments

Funding for EVs and Community Resiliency Centers

Program	Amount	Notes
Electric Vehicles	\$430 million	Includes \$20 million for equitable at-home charging program for renters, increases equity transportation grants to \$381 for Clean Cars 4 All, battery replacement
Community Resiliency Centers	\$110 million	Funding for community resiliency centers. Additional \$85 million in future years.



SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status	Impact to SVCE
AB 1814 (Grayson)	Adds CCAs as eligible program administrators for CPUC's Transportation Electrification Program	Support (Climate Mitigation/Clean Energy Funding)	Died	
SB 833 (Dodd)	Creates grant program for local government community resiliency plans and to expedite permitting for distributed energy resources.	Support (Climate Mitigation/Clean Energy Funding)	Died	
SB 1112 (Becker)	Ensures notification to tenants and property owners for tariff on bill decarbonization charges.	Support (Fuel Switching and Electrification)	Governor's Desk	
SB 1100 (Cortese)	Establishes a process for removing individuals who are willfully interrupting meetings	Support (per Board direction)	Signed by Governor	
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)	Died, legislative vehicle now AB 2449 (Rubio)	



SVCE Legislative Positions Matrix

Bill	Summary	SVCE Position (Legislative Program Policy)	Status
AB 2061 (Ting)	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.	Support (Fuel Switching and Electrification)	Governor's Desk
SB 1158 (Becker)	Requires load serving entities to report hourly electricity purchases. Requires the CPUC to assess whether reporting demonstrates "adequate progress" towards GHG targets.	Support (Climate Mitigation and Clean Energy Technologies)	Governor's Desk



Key State Legislative Milestones

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

SEPTEMBER 2022	OCTOBER 2022	NOVEMBER 2022	DECEMBER 2022	JANUARY 2023
Board of Directors, September 14:	Board of Directors, October 12: Consent: Minutes August 2022 Treasurer Report Committee Reports Regular Calendar: Investment Policy SVCE Workplan IRP Approval Reach Code Update FutureFit Fundamentals Program Presentation	Board of Directors, November 9: Consent: Minutes September 2022 Treasurer Report Committee Reports Regular Calendar: Reach Code Update Community Energy Resilience Program presentation	Board of Directors, December 14: Consent: Minutes October 2022 Treasurer Report Committee Reports Regular Calendar: Rate Change Reach Code Update	Board of Directors, January 11: Consent: Minutes November 2022 Treasurer Report Committee Reports Regular Calendar: Appointment of Chair and Vice Chair Appointment of Executive Committee Reach Code Update
Executive Committee, September 23: Program Snapshots - FutureFit Fundamentals	Executive Committee, October 28, 11am : Program Snapshots Request for Recommendation to the SVCE Board of Directors for approval of tariffed on bill pilot program	Executive Committee, Date TBD: Program Snapshots: FutureFit Homes and Buildings	Executive Committee, Date TBD: Program Snapshots	Executive Committee, Date TBD: Program Snapshots
Audit Committee - TBD Audit Kick-off				
	Finance & Admin Committee - TBD			

Board Action Requested
September 2022 Update

Item 2
Attachment 6

Date	Meeting Where Requested	Request/Comment	Comments	Department
6/10/2022	Special Meeting	Info on frequency and voltage changes required for reliability – future deeper dive (Vice Chair Tyson)	Staff will consider this topic for future board member information sessions	General
6/10/2022	Special Meeting	Information request on small modular reactors (SMRs) (Dir. Chua)	Staff is preparing information for Dir. Chua on	General
5/12/2021	Board Meeting	Training request on how to manage a potential new working environment and check-in 6 months to 1 yr after implementation of a possible hybrid work structure	Staff will keep this in mind as the hybrid work structure is developed	Executive
3/3/2021	Audit Committee	SVCE liability insurance - is it a sufficient amount? (Alt. Dir. Wei)	Staff is planning an overall assessment and review of SVCE's insurance portfolio in fall 2022	Finance & Admin
8/28/2020	Executive Committee	Policy check regarding duration of contracts before they go back out to bid (Dir. Gibbons)	Purchasing Policy does not currently have a formal duration limit, though Staff adheres to a five-year solicitation timeline in practice	Finance & Admin

Staff Report – Item 3

Item 3: Update on Strategic Plan and Adopt FY23 SVCE Strategic Focus Areas

From: Girish Balachandran, CEO

Prepared by: Andrea Pizano, Board Clerk/Executive Assistant

Date: 9/14/2022

RECOMMENDATION

Staff requests that the Board of Directors receive an update on the FY23 Strategic Plan and adopt the five proposed FY23 SVCE Strategic Focus Areas:

24x7 Clean Energy
Customer Base & Electrification
Inflation Reduction Act
Finance
Employee

EXECUTIVE COMMITTEE RECOMMENDATION

The Executive Committee met August 26, 2022 and received a presentation on the proposed FY23 SVCE Strategic Focus Areas. The committee was in consensus to support the focus areas presented for the Board's consideration.

BACKGROUND

The FY23 Strategic Focus Areas were previously introduced at the May Executive Committee and June Board of Directors meetings, and included in the June Executive Committee and August Board of Directors meetings as part of the FY23 preliminary operating budget. They were most recently presented at the August 26, 2022 Executive Committee meeting.

ANALYSIS & DISCUSSION

Adopting Strategic Focus Areas is useful for the Board of Directors and CEO to establish priorities. Staff is requesting the Board of Directors adopt the following five focus areas (in no particular order):

24x7 Clean Energy: Explore 24x7 clean energy delivery at scale, to improve on the current 100% clean energy goal

Customer Base & Electrification: Grow Customer Base & Offerings, Emphasize Electrification

Inflation Reduction Act: Accelerate deployment of currently adopted decarbonization strategies and goals; evaluate and capitalize on the Inflation Reduction Act & California state budget climate funds to further improve programs

Finance: Leverage Balance Sheet for Structured Financing and use financing solutions to increase impact of decarbonization program offerings, especially to lower-income customers

Employee: Be the Employer of Choice, and Increase Staffing

Adopting these focus areas will prioritize and drive workplan development.

Agenda Item: 3**Agenda Date: 9/14/2022**

STRATEGIC PLAN

The focus areas support the overall SVCE Strategic Plan.

FISCAL IMPACT

N/A

ALTERNATIVE

Staff is open to suggestions from the Board of Directors on amendments to the proposed focus areas.

ATTACHMENTS

1. This presentation is posted to the SVCE website.

Staff Report – Item 4

Item 4: Adopt the FY 2022-23 Recommended Operating Budget and Updated Reserves Policy

From: Girish Balachandran, CEO

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

Date: 9/14/2022

RECOMMENDATION

Staff recommends that the Board of Directors approve the fiscal year (FY) 2022-23¹ Recommended Operating Budget that projects depositing \$115.4 million into the reserves and the updated Reserves Policy that revises the reserve target thresholds.

COMMITTEE & BOARD REVIEWS

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 made a few suggestions, including ensuring 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.

At the August 10th, 2022, Board meeting, staff presented the Proposed FY 2022-23 budget and the updated Reserves policy. The Board discussed the proposed budget, supported the budget as shown, and did not propose any changes.

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 \$115.4 million is an increase of \$53.8 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 most significant contributor to this revenue increase is the favorable SVCE margins based on a reduced PCIA rate. SVCE margins relative to the current rates that went into effect in March of 2022, with a slight adjustment in June 2022, are about 10 percent higher. However, compared to the average margin over the FY 2021-22 period, the current margin is about 26 percent higher.

¹ The fiscal year 2022-23 starts on October 1, 2022 and ends on September 30, 2023.

Agenda Item: 4**Agenda Date: 9/14/2022**

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 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 ~20 percent². 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 NewGen model's accuracy, staff, working with the NewGen consultant, 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 a ~10 percent higher SVCE margin. Using the methodology discussed with the EC³, to account for potential modeling error, staff reduced the resulting margins from the current model using the 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 the latest prices and an adjustment for modeling error likely better aligns revenues closer to the rates PG&E will update in October. It also better aligns revenues with power supply costs because both estimates are made using the same 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, creating 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 decide based on the actual rates. To set 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 budgeting revenues to include a 0.9% write-off rate, 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

Due to increasingly volatile market prices, power supply expenses are expected to increase to \$325.3 million. 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 expects to receive PG&E allocations in 2022 to offset some of those cost increases, but the volumes are unknown at this time. Changing resource adequacy (RA) requirements and 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

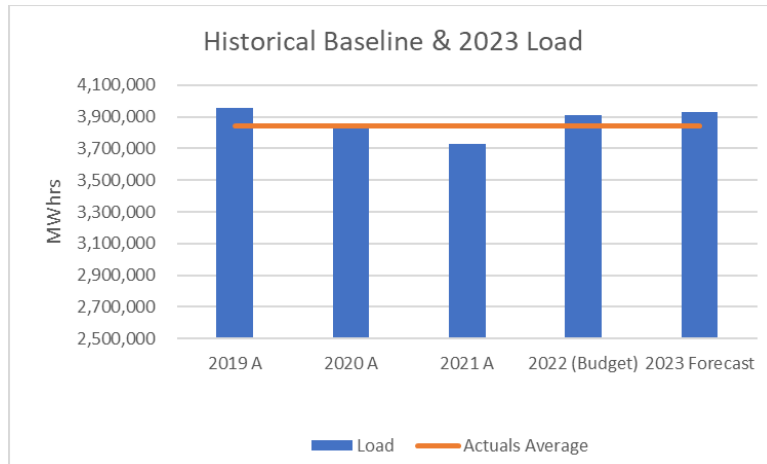
² As of the budget analysis preparation date of Jul 15th, 2022.

³ 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).

Agenda Item: 4**Agenda Date: 9/14/2022**

supply costs, potential delays in their operational starts and negotiations subject SVCE to additional energy, RPS, and RA volumes at currently high market prices.

While the commercial load is yet to recover to pre-Covid levels and the Covid-related increases in residential load are starting to taper off, load relative to the Mid-year budget forecast, including the growth from new load moving into the SVCE portfolio, is higher and contributes to the increase in Power Supply cost.

**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, which modeled a collapse in energy prices that substantially reduced 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 analyses with market and portfolio data consistent with those used to develop the recommended budget and computed the results on a fiscal year instead of the 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 a minimum of 120 Days of Cash on Hand (DCOH) for the next two fiscal years under Stress Test Scenario 2 conditions. Staff also proposes resetting the upper reserves target so that if stress test 2 occurs, reserves over the next five fiscal years will 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 maintaining at least 120 DCOH, which will be needed to reshape strategy and secure additional liquidity. Staff's proposal to increase the upper reserves target is intended to take advantage of good margin years to manage risks over the five years.

The table below summarizes the change in the reserve targets:

Reserve Targets (DCOH)	Current	New Targets
Minimum	120	120
Goal (Target)	230	285
Maximum (Upper Target)	320	490

Agenda Item: 4**Agenda Date: 9/14/2022**

If stress test 2 were to occur, the draw on reserves in the Fiscal Year 2023-24 would be about \$186 million. To end the Fiscal Year 2023-24 with 120 DCOH, SVCE needs to end FY 2022-23 with about \$288 million in reserves, 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 three years of the 5-year forecast stays above 90 DCOH.

Operating Expenses

Operating expenses are expected to grow in the recommended budget, increasing by \$6.6 million from the FY 2021-22 adjusted midyear budget. The increase in projected operating expenses is primarily comprised of costs associated with increased staffing and professional services. In addition, the operating budget includes an overall 5% contingency, which amounts to \$1.41 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 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, contributing another \$330 thousand. SVCE continues to work to fill positions and anticipates fully staffing by the end of the calendar year but continues utilizing a 5% long-term vacancy rate in the personnel budget. Salaries for all existing job descriptions are included in a table in attachment 4.

The ten new positions requested through this proposed budget reflect the increasing needs of a mature organization. The latest positions include three new program staff, focusing 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 proposes three new positions: two Energy Services Specialists to support commercial and industrial offerings and an outreach specialist to coordinate with member agencies and community groups. Finally, the Finance and Administration team proposes 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 \$2.35 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 bid 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, primarily due to 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, given significant 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 the appropriate levels of coverage and whether any savings can be found through bundling our

Agenda Item: 4**Agenda Date: 9/14/2022**

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.

Since the August 10th presentation to the Board, staff has made one adjustment to the operating expense budget. Staff has increased the budgeted contribution amount for CA Community Power (CC Power) by \$90,000 up to \$150,000 due to increases in member contributions approved at the August CC Power Board meeting, expected increase in operation cost due to managing the four long-term contracts entered into by CC Power over the last 12 months, along with a projected expansion of the General Manager role from a contract employee hired to work 15 hours/week, to a full-time General Manager with one high-level support staff, to pursue potential Inflation Reduction Act opportunities. We expect the CC Power budget to come in lower than \$150,000 but have targeted this amount to provide for maximum flexibility.

Organization	Previous Amount (\$000s)	Adjusted Amount (\$000s)
CA Community Power (CC Power)	60	150

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 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 including \$1.9 million from the PG&E nuclear allocation, representing the portfolio's savings 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.

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.

Staff does not recommend any specific reductions given a sufficient projected reserve balance that maintains SVCE's stable financial condition. The Board can revisit the customer discount rate when actual PCIA and PG&E generation rates are known with more certainty.

Agenda Item: 4**Agenda Date: 9/14/2022**

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 \$368.5 million, resulting in a surplus/contribution to reserves of \$115.4 million.

ATTACHMENTS

1. FY 2022-23 Recommended Operating Budget
2. Resolution 2022-21, Adopting the FY 2022-23 Operating Budget
3. Updated Financial Reserves Policy
4. FY 2022-23 Salary Chart

**SILICON VALLEY CLEAN ENERGY
FY 2022-23 OPERATING BUDGET**
(\$ in thousands)

DESCRIPTION	FY 2021-22	FY 2022-23	Year over Year Change	
	BUDGET	BUDGET	\$	%
ENERGY REVENUES				
Energy Sales	384,498	482,930	98,432	25.6%
Green Prime	1,005	931	(74)	-7.4%
TOTAL ENERGY REVENUES	<u>385,502</u>	<u>483,860</u>	<u>98,358</u>	<u>25.5%</u>
ENERGY EXPENSES				
Power Supply	274,979	325,296	50,317	18.3%
OPERATING MARGIN	<u>110,523</u>	<u>158,564</u>	<u>48,041</u>	<u>43.5%</u>
OPERATING EXPENSES				
Data Management	3,249	3,413	163	5.0%
PG&E Fees	1,450	1,470	20	1.4%
Salaries and Retirement	8,535	12,024	3,490	40.9%
Professional Services	5,669	8,016	2,347	41.4%
Marketing & Promotions	908	862	(46)	-5.1%
Notifications	131	131	0	0.0%
Lease	525	525	0	0.0%
General & Administrative	1,225	1,857	633	51.7%
TOTAL OPERATING EXPENSES	<u>21,693</u>	<u>28,299</u>	<u>6,606</u>	<u>30.5%</u>
OPERATING INCOME (LOSS)	<u>88,831</u>	<u>130,265</u>	<u>41,435</u>	<u>46.6%</u>
NON-OPERATING REVENUES				
Other Income	50	50	0	0.0%
Interest Income	300	592	292	97.2%
Grant Income	0	0	0	-
TOTAL NON-OPERATING REVENUES	<u>350</u>	<u>642</u>	<u>292</u>	<u>83.3%</u>
NON-OPERATING EXPENSES				
Financing	40	3	(37)	-92.5%
Interest	0	0	0	-
TOTAL NON-OPERATING EXPENSES	<u>40</u>	<u>3</u>	<u>(37)</u>	<u>-92.5%</u>
TOTAL NON-OPERATING INCOME (EXPENSES)	<u>310</u>	<u>639</u>	<u>329</u>	<u>106.0%</u>
CHANGE IN NET POSITION	<u>89,141</u>	<u>130,904</u>	<u>41,763</u>	<u>46.9%</u>
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER				
Capital Outlay	150	200	50	33.3%
Transfer to CRCR Fund	0	0	0	-
Transfer to Program Fund	6,781	9,765	2,984	44.0%
Nuclear Allocation	600	1,900	1,300	216.7%
Add'l Programs Allocation	17,000	0	(17,000)	-100.0%
Add'l Customer Bill Relief	3,000	3,600	600	20.0%
Other	0	0	0	-
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	<u>\$27,531</u>	<u>\$15,465</u>	<u>(\$12,066)</u>	<u>-43.8%</u>
BALANCE AVAILABLE FOR RESERVES	<u>\$61,609</u>	<u>\$115,439</u>	<u>\$53,830</u>	<u>87.4%</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY RESOLUTION

NO. 2022-21

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY TO APPROVE THE FISCAL YEAR 2022-2023 BUDGET FOR SILICON VALLEY CLEAN ENERGY

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

WHEREAS, the Authority operates on a fiscal year budget cycle from October 1st through September 30th;

WHEREAS, draft versions of the Authority’s budget for fiscal year 2022-2023 were presented to the Finance & Administration Committee on August 1, 2022, and the Board of Directors on August 10, 2022 (collectively, the “Prior Presentations”);

WHEREAS, staff has incorporated feedback from the Prior Presentations and has prepared a recommended budget, set forth in Exhibit A (the “Recommended Budget”);

NOW THEREFORE, the Board of Directors of the Silicon Valley Clean Energy Authority does hereby resolve that:

1. The foregoing recitals are true and correct.
2. The Board of Directors hereby approves and adopts the Recommended Budget, as set forth in Exhibit A, as the Authority’s fiscal year 2022-2023 budget.

PASSED AND ADOPTED this 14th day of September, 2022, by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Willey				
City of Gilroy	Director Hilton				
City of Los Altos	Director Fligor				
Town of Los Altos Hills	Director Tyson				
Town of Los Gatos	Director Rennie				
City of Milpitas	Director Chua				
City of Monte Sereno	Director Ellahie				

City of Morgan Hill	Director Martinez Beltran				
City of Mountain View	Director Abe-Koga				
County of Santa Clara	Director Lee				
City of Saratoga	Director Walia				
City of Sunnyvale	Director Klein				

Chair

ATTEST:

Andrea Pizano, Board Secretary



FP9

Category: FINANCE

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:**



FP9

Category: FINANCE

- 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 ~~230~~285 days of operations of the annual operating budget;
- (c) *Maximum Operating Reserve*** to cover ~~320~~490 days of operations of the annual operating budget.



FP9

Category: FINANCE

Conditions for Use of Reserves

For purposes of this policy, use of reserves is defined as a projected or estimated¹ 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.



FP9

Category: FINANCE

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.

FY22-23 Salary Chart

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Administrative Analyst	92,320	158,130
Administrative Assistant	61,546	97,682
Administrative Services Manager	133,350	209,549
Associate Data Analyst	91,159	135,121
Associate Legislative Analyst	79,497	124,924
Associate Manager of Decarbonization and Grid Innovation Programs	122,330	174,687
Associate Power Analyst	86,818	128,687
Associate Power Resources Planner	121,933	187,917
Associate Program Manager	76,932	120,894
Board Clerk/Executive Assistant	112,835	182,630
CFO & Director of Finance and Administration	164,123	286,277
Communications Manager	123,092	193,430
Communications Specialist	66,675	108,966
COO & Director of Power Resources	194,896	306,265
Data Analyst	106,547	159,299
Data Engineer	116,127	166,368
Data Scientist	121,933	174,687
Deputy Director of Administrative Services	140,018	220,027
Deputy Director of Decarbonization Policy and Programs	123,092	209,549
Director of Decarbonization Policy and Programs	146,088	257,907
Director of Energy Services and Community Relations	164,123	257,907
Director of Regulatory and Legislative Policy	164,123	257,907
Energy Services Lead	123,092	182,630
Energy Services Manager	123,092	209,549
Energy Services Specialist	76,932	120,894
Financial Analyst	92,320	145,072
Human Resources Generalist	92,320	158,130
Management Analyst	112,835	177,311

Manager of Decarbonization Policy and Programs	133,350	209,549
Marketing Specialist	66,675	108,966
Outreach Specialist	66,675	108,966
Policy Analyst	92,320	145,072
Power Analyst (Data-Markets / Load Forecasting)	101,473	151,713
Power Contracts & Settlements Manager	164,124	225,214
Power Resources Manager	153,866	241,788
Power Resources Planner	133,350	209,549
Power Settlements and Compliance Analyst	112,835	177,311
Principal Data Engineer	133,350	209,549
Principal Data Scientist	133,350	209,549
Principal Policy Analyst	133,350	209,549
Principal Power Analyst	164,136	225,214
Principal Program Manager	133,350	209,549
Program Manager	92,320	145,072
Programs Implementation Manager	92,320	145,072
Programs Specialist	76,932	120,894
Rates Manager	133,350	209,549
Regulatory & Compliance Manager	133,350	209,549
Regulatory Analyst	107,706	169,252
Risk Control Analyst	121,933	174,687
Senior Communications Specialist	80,434	122,196
Senior Data Analyst	116,127	166,368
Senior Data Engineer	135,163	187,917
Senior Data Scientist	135,163	187,917
Senior Energy Services Specialist	92,320	145,072
Senior Financial Analyst	121,933	174,687
Senior Government Affairs Manager	164,124	225,214
Senior Management Analyst	112,835	177,311
Senior Manager of Decarbonization Policy and Programs	164,124	225,214
Senior Manager of Energy Policy and Regulatory Analysis	164,123	257,907
Senior Manager of Power Operations	164,124	225,214
Senior Manager of Power Resources	153,866	241,788
Senior Marketing Specialist	80,434	122,196
Senior Policy Analyst	107,705	169,251
Senior Power Analyst	121,933	174,687

Senior Power Resources Planner	164,124	225,214
Senior Program Manager	121,933	174,687
Senior Programs Specialist	92,320	145,072
Senior Public Sector Services Manager	164,124	225,214
Senior Quantitative Analyst	121,933	174,687
Senior Rates Analyst	121,465	183,011
Senior Regulatory Analyst	107,706	169,252
Senior Risk Manager	164,124	225,214
Technology Services Manager	133,350	209,549
Wholesale Energy Markets Manager	164,136	225,214

Staff Report – Item 5

Item 5: Authorize the Chief Executive Officer to Execute Necessary Agreements for a Resource Adequacy Resource from AES Clean Energy Development, LLC

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO and Director of Power Resources
Charles Grinstead, Sr. Manager of Power Resources

Date: 09/14/2022

RECOMMENDATION

Staff recommends that the Silicon Valley Clean Energy Authority (SVCE) Board authorize the Chief Executive Officer (CEO) to execute the attached Long Form Resource Adequacy Agreement with AES Clean Energy Development, LLC ("Baldy Mesa Solar RA Agreement") in substantial form and any necessary ancillary agreements and documents as follows:

- 10-Year term RA Agreement with expected delivery from June 1, 2023 through May 31, 2033;
- 75 MWs megawatts (MW) of lithium-ion battery incremental capacity;
- The total contract amount not-to-exceed \$81,477,000.

Execution of the Baldy Mesa Solar RA Agreement is necessary to meet a portion of SVCE's procurement mandates under California's Mid-Term Reliability Procurement Order ("MTR Order").

BACKGROUND

Through the 2020 Integrated Resource Planning (IRP) proceeding, the California Public Utilities Commission (CPUC) had identified the need for additional clean energy resources and capacity including firm and/or baseload clean resources, and storage resources, to enable grid integration of a large fleet of intermittent resources to meet California's greenhouse gas emission reduction goals and to replace several methane gas once-through-cooling (OTC) power plants that are scheduled to be shut down, and the Diablo Canyon Nuclear Power Plant (DCNPP) slated to retire between in 2024 and 2025.

Subsequently, in June 2021, as part of the 2020 IRP the CPUC issued through a decision order (D.21-06-035) the MTR Order requiring jurisdictional load serving entities (LSEs), such as SVCE, to procure and/or develop a collective 11,500 MW of new capacity by 2026. SVCE's share of the MTR Order is 237 MW which is determined based on SVCE's load ratio to the CPUC's jurisdictional load. The MTR Order includes a requirement to procure a portion of incremental capacity through "generic" clean resources which may include capacity from standalone or paired storage capacity, such as Baldy Mesa. The MTR Order also requires a minimum ten-year term for compliance.

On January 5th, 2022, Silicon Valley Clean Energy, Sonoma Clean Power Authority, and Central Coast Community Energy, or "The Joint CCAs", issued the MTR Procurement Joint CCA RFO for Incremental Net Qualifying Capacity to meet respective requirements under the order, in addition to meeting Renewable Portfolio Standard "RPS" and greenhouse gas emission reductions goals.

The Joint CCAs received bids from 18 bidders and 39 projects located inside and outside California. Many of the projects were a combination of solar plus storage and standalone storage resources. Although many

Agenda Item: 5**Agenda Date: 9/14/2022**

projects were bid into the RFO, only a few were selected to move forward for further negotiations, of which Baldy Mesa Solar was selected. Additionally, through the RFO process many of the offers selected were either withdrawn or repriced by the seller. Most sellers cited increases in the cost of solar photovoltaic panels and/or lithium-ion batteries and/or competing interest for their resources.

On September 1, 2022, California Governor Newsom signed into law Senate Bill 846 providing for an extension of DCNPP through 2030. The justification for the extension was due to supply chain and development in issues for new clean resources. The MTR Order was maintained at 11.5 GW with the same on-line dates, however.

ANALYSIS & DISCUSSION

The Baldy Mesa Solar project proposed for board approval will continue to bridge the gap towards SVCE meeting CPUC MTR. The recommended project is located inside the California Independent System Operator (CAISO) balancing authority, was approved for full capacity deliverability status, and therefore count towards SVCE's MTR obligations.

Following is a summary of the Baldy Mesa Solar project recommended for approval.

1. Baldy Mesa Solar

Located in San Bernardino County, the project participants will receive incremental capacity attributes from a 4-hour 75 MW/300 MWh collocated lithium-ion battery. The battery will be charged from the on-site solar project for a duration of up to five years, per the investment tax credit program for paired solar and storage resources. AES Clean Energy Development, LLC will own and operate the facility in partnership with their parent company, AES Corporation, a Fortune 500 global energy company, focused on clean energy development in North America.

Project Overview

Project Name	Baldy Mesa Solar
Technology	Co-located Solar and Storage
Portfolio Capacity & Expected Annual Energy	75 MWs of Lithium-Ion Storage SVCE's expected share: 75 MW
Expected Commercial Operation Date & Term	June 1, 2023, 10 years
Developer	AES Clean Energy Development, LLC.
Location	San Bernardino County, California
Price	Fixed-price \$/kW-Month for capacity delivered with no escalator

SVCE Participation

The Baldy Mesa RA Agreement is ten-years with an expected delivery from June 1, 2023 through May 31, 2033. Currently, SVCE's expected share is 75 megawatts (MW) of lithium-ion battery incremental capacity.

The contract acquires the incremental resource adequacy benefits only meant to count towards the MTR requirements and towards SVCE's monthly RA requirements. The contract does not provide energy benefits, tolling capacity off the battery or energy to meet SVCE's RPS or clean energy goals.

MTR Order and Compliance

The Baldy Mesa Solar RA project meets the conditions established in the MTR Order for resources that must be able to deliver incremental capacity, has a minimum ten-year contract term, start date before mid-2026 and can meet resource adequacy requirements. The Baldy Mesa Solar project provides 75 MWs of nameplate, however once adjusted for effective load carrying capacity (ELCC) the capacity contribution decreases to

Agenda Item: 5**Agenda Date: 9/14/2022**

69.25 MWs of Net Qualifying Capacity (NQC). This capacity will meet the 2024 requirement which requires projects be on-line no later than June 30, 2024 and allow for bridge capacity if necessary.

SVCE's overall MTR Order obligation is 237 MW of net qualifying capacity (NQC) which is nameplate capacity adjusted by the technologies effective load carrying capacity. For example, SVCE's share of Baldy Mesa Solar RA Agreement is 75 MW of nameplate capacity but only 69.75 MW of NQC. MTR Order obligations vary year to year and have specific technology requirements in some years. Execution of the Baldy Mesa Solar RA Agreement will partially meet SVCE's MTR Order obligations. Table 1 is a summary of SVCE's MTR Order procurement efforts including Baldy Mesa Solar RA.

Table 1: SVCE MTR Order and Compliance

Total MTR Requirement	MTR Tranche 2024 Obligation	SVCE's Procurement	Compliant
1. Generic by June 2024	124	Proposed Baldy Mesa Solar RA 69.75 MW NQC	No 54.25 MW Deficit
2. Net Zero Resources – DCPD Replacement by June 2025	52	Existing purchases 34.27 MW	No 17.7 MW Deficit
3. Long Duration Storage by June 2026	20.5	Existing purchases 22.6 MW	Yes 2 MW Surplus
4. Firm Clean Resources (geothermal) by June 2026	20.5	Existing Purchases 25.1 MW	Yes 4.6 MW Surplus

STRATEGIC PLAN

Execution of the MTR project agreement supports the goals of the Board adopted Strategic Plan including:

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

ALTERNATIVE

SVCE can choose not to abide by the MTR Order. Doing so may expose SVCE's ratepayers to significant cost in the form of "back-stop" procurement undertaken by a central procurement entity in addition to CPUC penalties imposed on SVCE.

FISCAL IMPACT

Ultimate execution of the Baldy Mesa Solar RA Agreement will result in cost to SVCE starting in Fiscal Year 2023-24, which will be included in the budget at that time. Staff's spending authority over the life of the agreement shall not exceed \$81,477,000.

ATTACHMENTS

1. SVCE/AES Clean Energy Development, LLC RA Agreement (Redacted version)

EXECUTION VERSION

RESOURCE ADEQUACY AGREEMENT
COVER SHEET

A. **Parties**

Seller: Baldy Mesa Solar, LLC, a Delaware limited liability company

Buyer: Silicon Valley Clean Energy, a California joint powers authority

B. **Description of Unit**

A grid-connected 75 MW/300 MWh battery energy storage unit, located in San Bernadino County, in the State of California, as further described in Exhibit D.

C. **Product**

Buyer's Capacity Share of all Capacity Attributes available from the Unit.

D. **Delivery Term**

The Delivery Term is ten (10) Contract Years.

E. **Guaranteed Capacity**

The Guaranteed Capacity of the Unit shall be: 75 MW.

Buyer's Capacity Share shall be one hundred percent (100%) of the Guaranteed Capacity.

F. **Contract Price**

The Contract Price shall be [REDACTED] per kW-month.

G. **Seller's Security Amounts**

Development Security: [REDACTED] x Guaranteed Capacity x Buyer's Capacity Share.

Performance Security: [REDACTED] x Guaranteed Capacity x Buyer's Capacity Share.

H. **Milestones**

Milestone	Date for Completion
Site Control obtained	[REDACTED]
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [X] Mitigated Neg Dec, [] EIR	[REDACTED]
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	[REDACTED]

EXECUTION VERSION

Milestone	Date for Completion
Interconnection Agreement executed	████████
Major equipment procured	████████
Federal and State discretionary permits obtained	████████
Guaranteed Construction Start Date	████████
Network Upgrades completed	████████
Full Capacity Deliverability Status obtained	████████
Initial Synchronization	████████
Expected CAISO Commercial Operation	████████
Guaranteed Commercial Operation Date	████████

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EXECUTION VERSION

TABLE OF CONTENTS

COVER SHEET	I
ARTICLE 1: DEFINITIONS	1
ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT	11
2.1 Term.....	11
2.2 Conditions Precedent	12
ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT.....	12
3.1 Resource Adequacy Capacity Product.....	12
3.2 Interconnection Capacity.....	13
3.3 [Reserved].....	13
3.4 Delivery Point.....	13
3.5 Planned Outages.....	13
3.6 Replacement RA.....	13
3.7 Delivery of RA.....	14
3.8 Failure to Deliver Product.....	14
3.9 [Reserved].....	15
3.10 Monthly RA Capacity Payment.....	15
3.11 Allocation of Other Payments and Costs.....	15
ARTICLE 4: CAISO OFFER REQUIREMENTS	16
ARTICLE 5: EVENTS OF DEFAULT; REMEDIES.....	16
5.1 Events of Default.....	16
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	18
5.3 Net Out of Settlement Amounts.....	18
5.4 Notice of Payment of Termination Payment.....	18
5.5 Disputes with Respect to Termination Payment.....	19
5.6 [Reserved].....	19
5.7 Seller Pre-COD Liability Limitations.....	19
ARTICLE 6: PAYMENT AND NETTING.....	19
6.1 Billing Period.....	19
6.2 Timeliness of Payment.....	19
6.3 Disputes and Adjustments of Invoices.....	19
6.4 Netting of Payments.....	20
6.5 Payment Obligation Absent Netting.....	20
6.6 Security.....	20
ARTICLE 7: LIMITATIONS	20
7.1 Limitation of Remedies, Liability and Damages.....	20
ARTICLE 8: GOVERNMENTAL CHARGES	21
8.1 Cooperation.....	21
8.2 Governmental Charges.....	21

EXECUTION VERSION

ARTICLE 9: [RESERVED.]	21
9.1 [Reserved.]	21
ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS	21
10.1 Mutual Representations and Warranties.	21
10.2 Buyer and Seller Covenants.	22
10.3 Seller Representations, Warranties and Covenants.	23
10.4 Buyer Representations, Warranties and Covenants.	24
ARTICLE 11: CONFIDENTIALITY	24
ARTICLE 12: BUYER'S RE-SALE OF PRODUCT	25
ARTICLE 13: CHANGE IN LAW	26
ARTICLE 14: COLLATERAL REQUIREMENTS	26
14.1 Development Security.	26
14.2 Performance Security.	26
14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.	26
14.4 Buyer Financial Statements.	27
ARTICLE 15: INSURANCE	27
15.1 Insurance.	27
15.2 Evidence of Insurance.	28
ARTICLE 16: UNIT CONSTRUCTION AND COMMERCIAL OPERATION	28
16.1 Construction of the Unit.	28
16.2 Commercial Operation.	29
16.3 [REDACTED]	31
16.4 [REDACTED]	31
ARTICLE 17: FORCE MAJEURE	32
17.1 Definition.	32
17.2 No Liability If a Force Majeure Event Occurs.	33
17.3 Notice.	33
17.4 Termination Following Force Majeure Event.	33
ARTICLE 18: MISCELLANEOUS	33
18.1 Title and Risk of Loss.	33
18.2 Indemnity.	34
18.3 Assignment.	34
18.4 Governing Law and Venue.	35
18.5 Notices.	35
18.6 Mobile-Sierra.	36
18.7 General.	36
18.8 Audit.	37
18.9 Forward Contract.	37
18.10 Dispute Resolution.	37

EXECUTION VERSION

18.11	Execution.....	37
18.12	Joint Powers Authority.....	37
18.13	Dodd-Frank Act.....	38
18.14	Market-Based Rate Authority.....	38
18.15	Rules of Interpretation.....	38
EXHIBIT A: FORM OF LETTER OF CREDIT		A-1
EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE		B-1
EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE.....		C-1
EXHIBIT D: DESCRIPTION OF UNIT.....		D-1
EXHIBIT E: OPERATIONAL CHARACTERISTICS.....		E-1
EXHIBIT F: PROGRESS REPORTING FORM.....		F-1
EXHIBIT G: FORM OF BUYER ASSIGNMENT AGREEMENT		G-1
EXHIBIT H: NOTICES.....		H-1

DRAFT

EXECUTION VERSION

RESOURCE ADEQUACY AGREEMENT

This Resource Adequacy Agreement (“Agreement”) is entered into between Baldy Mesa Solar, LLC (“Seller”) and Silicon Valley Clean Energy, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, as of September __, 2022 (the “Effective Date”). All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Unit; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

- 1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 “Agreement” has the meaning set forth in the Preamble.
- 1.3 “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 Agreement, including without limitation, the Tariff.
- 1.4 “Availability Incentive Payments” means Availability Incentive Payments as defined in the Tariff.
- 1.5 “Availability Standards” means Availability Standards as defined in the Tariff.
- 1.6 “Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.7

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EXECUTION VERSION

- 1.9 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.
- 1.10 “Buyer” has the meaning set forth in the Preamble.
- 1.11 “Buyer’s Capacity Share” means the percentage of the Guaranteed Capacity, as set forth in Section E of the Cover Sheet, for which Buyer shall have exclusive rights to all Capacity Attributes available from the Unit, including the Designated RA Capacity.
- 1.12 “CAISO” means the California Independent System Operator or its successor.
- 1.13 “CAISO Balancing Authority Area” has the meaning set forth in the CAISO Tariff.
- 1.14 “CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.
- 1.15 “CAISO Control Area” means the Control Area (as defined in the Tariff) that is operated by the CAISO.
- 1.16 “CAISO Controlled Grid” has the meaning set forth in the Tariff.
- 1.17 “CAISO Offer Requirements” has the meaning set forth in Article 4.
- 1.18 “Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the Unit’s Guaranteed Capacity that can be purchased and sold under CAISO or CPUC market rules, including all RA Capacity.
- 1.19 “Change of Control” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller or otherwise ceases to retain the ability to control the decision making of Seller; provided that in calculating ownership percentages for all purposes of the foregoing:
- (a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
 - (b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity and tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf and subsequent assignee or transferee thereof) shall be excluded from the total outstanding equity interests in Seller.
- 1.20 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.
- 1.21 “Claiming Party” has the meaning set forth in Section 3.12.
- 1.22 “Claims” means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by

EXECUTION VERSION

settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

- 1.23 “Commercial Operation” has the meaning set forth in Section 16.2(a).
- 1.24 “Commercial Operation Date” means the date on which Commercial Operation is achieved.
- 1.25 “Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED]
- 1.26 “Compliance Obligation” means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.
- 1.27 “Confidential Information” has the meaning set forth in Article 11.
- 1.28 “Construction Start” has the meaning set forth in Section 16.1(a).
- 1.29 “Construction Start Date” has the meaning set forth in Section 16.1(a).
- 1.30 “Contract Price” has the meaning set forth in Section F of the Cover Sheet.
- 1.31 “Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Commercial Operation Date; and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- 1.32 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.
- 1.33 “CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.
- 1.34 “CPUC” means the California Public Utilities Commission or its successor.
- 1.35 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.36 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s.
- 1.37 “Damage Payment” means the dollar amount that equals [REDACTED].
- 1.38 “Defaulting Party” has the meaning set forth in Section 5.1.
- 1.39 “Delivery Point” has the meaning set forth in Section 3.4.

EXECUTION VERSION

- 1.40 “Delivery Term” means the period of Contract Years set forth in Section D of the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.
- 1.41 “Designated RA Capacity” shall be equal to, with respect to each Showing Month of the Delivery Term, Buyer’s Capacity Share multiplied by the RA Capacity available from the Unit.
- 1.42 “Development Cure Period” has the meaning set forth in Section 16.2(c).
- 1.43 “Development Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.44 “Dispute” has the meaning set forth in Section 18.10(a).
- 1.45 “Dispute Notice” has the meaning set forth in Section 18.10(a).
- 1.46 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.47 “Effective Date” is the date set forth in the Preamble.
- 1.48 “Effective Flexible Capacity” means the net capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirements, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.49 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.
- 1.50 “EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.
- 1.51 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- 1.52 “Event of Default” has the meaning set forth in Section 5.1.
- 1.53 “Facility” has the meaning set forth in Exhibit E.
- 1.54 “FCR Attributes” means, with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.
- 1.55 “FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.56 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.
- 1.57 “Flexible Capacity Category” has the meaning set forth in the Resource Adequacy Rulings.

EXECUTION VERSION

- 1.58 “Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.59 “Force Majeure Event” has the meaning set forth in Section 17.1(a).
- 1.60 “Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the Tariff.
- 1.61 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.
- 1.62 “Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Unit.
- 1.63 “Governmental Body” means (a) any federal, state, local, municipal or other government; (b) 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 (c) any court or governmental tribunal, but in all cases, excludes both Parties.
- 1.64 “Governmental Charges” has the meaning set forth in Section 8.2.
- 1.65 “Guaranteed Capacity” means the maximum dependable operating capacity of the Unit to discharge electric energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, as set forth on the Cover Sheet.
- 1.66 “Guaranteed Commercial Operation Date” is the date set forth in Section H of the Cover Sheet, as such date may be extended as provided herein.
- 1.67 “Guaranteed Construction Start Date” is the date set forth in Section H of the Cover Sheet, as such date may be extended as provided herein.
- 1.68 “Guaranteed Flexible Capacity” means, at any point in time, Buyer’s Capacity Share multiplied by the maximum quantity of Effective Flexible Capacity (in MWs) for which a storage unit having achieved FCDS, and having a storage capacity equal to the Guaranteed Capacity with at least four (4) hours of continuous discharging, and having achieved or exceeded the Operational Characteristics in Exhibit E may be counted in any given Showing Month pursuant to the then-current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.
- 1.69 “Guaranteed Net Qualifying Capacity” means, at any point in time, Buyer’s Capacity Share multiplied by the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage unit having achieved FCDS, and having a storage capacity equal to the Guaranteed Capacity, with at least four (4) hours of continuous discharging, and having achieved or exceeded the Operational Characteristics in Exhibit E may be counted in any given Showing Month pursuant to the then-current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

EXECUTION VERSION

- 1.70 “Initial Synchronization” has the meaning set forth in the Tariff.
- 1.71 “Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.
- 1.72 “Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Interconnection Point under Seller’s Interconnection Agreement, in an amount no less than 75 MW.
- 1.73 “Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.
- 1.74 “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.
- 1.75 “Investment Grade” means a Credit Rating of at least “BBB-” from S&P and/or “Baa3” from Moody’s (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).
- 1.76 “Joint Powers Agreement” means that certain agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a joint powers authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.).
- 1.77 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.78 “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.
- 1.79 “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 Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.80 “Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of ■■■■

EXECUTION VERSION

- [REDACTED] in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.
- 1.81 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.
- 1.82 “LRA” has the meaning set forth in the Tariff.
- 1.83 “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).
- 1.84 “Milestones” has the meaning set forth in Section H of the Cover Sheet.
- 1.85 “Monthly RA Capacity Payment” has the meaning specified in Section 3.10(a) hereof.
- 1.86 “Moody’s” means Moody’s Investor Services, Inc. or its successor.
- 1.87 “MTR Resource” means a resource that meets the requirements of CPUC Decision 21-06-035, including that such resource (a) a first point of interconnection with CAISO Balancing Authority Area, (b) is incremental to the CPUC’s baseline list established pursuant to CPUC Decision 21-06-035, and (c) is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.
- 1.88 “MW” means megawatts measured in alternating current, unless expressly stated in terms of direct current.
- 1.89 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.90 “Network Upgrades” has the meaning set forth in the Tariff.
- 1.91 “Net Qualifying Capacity” or “NQC” means the net capacity of a resource that can be counted towards an LSE’s RAR obligation, as identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or other Governmental Body having jurisdiction.
- 1.92 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.93 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.94 “Notification Deadline” has the meaning set forth in Section 3.6.
- 1.95 “Notifying Party” has the meaning set forth in Section 18.10(a).
- 1.96 “One-Time Extension” has the meaning set forth in Section 16.4(a).
- 1.97 “Operational Characteristics” means the minimum performance requirements for the Unit, as set forth in Exhibit E.
- 1.98 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outages.

EXECUTION VERSION

- 1.99** “Participating Transmission Owner” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is Southern California Edison.
- 1.100** “Performance Security” means collateral in the form of cash or a Letter of Credit in an amount set forth in Section G of the Cover Sheet.
- 1.101** “Permitted Transferee” means (a) any Affiliate of Seller or (b) any entity that has, or is controlled by another person or business entity that satisfies the following requirements: (i) a tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and (ii) at least two (2) years of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.
- 1.102** “Planned Outage” means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.103** “Product” means Buyer’s Capacity Share of all Capacity Attributes available from the Unit, including the Designated RA Capacity.
- 1.104** “Progress Report” means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(c).
- 1.105** “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 energy storage system industry during the relevant time period with respect to battery systems in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.
- 1.106** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CPUC, CAISO, or other Governmental Body authorized to make such determination under Applicable Laws, including the Resource Adequacy Rulings. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes, and FCR Attributes of the capacity provided by a Unit.
- 1.107** “RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month, as calculated in accordance with Section 3.8(b).

EXECUTION VERSION

- 1.108** “RAR” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, or by an LRA or other Governmental Body having jurisdiction.
- 1.109** “RAR Attributes” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.110** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.
- 1.111** “RA Penalties” means the Tier 1 System RA Penalties assessed against LSEs by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against LSEs for RA deficiencies. For example, the Tier 1 System RA Penalties applicable under the “2022 Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” are 8.88/kW-month for the months of May through October and \$4.44/kW-month for the months of November to April.
- 1.112** “RA Shortfall Month” means any Showing Month, commencing with the Showing Month that contains the Commercial Operation Date, during which either: (a) the Unit has not achieved Full Capacity Deliverability Status; or (b) the Net Qualifying Capacity of the Unit that was able to be included in Buyer’s Supply Plan for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity for such Showing Month; or (c) the Effective Flexible Capacity of the Unit that was able to be included in Buyer’s Supply Plan for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the then applicable Guaranteed Flexible Capacity for such Showing Month.
- 1.113** “Recipient Party” has the meaning set forth in Section 18.10(a).
- 1.114** “Regulatory Event” has the meaning set forth in Section 18.7.
- 1.115** “Reliability Compensation Services Tariff” has the meaning set forth in the Tariff.
- 1.116** “Remedial Action Plan” has the meaning specified in Section 16.1(d) hereof.
- 1.117** “Replacement RA” means resource adequacy attributes, as they are identified from time to time by the Tariff, the Resource Adequacy Rulings, LRA, or any Governmental Body having jurisdiction, that are (a) equivalent to those that would have been provided by the Unit, (b) located within the CAISO Balancing Authority Area, and (c) to the extent that the Unit would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area as the Unit. For avoidance of doubt, Replacement RA does not need to be provided from an MTR Resource.

EXECUTION VERSION

- 1.118 “Replacement Unit” means an alternative battery electric storage project to the Unit with at least four (4) hours of continuous discharging, which unit must (a) have an expected nameplate capacity of seventy-five (75) MW or a portion of such unit equal to seventy-five (75) MW if the unit has an expected nameplate capacity of more than seventy-five (75) MW, or such larger capacity as may be acceptable to Buyer in its sole discretion, and (b) qualifies as an MTR Resource.
- 1.119 “Replacement Unit Deadline” has the meaning set forth in Section 16.3(a).
- 1.120 “Replacement Unit Notice” has the meaning set forth in Section 16.3(a).
- 1.121 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.122 “Resold Product” has the meaning set forth in Article 12.
- 1.123 “Resource Adequacy Plan” has the meaning specified in the Tariff.
- 1.124 “Resource Adequacy Resource” has the meaning set forth in the Tariff.
- 1.125 “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.
- 1.126 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.127 “RMR Contracts” has the meaning set forth in the Tariff.
- 1.128 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.129 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.
- 1.130 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.131 “Security Interest” has the meaning set forth in Section 14.3(a).
- 1.132 “Seller” has the meaning set forth in the Preamble.
- 1.133 “Settlement Amount” means, with respect to the Non-Defaulting Party, the aggregate Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.
- 1.134 “Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the Resource Adequacy Rulings or Tariff. For illustrative purposes only, pursuant to the Resource Adequacy

EXECUTION VERSION

Rulings in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.135 “Site” means the real property on which the Unit is located as identified in Appendix D.
- 1.136 “Site Control” means that, for the Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.
- 1.137 “Substitution Rules” has the meaning specified in the Tariff.
- 1.138 “Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.
- 1.139 “Tariff” means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.140 “Term” has the meaning set forth in Section 2.1(a).
- 1.141 “Terminated Transaction” has the meaning set forth in Section 5.2.
- 1.142 “Termination Payment” has the meaning set forth in Section 5.3.
- 1.143 “Transmission Provider” means the CAISO.
- 1.144 “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.
- 1.145 “Ultimate Parent” means the AES Corporation.
- 1.146 “Unit” shall mean the energy storage unit described in Section B of the Cover Sheet and Exhibit D hereof.
- 1.147 “Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of or failure to provide warnings or instructions.

ARTICLE 2: TERM; DELIVERY TERM; CONDITIONS PRECEDENT

2.1 Term.

The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, then-owing indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Development Security or Performance Security, as applicable, is released and/or returned (the “Term”). Upon Seller’s request, Buyer will promptly confirm in writing the Effective Date. All provisions relating to invoicing, payment, delivery,

EXECUTION VERSION

settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 17.2 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 11 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; all rights under Section 16.2(g) survive early termination by Seller pursuant to Section 16.1(c) and Section 16.2(e) for an additional two (2) years; and (iv) all provisions relating to limitations of liability survive without limit.

2.2 Conditions Precedent.

Seller shall provide notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Unit and to enable Seller to deliver the Product to Buyer except for those CAISO and Governmental Approvals that Seller is required to obtain during the Delivery Term which are not required to commence commercial operations and which Seller reasonably expects to obtain in the ordinary course.

(b) Seller shall have secured Site Control.

(c) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Commercial Operation Date has occurred.

(d) Seller shall have provided Performance Security to Buyer as required by Section 14.2.

(e) As of the Commercial Operation Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(f) Seller has obtained Full Capacity Deliverability Status.

(g) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month of the Delivery Term and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO for the first Showing Month of the Delivery Term.

(h) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(i) As of the Commercial Operation Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including Commercial Operation Delay Damages.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

(a) During the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Unit at the Contract Price and in accordance with Section 3.10, and Seller shall supply and deliver to Buyer at the Delivery Point all the Product produced by or associated with the Unit in accordance with

EXECUTION VERSION

the terms of this Agreement. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point. Notwithstanding anything to the contrary herein, no energy or ancillary services associated with the Unit are required to be made available to Buyer as part of this Agreement, and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement.

(b) Seller shall obtain Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status. Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status for the Guaranteed Capacity from the CAISO and shall perform all actions necessary to ensure that the Unit qualifies to provide the Designated RA Capacity to Buyer.

3.2 Interconnection Capacity.

Seller shall be responsible for all costs of interconnecting the Unit to the Interconnection Point. Seller shall have and maintain interconnection capacity available or allocable to the Unit that is no less than the Interconnection Capacity Limit throughout the Delivery Term.

3.3 [Reserved].**3.4 Delivery Point.**

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

3.5 Planned Outages.

Seller shall schedule all Planned Outages within the time-period determined by the CAISO for the Unit, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Seller shall reimburse Buyer for any cost Buyer incurs to provide Replacement RA, as required by the CAISO, during any Planned Outages (including the cost of procuring Replacement RA for a full calendar month during any month in which a Planned Outage is planned or scheduled). Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Unit shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless (i) required to maintain any manufacturer's warranties on Unit equipment; (ii) required in accordance with Prudent Operating Practice to prevent a future unscheduled outage or damage to the Unit, or (iii) otherwise approved by Buyer in writing in its sole discretion.

3.6 Replacement RA.

(a) The "Notification Deadline" for a given Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity and/or Guaranteed Flexible Capacity, as applicable, with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity and/or Effective Flexible Capacity, as applicable, that is able to be included in Buyer's Supply

EXECUTION VERSION

Plan for such Showing Month; *provided*, that any Replacement RA is communicated by Seller to Buyer no later than the Notification Deadline.

3.7 Delivery of RA.

Seller shall provide Buyer with the Designated RA Capacity and any Replacement RA for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity and any Replacement RA provided to Buyer for each Showing Month. Buyer shall notify Seller five (5) Business Days prior to the Notification Deadline if Seller is to submit less than the full Contract Quantity during the applicable Showing Month.

(b) The Designated RA Capacity and any Replacement RA is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Designated RA Capacity from Seller's Supply Plan for any Showing Month during the Delivery Term, has been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plan with respect to any part of the Contract Quantity in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable Notification Deadline for the relevant Showing Month.

(c) At least ninety (90) days before Buyer's annual FCR Showings filing deadline, Seller shall provide Buyer with written notice of the quantity of Guaranteed Flexible Capacity the Unit is expected to provide for the following calendar year. No later than the Notification Deadline, Seller will notify Buyer of the quantity of Effective Flexible Capacity that the Buyer is permitted to include in the Buyer's FCR Showings. Seller is prohibited from selling any Effective Flexible Capacity that Buyer is not able to include in Buyer's CPUC FCR Showings. For the avoidance of doubt, the Monthly RA Capacity Payment shall not be adjusted based upon the quantity of Effective Flexible Capacity Buyer is permitted to include in its CPUC FCR Showings.

3.8 Failure to Deliver Product.

(a) For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.8(b), and/or provide Replacement RA, as set forth in Section 3.6(b), as the exclusive remedy for the Product that Seller fails to convey to Buyer.

(b) For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the product of:

(i) The greater of:

(A) the difference, expressed in kW, of the then applicable Guaranteed Net Qualifying Capacity, minus the then applicable Net Qualifying Capacity that may be included in the Supply Plan for Buyer, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Replacement RA that was able to be included in the Supply Plan for such Showing Month for Buyer; and

(B) the difference, expressed in kW, of the then applicable Guaranteed Flexible Capacity, minus the then applicable Effective Flexible Capacity that may be

EXECUTION VERSION

included in the Supply Plan for Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in the Supply Plan for such Showing Month for Buyer;

(ii) multiplied by [REDACTED] applicable to such RA Shortfall Month.

3.9 [Reserved].

3.10 Monthly RA Capacity Payment.

Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly RA Capacity Payment equal to the product of (i) the Contract Price, (ii) the Guaranteed Capacity, (iii) Buyer's Capacity Share, and (iv) 1,000; provided, Buyer's obligation to make Monthly RA Capacity Payments shall be pro-rated or suspended during any month in which a Force Majeure Event reduces the delivered Product or prevents Seller delivering Product. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

3.11 Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy and environmental attribute sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the storage capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of the Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to

EXECUTION VERSION

remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent the Unit is in an Outage, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Guaranteed Capacity in compliance with the Tariff, including compliance with Minimum Sate of Charge, Day-Ahead Availability, Real-Time Availability, Must Offer Obligation, and Default Energy Bid requirements established in Article 40 of the Tariff, and Seller 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 Product hereunder. (the "CAISO Offer Requirements"). 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 5: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts);

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.8) if such failure is not remedied within thirty (30) Business Days after written notice (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts);

(d) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation

EXECUTION VERSION

Delay Damages, a Development Cure Period, and/or a One-Time Extension, the exclusive remedy for which is set forth in Section 16.2(e);

(e) if at any time, Seller delivers or attempts to deliver Product to the Delivery Point for sale under this Agreement that was not generated by the Unit, except for Replacement RA;

(f) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Term to any party other than Buyer except as expressly permitted under this Agreement;

(g) such Party becomes Bankrupt;

(h) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 18.3, if applicable;

(i) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(j) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

(k) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(i) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(ii) the issuer of such Letter of Credit becomes Bankrupt;

(iii) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(iv) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(v) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(vi) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(vii) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement.

EXECUTION VERSION**5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement (referred to herein as a “Terminated Transaction”) between the Parties; (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance. If the Early Termination Date occurs before the Commercial Operation Date and Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer. If the Early Termination Date occurs after the Commercial Operation Date, or if Buyer is the Defaulting Party either before or after the Commercial Operation Date, then as soon as reasonably practicable, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date.

██████████ The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 14, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation but in no event later than thirty (30) days, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within ten (10) days after such notice is effective.

EXECUTION VERSION

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 [Reserved].

5.7 Seller Pre-COD Liability Limitations.

Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to [REDACTED]

ARTICLE 6: PAYMENT AND NETTING

6.1 Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, 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 five (5) 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

EXECUTION VERSION

overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 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 occurred, the right to payment for such performance is waived.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.8 or 16.2(b), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Sections 3.8 or 16.2(b), interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Development Security and Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Development Security or Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages.

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.3, THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE

EXECUTION VERSION

NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8: GOVERNMENTAL CHARGES

8.1 CooperationError! Bookmark not defined..

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 9: [RESERVED.]

9.1 [Reserved.]

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 Mutual Representations and Warranties.

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Unit and sell the Product therefrom in the case of Seller;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

EXECUTION VERSION

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

10.2 Buyer and Seller Covenants.

Buyer and Seller shall, throughout the Delivery Term, 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 Product, including the Designated RA Capacity, for the sole benefit of Buyer (or any subsequent purchaser under Article 12). Such commercially reasonable actions shall include, without limitation:

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

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform it to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided*, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Facility

EXECUTION VERSION

undertake capital improvements, Facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that:

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Product from the Unit, including the Designated RA Capacity;

(b) Throughout the Delivery Term, Seller owns or has the exclusive right to the Capacity Attributes sold under this Agreement, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) Throughout the Delivery Term, no portion of the Designated RA Capacity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) Throughout the Delivery Term, no portion of the Designated RA Capacity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area and Seller shall maintain Site Control throughout the Delivery Term;

(f) Throughout the Delivery Term, the owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) Throughout the Delivery Term, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred from the Unit does not exceed that Unit's RA Capacity;

(h) Throughout the Delivery Term, with respect to the Designated RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RAR, LAR, and FCR;

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

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated, throughout the Delivery Term, to cause the Unit's Scheduling Coordinator to provide to the Buyer, at least twenty (20) Business Days before the Notification Deadline, the Designated RA Capacity of the Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified the Unit's Scheduling Coordinator that, throughout the Delivery Term, Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

EXECUTION VERSION

- (l) As of the Effective Date, that the Unit is eligible to qualify as a MTR Resource.

10.4 Buyer Representations, Warranties and Covenants.

(a) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(b) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(c) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

10.5 Prevailing Wage.

Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Buyer agrees that Seller’s obligations under this Section 10.5 with respect to the Prevailing Wage Requirement will be satisfied upon the execution by Seller’s contractor of a community workforce agreement, work site or project labor agreement, collective bargaining agreement, or other similar agreement related to construction of the Facility.

ARTICLE 11: CONFIDENTIALITY

(a) Neither Party shall disclose this Agreement, any of the terms or conditions of this Agreement or information exchanged between the Parties pursuant to this Agreement (“Confidential Information”) to a third party, except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, request from a regulatory body, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the Disclosing Party, if any, in making such disclosure, or (iv) as may be furnished to a Party’s Affiliates, and to each of such person’s employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(b) Notwithstanding the foregoing, the Parties agree that Buyer may disclose information pertaining to this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans;

EXECUTION VERSION

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 Scheduling Coordinator to further disclose such information. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to affect such resale transaction, provided that such other party agrees to keep such information confidential.

(c) Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* (“Public Records Act”) in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect and copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER’S RE-SALE OF PRODUCT

(a) Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause the Unit’s Scheduling Coordinator, to follow Buyer’s reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller’s obligations under this Agreement.

(b) Seller further agrees, and agrees to cause the Unit’s Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer’s rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit’s Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8.

(c) In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale: (i) benefitting LSE’s SC identification number (SCID), (ii) volume (in MW) of Resold Product, and (iii) subsequent sale delivery period for Resold Product.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Product sold to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues. Buyer shall be responsible for any material, incremental costs of offering, bidding, submitting, or re-selling Product in such centralized capacity market.

EXECUTION VERSION

ARTICLE 13: CHANGE IN LAW

If any action by the CPUC, CAISO or any Governmental Body having jurisdiction results in any change in applicable law occurring after the Effective Date that changes the Resource Adequacy Requirements such that the Product can no longer be counted towards Buyer's Compliance Obligation (a "Change in Law"), then upon the request of the affected Party, the Parties will discuss in good faith potential amendments to this Agreement as the Parties may mutually agree are appropriate to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits and burdens and responsibilities of the Parties hereunder; provided however that no Party is obligated to agree to an amendment and further provided that Seller's obligations hereunder are subject to the limitations on Seller's obligations as set forth in Section 10.3(b).

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Development Security.

Seller shall deliver Development Security to Buyer within ten (10) Business Days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement provided that the aggregate amount of any such collected or drawn upon Development Security shall in no event exceed an amount equal to the Seller Pre-COD Liability Cap, and Seller has no obligation to replenish the Development Security in excess thereof. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

14.2 Performance Security.

Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect and shall within ten (10) Business Days replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement. Buyer shall return the Performance Security, less the amounts drawn in accordance with this Agreement, once all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, termination damages, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

14.3 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security and Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this

EXECUTION VERSION

Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following:

- (i) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, including any such rights and remedies under Applicable Law then in effect;
 - (ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security and Performance Security, as applicable; and
 - (iii) Liquidate Development Security or Performance Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
- (c) Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

14.4 Buyer Financial Statements.

If, at any time during the Term, Buyer does not have or ceases to have and maintain an Investment Grade Credit Rating, Buyer provide to Seller both upon request and as indicated below: (a) within sixty (60) days following the end of its first, second and third fiscal quarters, or as soon as reasonably possible thereafter, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within two hundred ten (210) days following the end of each fiscal year, or as soon as reasonably possible thereafter, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer's annual report, which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members.

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage. In addition, Seller will require that its contractors comply with such insurance requirements and industry standards as related to the scope of Work. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

- (i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.
- (ii) Employers' liability insurance will not be less than one million dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar (\$1,000,000) policy limit will apply to each employee.

EXECUTION VERSION

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than five million dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars (\$10,000,000). The amounts of liability insurance described in Section 15.1(b)(i) and this Section 15.1(b)(ii) may be satisfied by primary insurance or by any combination of primary and umbrella insurance.

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Unit prior to the Commercial Operation Date, construction all-risk form property insurance covering the Unit during such construction periods, and naming Seller (and Lender if any) as the loss payee.

15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. In the event of any material modification, reduction, cancellation or termination of coverage, Seller will provide thirty (30) days prior notice to Buyer or as soon as reasonably possible if thirty (30) days is not available. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: UNIT CONSTRUCTION AND COMMERCIAL OPERATION

16.1 Construction of the Unit.

(a) Construction Start. "Construction Start" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Unit, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Unit may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent

EXECUTION VERSION

agreements) and issued thereunder a “notice to proceed” or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Unit at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause the Construction Start Date to be achieved by the Guaranteed Construction Start Date; provided that if Seller does not cause the Construction Start Date by the Guaranteed Construction Start Date, Seller’s sole liability and Buyer’s sole remedy will be Seller’s obligation to provide a Remedial Action Plan as provided in Section 16.1(c).

(b) Progress Reports. The Parties acknowledge that Seller’s obligations hereunder are contingent upon the construction and operation of the proposed energy storage system being developed by the Guaranteed Commercial Operation Date. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller’s possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements and integrated resource planning requirements, including providing status reports to the CPUC with respect to the Unit.

(c) Remedial Action Plan; Termination Right. If Seller misses any Milestone by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) to the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. Delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent missed Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. In the event Seller misses any Milestone by more than ninety (90) days and Seller and Buyer mutually agree that Seller will not achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period, a One-Time Extension or Seller’s payment of Commercial Operation Delay Damages, either Party shall have the right, but not the obligation, to terminate this Agreement and Seller will owe Buyer, as liquidated damages, an amount equal to the full Development Security that is required to be posted by Seller pursuant to this Agreement; *provided*, payment of such amount shall constitute liquidated damages and Buyer’s sole and exclusive remedy for such termination.

16.2 Commercial Operation.

(a) Commercial Operation. “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided notice to Buyer substantially in the form of Exhibit C. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Unit to occur by the Guaranteed Commercial Operation Date.

(b) Commercial Operation Delay Damages. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller

EXECUTION VERSION

desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. In no event will Seller be required to pay Commercial Operation Delay Damages for more than a total of [REDACTED]. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, if Seller has elected to extend the Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 16.2(b).

(c) Extension of Guaranteed Milestones. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

(i) The Interconnection Facilities or Network Upgrades, if applicable, are not complete and ready for the Unit to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of commercially reasonable efforts by Seller; or

(ii) A Force Majeure Event occurs.

(d) Maximum Milestone Extensions. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed [REDACTED] for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) shall not exceed [REDACTED]. No extension shall be given if the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s failure to take such commercially reasonable actions.

(e) Termination for Failure to Achieve Guaranteed Commercial Operation Date. If Seller has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages, a One-Time Extension and/or a Development Cure Period, then either Party has the right, but not the obligation, to terminate this Agreement [REDACTED]

(f) Failure to Reach Guaranteed Capacity. If, at Commercial Operation, the installed capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity such that the installed capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit C hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal

EXECUTION VERSION

to [REDACTED] for each MW that the Guaranteed Capacity exceeds the installed capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be reduced to an amount equal to the product of (a) the amount in effect prior to such adjustment, multiplied by (b) the ratio of the installed capacity as of such date to the original Guaranteed Capacity.

(g) Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Unit after Early Termination Date. If this Agreement is terminated by Seller prior to the Commercial Operation Date pursuant to Section 16.1(c) or 16.2(e), neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Unit to a party other than Buyer for a period of [REDACTED] following such termination, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement [REDACTED]

[REDACTED] and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Unit, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Unit) so long as the limitations contained in this Section 16.2(g) apply, unless the transferee agrees to be bound by the terms set forth in this Section 16.2(g) pursuant to a written agreement approved by Buyer in its reasonable discretion. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 16.2(g).

16.3 [REDACTED]

[REDACTED]

16.4 [REDACTED]

[REDACTED]

EXECUTION VERSION

ARTICLE 17: FORCE MAJEURE

17.1 Definition.

(a) “Force Majeure Event” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic and pandemic landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event; or (ix) delays in the construction of the Facility or the delivery of

EXECUTION VERSION

materials necessary to complete the Facility known or that reasonably should have been known to Seller, its existing suppliers or service providers for the Facility as of the Effective Date.

17.2 No Liability If a Force Majeure Event Occurs.

Except as provided in Section 16.2(b) and (c), neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

17.3 Notice.

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

17.4 Termination Following Force Majeure Event.

(a)

[REDACTED]

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 18: MISCELLANEOUS

18.1 Title and Risk of Loss.

EXECUTION VERSION

Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

18.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Seller's operation and/or maintenance of the Unit, including without limitation any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Unit site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

18.3 Assignment.

(a) Assignment Generally. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed, and any Change of Control of Seller will be deemed an assignment and will require the prior written consent of Buyer hereunder, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement, including through a Change of Control, to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement, including through a Change of Control, to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Unit by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry

EXECUTION VERSION

(b) Notwithstanding the foregoing, after the Commercial Operation Date has occurred, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to any Person acquiring all or substantially all of the renewable energy assets directly or indirectly owned by Seller's Ultimate Parent (whether voluntary or by operation of law and whether by assignment or Change of Control), if, (a) such transferee is a Permitted Transferee; (b) Seller gives Buyer notice at least fifteen (15) Business Days prior to such proposed assignment or Change of Control; (c) except in the case of a Change of Control, Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this agreement upon such transfer or assignment; and (d) Seller has provided Buyer with a certificate signed by the Person to which Seller wishes to assign its interests certifying that such Person meets the definition of a Permitted Transferee (and only if the requirements in subsections (a), (b), (c) and (d) above are satisfied). Neither the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller subsequent to such foreclosure or transfer or assignment in lieu of foreclosure to a Permitted Transferee) shall require Buyer's consent.

(c) Buyer's Limited Assignment Right. Buyer may assign the right to receive all or a portion of the Product that would otherwise be delivered to Buyer hereunder. In connection with any such assignment, Buyer and Seller agree to execute an assignment agreement substantially in the form attached hereto as Exhibit G. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so, and (ii) any damages associated with such assignee's failure to receive any such Product.

18.4 Governing Law and Venue.

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. Each of the Parties irrevocably and unconditionally agrees that any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof shall be filed in either the United States District Court for the Northern District of California or the Superior Court of California, County of Santa Clara, as appropriate (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Northern District of California or the Superior Court of California, County of Santa Clara, as appropriate, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

18.5 Notices.

EXECUTION VERSION

All notices, requests, statements or payments shall be made as specified in Exhibit H. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

18.6 Mobile-Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

18.7 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) [REDACTED] constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights

EXECUTION VERSION

shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

18.8 Audit.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Product delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

18.9 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

18.10 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 18.10) (a "Dispute"), any Party (the "Notifying Party") may deliver to the other Parties (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.10(a) and (b) by the expiration of the thirty (30) day period set forth in Section 18.10(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

18.11 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

18.12 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for

EXECUTION VERSION

all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

18.13 Dodd-Frank Act

The Parties intend this Agreement to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

18.14 Market-Based Rate Authority.

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this Agreement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

18.15 Rules of Interpretation.

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

EXECUTION VERSION

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

BALDY MESA SOLAR, LLC

**SILICON VALLEY CLEAN
ENERGY, a California joint powers
authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of [Buyer], a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Resource Adequacy Agreement dated as of _____ and as amended (the “Agreement”) between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

EXECUTION VERSION

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXECUTION VERSION

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Resource Adequacy Agreement dated as of _____, (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

Name and Title of Authorized Representative

Date _____

EXECUTION VERSION

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [Seller] (“Seller”) to [Buyer], a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[Seller]

By: _____

Its: _____

Date: _____

EXECUTION VERSION

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by [Seller] (“Seller”) to [Buyer], a California joint powers authority (“Buyer”) in accordance with the terms of that certain Resource Adequacy Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

- a) The Unit is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- b) Seller has installed equipment for the Unit with a nameplate capacity of no less than ninety-seven percent (97%) of the Guaranteed Capacity.
- c) The Unit is fully capable of charging, storing and discharging energy up to no less than ninety-seven percent (97%) of the Guaranteed Capacity and receiving instructions to charge, store and discharge energy.
- d) Authorization to parallel the Unit was obtained by the Participating Transmission Owner, Southern California Edison on _____[DATE]_____.

SELLER:

Signature: _____

Name: _____

Title: _____

Date: _____

ENGINEER

Signature: _____

Name: _____

Title: _____

Date: _____

EXECUTION VERSION

EXHIBIT D: DESCRIPTION OF UNIT

The following describes the Unit to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

Unit name: Baldy Mesa Solar

Resource type: Lithium-Ion Battery Energy Storage System

Nameplate capacity: 75MW

Flex Capacity estimate: Years 1-5: 75MW; Years 6+: 150MW

Location: San Bernardino County, CA

Unit physical address: 19252 Muskrat Ave, Adelanto, California 92301

Unit elevation: 2888 ft

Unit latitude: 34.5759

Unit longitude: -117.4134

Interconnection voltage: 115kV

CAISO transmission access charge area: SCE

Point of interconnection: 115kV bus at SCE Roadway Substation

Point of interconnection address: 34.5759,-117.413376

Existing zone: SP-15

PNode: ROADWAY_1_N013

CAISO Resource ID: TBD

Substation: SCE Roadway Substation

EXECUTION VERSION

EXHIBIT E: OPERATIONAL CHARACTERISTICS

Throughout the Delivery Term, the Unit shall maintain or exceed the following minimum performance. The amounts set forth below reflect the full Unit.

Discharging and Charging

Minimum monthly Round-Trip Efficiency: █%

Minimum Annual Availability: █%

Minimum daily Cycles █

Minimum annual Cycles: █

Definitions

“Round-Trip Efficiency” means the rate calculated by dividing energy discharged from the Unit by energy charged to the Unit.

“Annual Availability” means the total number of hours, or partial hours, in the Contract Year during which the Unit was available to charge and discharge energy between the Unit and the Delivery Point.

“Cycles” means the number of equivalent charge/discharge cycles of the Unit during a specified time period, which shall be deemed to be equal to (a) the total cumulative amount of discharging energy discharged from the Unit (expressed in MWh) divided by (b) four (4) hours.

Description of the Facility

Baldy Mesa Solar is a project comprised of the 75 MW, 300 MWh BESS Unit, paired with a solar facility with an expected nameplate capacity of 150 MW (“Facility”).

Baldy Mesa Solar is behind a POI with an interconnection capacity of 200 MW, along with several other projects under development by AES.

In furtherance of Buyer’s compliance and reporting obligations related to the Product, and without limiting Seller’s obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations (subject to redaction of commercially sensitive information).

EXECUTION VERSION

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Unit description.
3. Site plan of the Unit.
4. Description of any material planned changes to the Unit or the Site.
5. Schedule showing progress on Unit construction generally and achieving each of the Milestones.
6. Summary of activities during the previous month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to the Milestones, including whether Seller is on schedule with respect to the same.
9. List of issues that are likely to potentially affect achievement of the Milestones.
10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.
11. Pictures, in sufficient quantity and of appropriate detail to document construction and interconnection progress.
12. Compliance with workforce and prevailing wage requirements.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT G: FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [____], 2022 by and among [____], a [____] (“**Seller**”), [CCA], a [____] (“**Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain Resource Adequacy Agreement (the “**RAA**”) between Buyer and Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, Seller, Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of Buyer under the RAA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of Buyer under the RAA are expressly reserved for Buyer.
- (b) Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of Buyer under the RAA are expressly retained by Buyer. To the extent J. Aron fails to pay for any Assigned Products by the due date for payment set forth in the RAA, Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the RAA) of receiving notice of such non-payment from Seller.
- (c) J. Aron hereby accepts and Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the RAA shall take place between Buyer and Seller pursuant to the terms of the RAA; provided that (i) title to Assigned Product will pass from Seller to J. Aron upon delivery by Seller of Assigned Product in accordance with the RAA; (ii) Buyer is hereby authorized by J. Aron to and shall act as J. Aron’s agent with regard to scheduling Assigned Product; (iii) Buyer will provide copies to J. Aron of any Notice (as defined in the RAA) of an Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to Seller and promptly after receipt thereof from Seller; (iv) Seller will provide copies to J. Aron of annual forecasts and monthly forecasts of Available Capacity provided pursuant to Section [____] of the RAA; (v) Seller will provide copies to J. Aron of all invoices and supporting data provided to Buyer pursuant to Section [____], provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section [____], will be resolved solely between Buyer and Seller and therefore Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (vi) Buyer and Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.
- (e) Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from Seller through one or more intermediaries such that all Assigned Products will be re-delivered to Buyer, and (ii) J. Aron has the right to purchase receivables due from Buyer for any such Assigned Products. To the extent J. Aron purchases any such receivables due from Buyer, J. Aron may transfer such receivables to Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

- (f) Notwithstanding any other provision of this Agreement, Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where Buyer is acting as Scheduling Coordinator for the Unit (as defined in the RAA) and through scheduling of ISTs. As used in this clause (f), the following terms have the meanings specified below.

“**CAISO**” means California Independent System Operator or its successor.

“**CAISO Tariff**” means CAISO’s Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Scheduling Coordinator**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
- (1) delivery of a written notice of termination by either J. Aron or Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by Seller to each of J. Aron and Buyer following J. Aron’s failure to pay when due any amounts owed to Seller in respect of any Delivered Product Payment Obligation and such failure continues for one business day following receipt by J. Aron of written notice thereof;
 - (3) delivery of a written notice by Seller if any of the events described in Section [] [Bankruptcy] of the RAA occurs with respect to J. Aron; or
 - (4) delivery of a written notice by J. Aron if any of the events described in Section [] [Bankruptcy] of the RAA occurs with respect to Seller.
- (b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the RAA. All Assigned Rights and Obligations shall revert from J. Aron to Buyer upon the expiration of or early termination of the RAA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The Seller and the Buyer represent and warrant to J. Aron that (a) the RAA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the RAA or suspend performance thereunder; and (c) all of its obligations under the RAA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [] and the Cover Sheet of the RAA and to the addresses of each of Seller and Buyer specified in the RAA. Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by Seller to Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email: gs-prepay-notices@gs.com

5. Miscellaneous. Sections [] (Buyer's Representations and Warranties), [] (Confidential Information), Sections [] (Severability), [] (Counterparts), [] (Amendments), [] (No Agency), [] (Mobile-Sierra), [] (Counterparts), [] (Facsimile or Electronic Delivery), Section [] (Binding Effect) and [] (No Recourse to Members of Buyer) of the RAA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. U.S. Resolution Stay Provisions. The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) each of Buyer and Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

7. Governing Law, Jurisdiction.

(a) Governing Law.

THIS ASSIGNMENT AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS ASSIGNMENT AGREEMENT WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ANY CONFLICTS OF LAWS PROVISIONS THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAWS; PROVIDED, HOWEVER, THAT THE AUTHORITY OF THE BUYER TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS ASSIGNMENT AGREEMENT SHALL BE DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) [Reserved].¹

(c) Waiver of Right to Trial by Jury.

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS NOVATION AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF EITHER OF THE OTHER PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND EACH OF THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS ASSIGNMENT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7(C).

¹ NOTE: Parties to negotiate and agree upon jurisdiction provision, if any, at the time of execution.

[Remainder of Page Intentionally Blank]

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IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[SELLER]

a [_____]

By: _____

Name: _____

Title: _____

[BUYER]

a [_____]

By: _____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By: _____

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: _____

Name:

Title:

Appendix 1

Assigned Rights and Obligations

RAA: “RAA” means that certain Resource Adequacy Agreement dated [____], by and between [Buyer], a [____], and [____], a [____], as amended from time to time.

“**Assignment Period**” means the period beginning on [_____] and extending until [_____] provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the RAA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Products” include [____].

Further Information: All Assigned Product delivered by Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

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Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

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EXHIBIT H: NOTICES

BALDY MESA SOLAR, LLC ("Seller")	Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer")
All Notices: Street: City: Attn: General Counsel Phone: 801-679-3500 Email: [REDACTED]	All Notices: Street: 333 W. El Camino Real, Suite 330 City: Sunnyvale, California, 94087 Attn: Girish Balachandran, CEO Phone: (408) 721-5301 Email: [REDACTED]
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: [REDACTED] [REDACTED]
Invoices: Attn: Revenue Manager Phone: 801-679-3500 E-mail: [REDACTED]	Invoices: Attn: Power Supply Group Phone: (408) 721-5301 E-mail: [REDACTED]
Payments: Attn: Revenue Manager Phone: 801-679-3500 E-mail: [REDACTED]	Payments: Attn: Finance Group Phone: (408) 721-5301 E-mail: [REDACTED]
Wire Transfer: [REDACTED] [REDACTED] [REDACTED]	Wire Transfer: [REDACTED] [REDACTED] [REDACTED]

Staff Report – Item 6

Item 6: Integrated Resource Plan Status Update

From: Girish Balachandran, CEO

Prepared by: Monica Padilla, COO & Director of Power Resources
Maren Wenzel, Senior Manager of Energy Policy and Regulatory Analysis

Date: 9/14/2022

RECOMMENDATION

Staff requests that the Board of Directors receive an update on the 2022 Integrated Resource Plan.

BACKGROUND

The CPUC requires all load serving entities submit an Integrated Resource Plan (IRP) every two years. This plan requires load serving entities show how they can meet resource adequacy, greenhouse gas and renewable portfolio standard goals. From the submissions of the IRP, the CPUC forms a Preferred System Plan which the CPUC confirms will meet all system needs and policy goals.

The last IRP submitted by SVCE was done in 2020.

ANALYSIS & DISCUSSION

In an effort to continue communications with the Board of Directors on the IRP, staff will provide a presentation with a status update prior to requesting approval of the IRP in October 2022.

STRATEGIC PLAN

These efforts support SVCE's Strategic Plan Goal 4, "Plan for resources to meet SVCE's mission while balancing multiple stakeholder objectives", Measure 1, "Integrated Resource Planning - develop pathway to affordable, reliable and carbon-free power supply by 2035 and beyond (2045)."

FISCAL IMPACT

N/A

ATTACHMENTS

1. This presentation is posted to the SVCE website.

Staff Report – Item 7

Item 7: New Construction Reach Code Update

From: Girish Balachandran, CEO

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

Date: 9/14/2022

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 jurisdiction's passed reach codes applying to the 2019 building code. These reach codes (with the exception of those passed by Morgan Hill and Campbell) will expire 12/31/2022.

Staff is in the process of supporting member agencies with core technical assistance and supportive elements, to adopt, renew, or enhance these codes. In addition, staff is in the process of developing resources that will support policies for existing building electrification.

An initial update was provided to the Board of Directors at the March 9, 2022 board meeting, with additional updates in April, May, June, and August.

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

September 14, 2022

Appendix A

Power Resource Contracts Executed by CEO

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between **City of Riverside** and **SILICON VALLEY CLEAN ENERGY**, a California joint powers authority ("**Seller**"), dated as of August 22, 2022 (the "**Effective Date**"), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the "**Transaction**"). Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

Purchaser: City of Riverside

Seller: Silicon Valley Clean Energy

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B and C are incorporated into this Confirmation

ARTICLE 2 **DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the 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 the Showing Month will equal the Contract Quantity, less any excused reductions to the Contract Quantity, and in the case of Flexible RA Capacity, less any Excused Reductions in Unit EFC.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Contract Quantity by providing Purchaser with the specific Unit 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 Contract Quantity for the Shown Unit in any Showing Month, the Parties will 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 the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. 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 Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Purchaser will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit 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
- (h) Excused Reductions in Unit EFC:
If the Product includes FCR Attributes, then Seller's failure to deliver any of the amount of FCR Attributes specified in Appendix B during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Effective Date as determined by CAISO and Seller has provided notice of such reduction to Purchaser by the Notification Deadline for the applicable Showing Month. In the event of such excused reductions in Unit EFC, Seller shall convey to Buyer a revised amount of FCR Attributes of such Unit. The extent to which Seller's failure is excused will equal (i) the Contract Quantity of FCR Attributes for such month multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Effective Date, divided by (iii) the Unit EFC as of the Effective Date. Seller may, but is not obligated to, provide the excused part of the Contract Quantity of FCR Attributes for the applicable month from the Shown Unit.

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

2.2 Purchaser's Remedies for Seller's Failure to Deliver Contract Quantity

- (a) If Seller fails to deliver any part of the Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to 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. The Parties will 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.

2.3 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 2.3(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the 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 will, and will cause the 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 Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

ARTICLE 3

PAYMENTS

3.1 Payment

After Seller has delivered the Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser must pay for the Product as provided in Article 9 of the WSPP Agreement; except that under Section 9.4, in case any portion of any bill is in dispute, then only the undisputed portion of the bill shall be paid when due. The disputed portion of the bill shall be adjusted or paid upon final resolution of the dispute. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

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 Unit 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 against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the 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 must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser any such amounts received by Seller, or a 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 will, or will cause the Unit's SC to, within one 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 must schedule or cause the Unit's SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the 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 will indemnify and hold Purchaser harmless from, the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the 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 will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Purchaser's rights to the Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) the Unit qualifies under the Tariff for the Product, and the Unit 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 Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
- (d) if applicable, Seller has notified either the 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 Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

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

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

5.2 Payment Netting.

Section 28.1 of the WSPP Agreement shall be applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP.

5.3 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; and (iii) Purchaser may disclose information to any Subsequent Purchaser. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as confidential. 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 hereto to City of Riverside pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), City of Riverside will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by City of Riverside. If Seller takes no

such action after receiving the foregoing notice from City of Riverside, City of Riverside shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, City of Riverside shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless City of Riverside, its officers, employees and agents ("City of Riverside Indemnified Parties"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of City of Riverside Indemnified Parties for City of Riverside's refusal to disclose any Requested Confidential Information.

5.4 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.5 Governing Law

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

5.5 Credit Requirements

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

5.6 No Recourse to Members of Purchaser

Seller 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. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Purchaser will have no rights and will not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Seller's constituent members, in connection with this Confirmation.

5.7 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.

5.8 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 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.

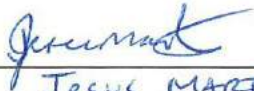
[Signatures appear on the following page.]

AGREED AS OF THE EFFECTIVE DATE:

CITY OF RIVERSIDE

RX

**SILICON VALLEY CLEAN ENERGY, a
California joint powers authority**

By: 
Name: Jesus MARTINEZ
Title: Market operations Manager

DocuSigned by:

By: 5CA64B9AC4C24C3
Name: GIRISH Balachandran
Title: CEO

APPENDIX A DEFINED TERMS

“CAISO” means the California ISO.

“Capacity Attributes” means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the 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 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 or by the CAISO pursuant to the Tariff for an applicable Showing Month.

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

“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.

“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 Unit, any and all resource adequacy attributes of the 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.

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

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

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

“MW” means megawatt.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Product” means RAR, Local RAR and FCR, 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.

“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.

“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 a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

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

“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.

“Uncontrollable Forces” shall have the meaning set forth in the WSPP Agreement, except that notwithstanding Section 10 of the WSPP Agreement, a Party’s failure to perform shall not be excused as an Uncontrollable Force due to “drought” or a “failure to obtain the necessary authorizations and approvals from, any governmental agency or authority.”

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

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

“Unit NQC” means Unit Net Qualifying Capacity and is the lesser of that of the Unit 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):

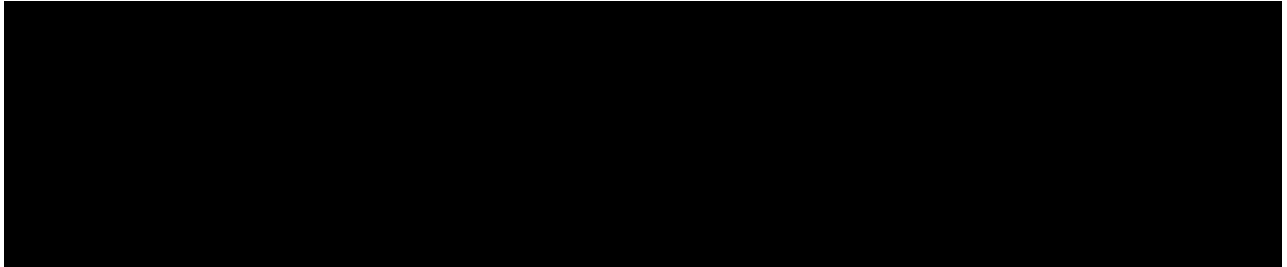
CAISO Zone: South

MCC Bucket: 4

CPUC Local Area (if applicable):

Flexible Capacity Category (if applicable): 1

Delivery period: November 1, 2022 through November 30, 2022 inclusive

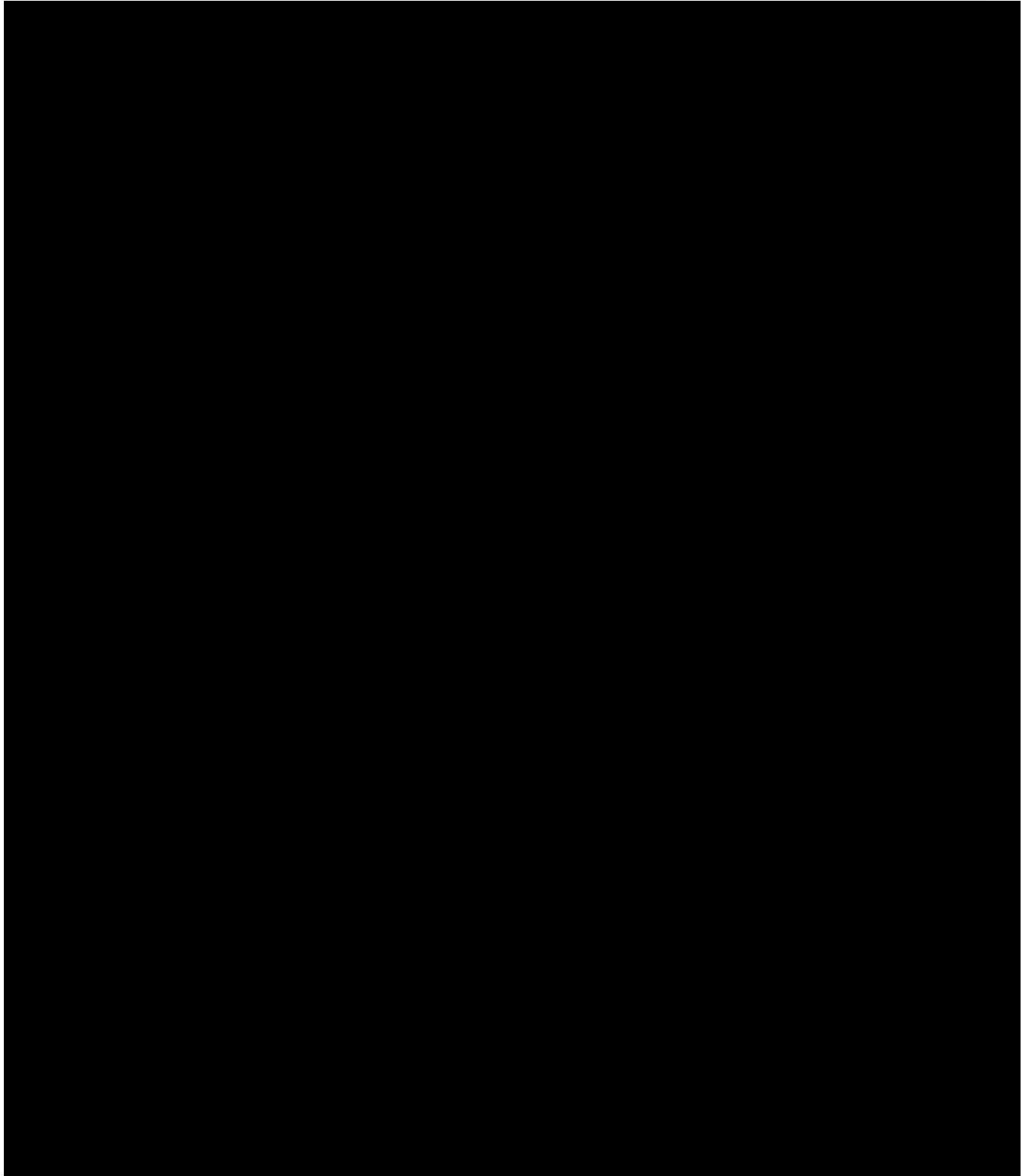


Unit 1

Unit Specific Information	
Resource Name	REDONDO GEN STA. UNIT 5
Physical Location	Redondo Beach, CA
CAISO Resource ID	REDOND 7 UNIT 5
SCID of Resource	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):	178.87
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	SCE
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	LA Basin
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C
NOTICE INFORMATION





Joint CCA WSPP Standard RA Confirmation**WSPP RESOURCE ADEQUACY CONFIRMATION**

This Confirmation confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”) and **Peninsula Clean Energy Authority**, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of July 26, 2022 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated August 12, 2021 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Joint CCA WSPP Standard RA Confirmation**ARTICLE 2**
DELIVERY OBLIGATIONS AND ADJUSTMENTS**2.1 Sale and Delivery of Product**

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Joint CCA WSPP Standard RA Confirmation

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

- (g) Hold-Back Capacity, if any, is deemed Contract Quantity delivered, unless utilized under Article Five as Substitute Capacity, then Contract Quantity is delivered according to the timeline requirements therein.
- (h) The Shown Unit(s) must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

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

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.

Joint CCA WSPP Standard RA Confirmation**2.4 Planned Outages**

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

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

- a) If Seller fails to deliver any part of the Expected Contract Quantity as required herein for any Showing Month, Seller shall be liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word “hourly” therein.
- b) Seller shall indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller’s failure to deliver the Product or a Shown Unit’s SC’s failure to timely or accurately submit Supply Plans in accordance with the Tariff and this Confirmation. The Parties shall use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.6 Purchaser’s Re-Sale of Product

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

Joint CCA WSPP Standard RA Confirmation

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

- (b) Purchaser shall notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two (2) Business Days before the Notification Deadline for each Showing Month for which Purchaser has resold the Product. Purchaser shall notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with Purchaser's direction and Purchaser shall retain and receive all revenues from such re-sale.
- (d) Purchaser shall have the exclusive right to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Contract Quantity into the CAISO Competitive Solicitation Process (CSP) for CPM Capacity. Seller and the Unit's SC shall comply with the Purchaser's direction and, to the extent that the CAISO designates the Expected Contract Quantity as CPM Capacity, Purchaser shall be entitled to retain and receive the CPM Capacity Payment. Unless otherwise instructed by Purchaser, (i) Seller shall not, and shall cause the Unit's SC to not, offer any portion of the Expected Contract Quantity to CAISO as CPM Capacity and (ii) if CAISO designates any portion of the Contract Capacity as CPM Capacity, then Seller shall, and shall cause the Unit's SC to, promptly (and in any event within one (1) Business Day of the time Seller receives notification from CAISO) notify Purchaser of such designation, and if CAISO makes such a designation, Seller shall not, and shall cause the Unit's SC to not, accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.

ARTICLE 3
PAYMENTS

3.1 Payment

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

Joint CCA WSPP Standard RA Confirmation**3.2 Allocation of Other Payments and Costs**

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Shown Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it pursuant to this Section 3.2(a) against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Expected Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller shall promptly report receipt of any such revenues to Purchaser. Seller shall pay to Purchaser within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller shall, or shall cause the Shown Unit's SC to, within one (1) Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4**OTHER PURCHASER AND SELLER COVENANTS****4.1 CAISO Requirements**

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

Joint CCA WSPP Standard RA Confirmation**4.2 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization**

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

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

4.3 Seller's Representations and Warranties

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

- (a) No part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) The Shown Unit(s) qualify to provide the Product under the Tariff, and the Shown Unit(s) and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Shown Unit(s) during the Delivery Period does not exceed the Shown Unit's Net Qualifying Capacity and, if applicable, the Effective Flexible Capacity for that Shown Unit;
- (d) if applicable, Seller has notified either the Shown Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Shown Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such Shown Unit's SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

Joint CCA WSPP Standard RA Confirmation**4.4 Market Based Rate Authority**

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

ARTICLE 5
HOLD-BACK AND SUBSTITUTE CAPACITY

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

ARTICLE 6
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

6.1 Termination Payment

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

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

Joint CCA WSPP Standard RA Confirmation

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.

Joint CCA WSPP Standard RA Confirmation**6.3 Dodd-Frank Act**

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

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

6.5 Governing Law

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

6.6 Collateral

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

6.7 No Recourse to Members of Seller or Purchaser²

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

Joint CCA WSPP Standard RA 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.”

Joint CCA WSPP Standard RA Confirmation

- (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.”

Joint CCA WSPP Standard RA Confirmation

- (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.

Joint CCA WSPP Standard RA Confirmation

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:

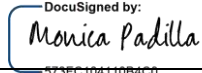
Peninsula Clean Energy Authority

By: Janis C. Pepper

Name: Janis Pepper

Title: CEO

Silicon Valley Clean Energy Authority

By: 

Name: Monica Padilla

Title: COO & Director of Power Resources

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.

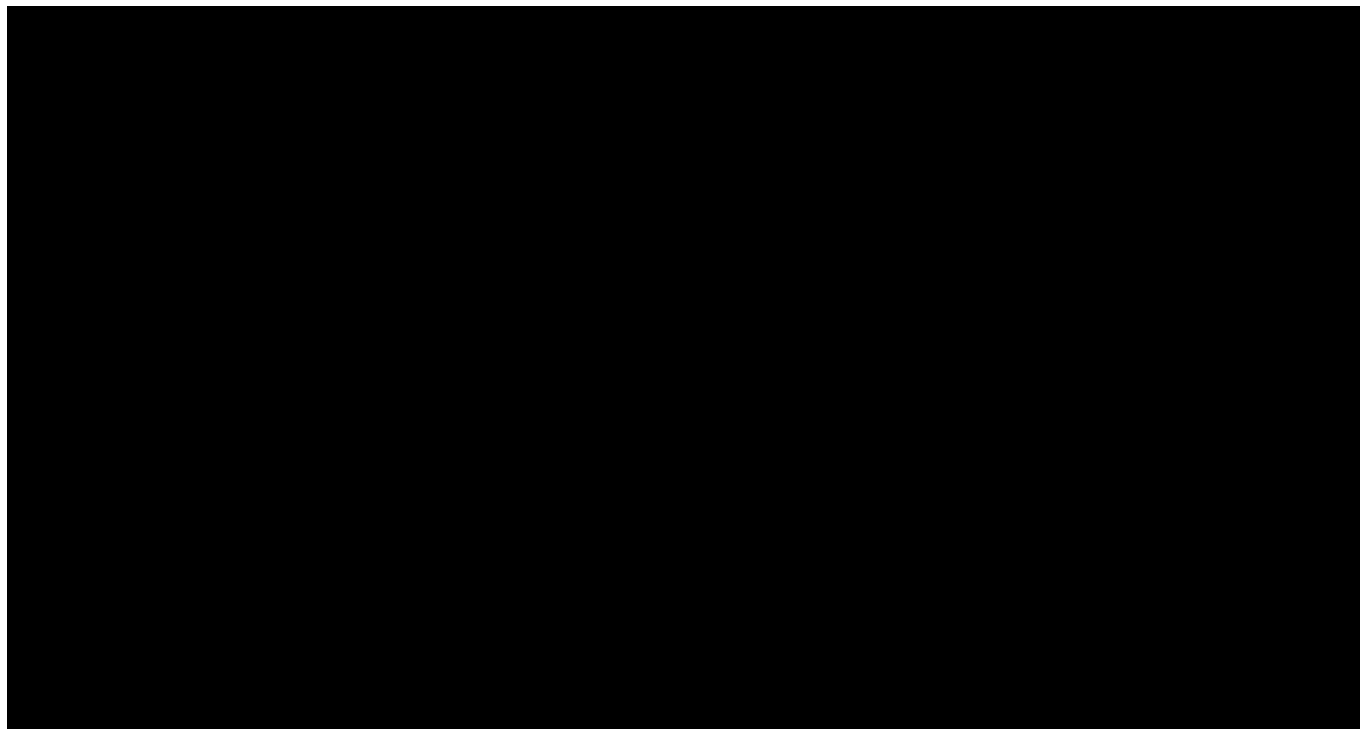
Additional Product Information (fill in all that apply):

CAISO Zone:

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 1



Unit 1

Unit Specific Information	
Resource Name	REDONDO GEN STA. UNIT 8
Physical Location	Redondo Beach, CA
CAISO Resource ID	REDOND_7_UNIT 8
SCID of Resource	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):	480
Unit EFC by month (e.g., Jan=30, Feb=50)	350
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C
NOTICE INFORMATION

Seller: Peninsula Clean Energy Authority	Purchaser: Silicon Valley Clean Energy Authority

APPENDIX D
PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between East Bay Community 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 July 19, 2022 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated August 12, 2021 (the “WSPP Agreement”). The WSPP Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1
TRANSACTION TERMS

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B, C, and D are incorporated into this Confirmation.

☐ **Firm RA Product:**

Seller shall provide Purchaser with the Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity for any reason, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

☒ **Contingent Firm RA Product:**

Seller shall provide Purchaser with Product from the Unit in the amount of the Contract Quantity. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reduction of the Contract Quantity of the Unit in accordance with Section 2.2, Seller shall have the option to notify Purchaser that either (a) Seller will not provide the portion of the Contract Quantity attributable to such reduction during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period pursuant to Section 2.3. If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than as provided in Section 2.2, then Seller shall have the option to supply Alternate Capacity pursuant to Section 2.3 to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Purchaser with the Expected Contract Quantity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Expected Contract Quantity during such period, then Seller shall be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Section 2.5.

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller shall sell and deliver to Purchaser, and Purchaser shall purchase and receive from Seller, the Expected Contract Quantity of the Product from the Shown Unit(s). Seller's obligation to deliver the Expected Contract Quantity of Product for the Delivery Period is firm and will not be excused for any reason.
- (b) Seller shall deliver the Expected Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit(s) and the characteristics of the Shown Unit(s) and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller shall submit, or cause the Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for such Showing Month shall equal the Expected Contract Quantity, including a request for Hold-Back Capacity pursuant to Article Five of this Confirmation.
- (d) Seller shall sell and deliver Product from a Shown Unit that meets the requirements set forth in Appendix B, including the Resource Category and, if applicable, the Flexible Capacity Category. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. A Shown Unit may not be an unspecified import. Seller shall identify the Shown Unit(s) and Expected Contract Quantity by providing Purchaser with the specific information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Contract Quantity for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Purchaser's instructions, including Purchaser's instructions to withhold all or part of the Expected Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Shown Unit(s) by CAISO. Seller has failed to deliver the

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Expected Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Seller will not have failed to deliver the Expected Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit(s) and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

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

2.2 Reductions in Contract Quantity

- (a) If Seller is providing Contingent Firm RA Product, Seller's obligation to deliver the Contract Quantity for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; provided, (i) Seller notifies Purchaser by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Purchaser may include in Purchaser's Compliance Showings applicable to that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff.
- (b) In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such portions of such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 2.3.

2.3 Seller's Option To Provide Alternate Capacity

If Seller is unable to provide the full Contract Quantity for 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:

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

**Joint CCA WSPP Standard RA Confirmation
19 July 2022****SVCE08RA2022**

- (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.

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

**Joint CCA WSPP Standard RA Confirmation
19 July 2022****SVCE08RA2022**

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

**Joint CCA WSPP Standard RA Confirmation
19 July 2022****SVCE08RA2022**

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

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

6.5 Governing Law

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

6.6 Collateral

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

6.7 No Recourse to Members of Purchaser

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

constituent members, or the officers, directors, advisors, contractors, consultants or employees of Purchaser or Purchaser'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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

Joint CCA WSPP Standard RA Confirmation
19 July 2022

SVCE08RA2022

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

**Joint CCA WSPP Standard RA Confirmation
19 July 2022****SVCE08RA2022**

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:

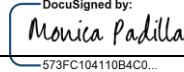
**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By:  DocuSigned by:
205EAE1AE9DE4A7...

Name: Marie Fontenot

Title: Vice President of Power Resources

**SILICON VALLEY COMMUNITY
ENERGY AUTHORITY, a California
joint powers authority**

By:  DocuSigned by:
573FC104110B4C0...

Name: Monica Padilla

Title: COO & Director of Power Resources

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.

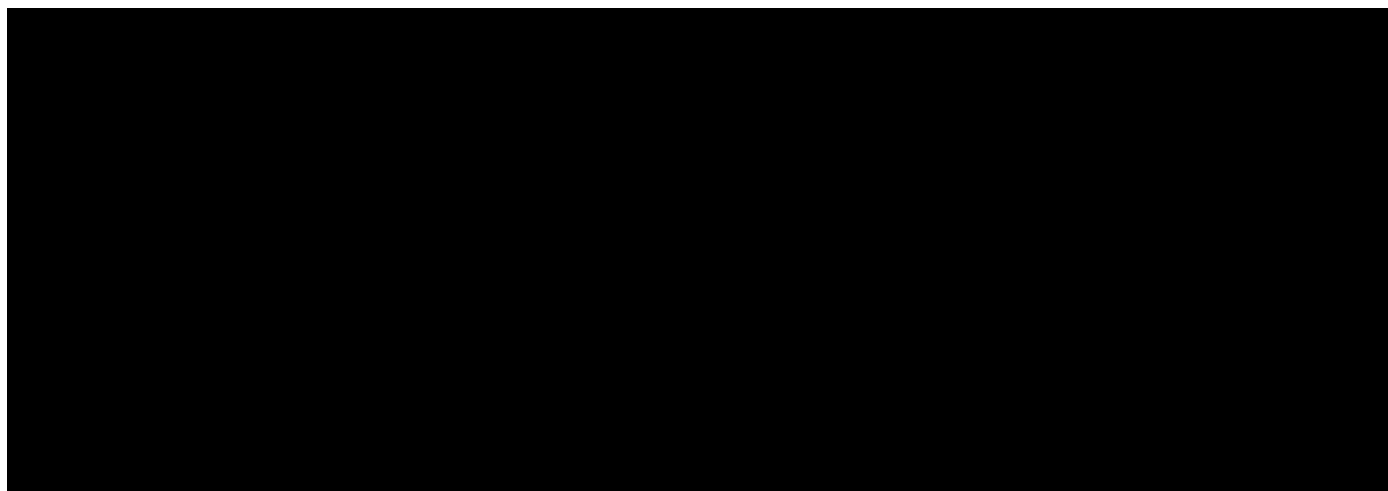
Additional Product Information (fill in all that apply):

CAISO Zone: North System

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A



Unit 1

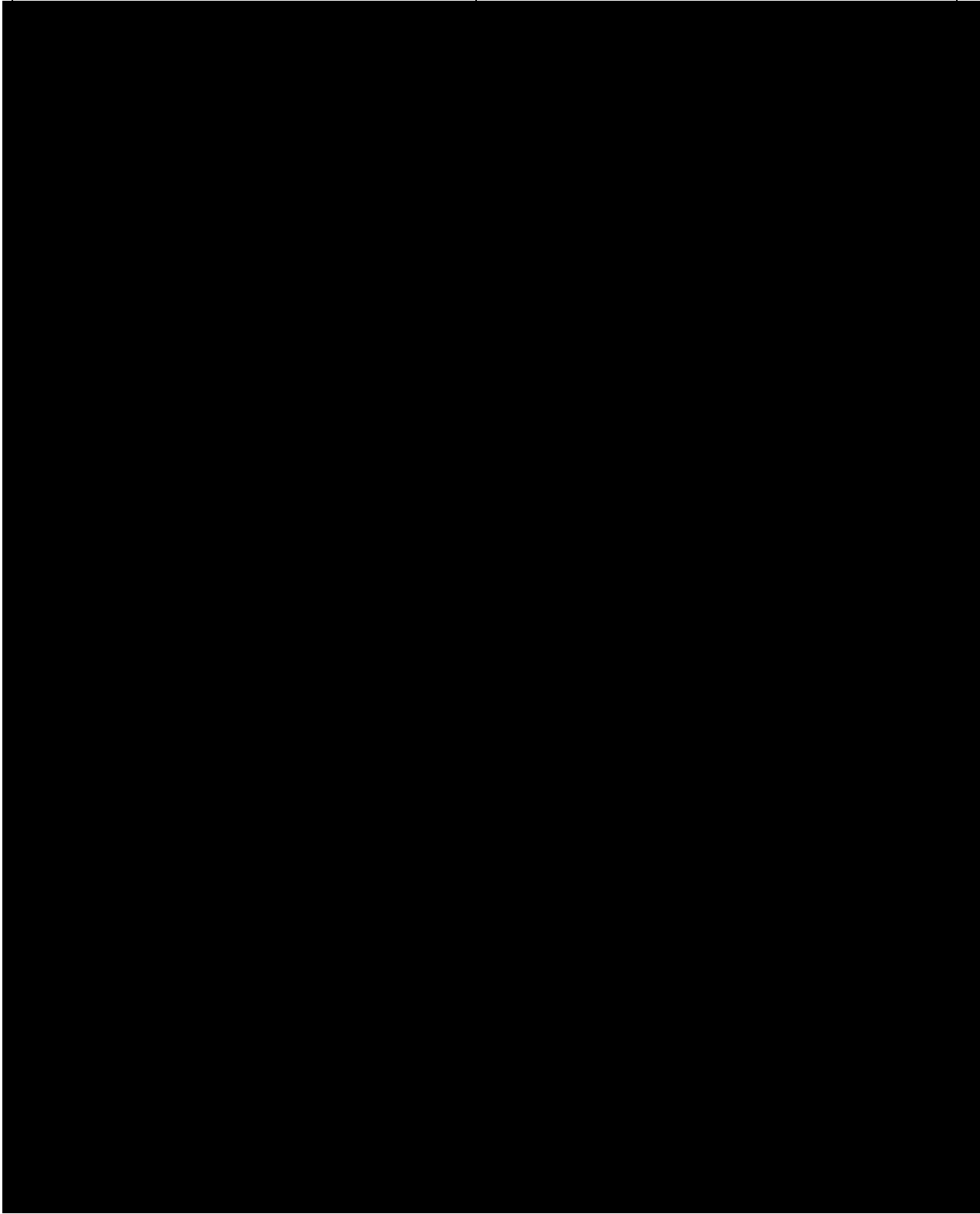
Unit Specific Information	
Resource Name	Metcalf Energy Center
Physical Location	San Jose, CA
CAISO Resource ID	METEC_2_PL1X3
SCID of Resource	
Unit NQC by month (e.g., Jan=50, Feb=65):	Oct=597.05, Dec=597.05
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	Thermal
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	PG&E
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

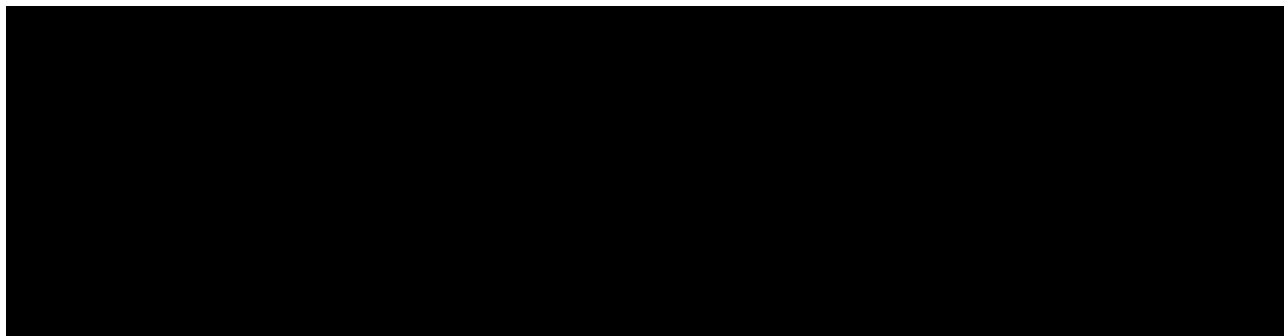
(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

APPENDIX C
NOTICE INFORMATION

Seller: East Bay Community Energy Authority	Purchaser: Silicon Valley Clean Energy Authority
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APPENDIX D
PLANNED OUTAGE SCHEDULE

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

**IMPORT CAPABILITY TRANSFER
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
SAN DIEGO COMMUNITY POWER**

This confirmation letter including all appendices hereto (“Confirmation”) confirms the transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority (“Seller”) and **San Diego Community Power**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of August 5, 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 WSP 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 Points in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

1.2 Delivery Period and Term

- (a) Delivery Period. The Delivery Period October 1, 2022 through October 31, 2022 inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (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 as follows (the “Contract Quantity”), at the Contract Price, and for the following Delivery Points as specified in the Contract Quantity 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:

$$\text{One-Time Payment} = \sum_i^n (A_i \times B_i \times 1,000)$$

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

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 by electronic mail transmission (including PDF) 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 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 will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of 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.

Acknowledged and agreed to as of the Confirmation Effective Date.

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

DocuSigned by:
By: Girish Balachandran
5CA64B9AC4C24C3
Name: Girish Balachandran
Title: CEO

**SAN DIEGO COMMUNITY POWER, a
California joint powers authority**

By: Karin Burns
Name: Karin Burns
Title: Chief Executive Officer

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.

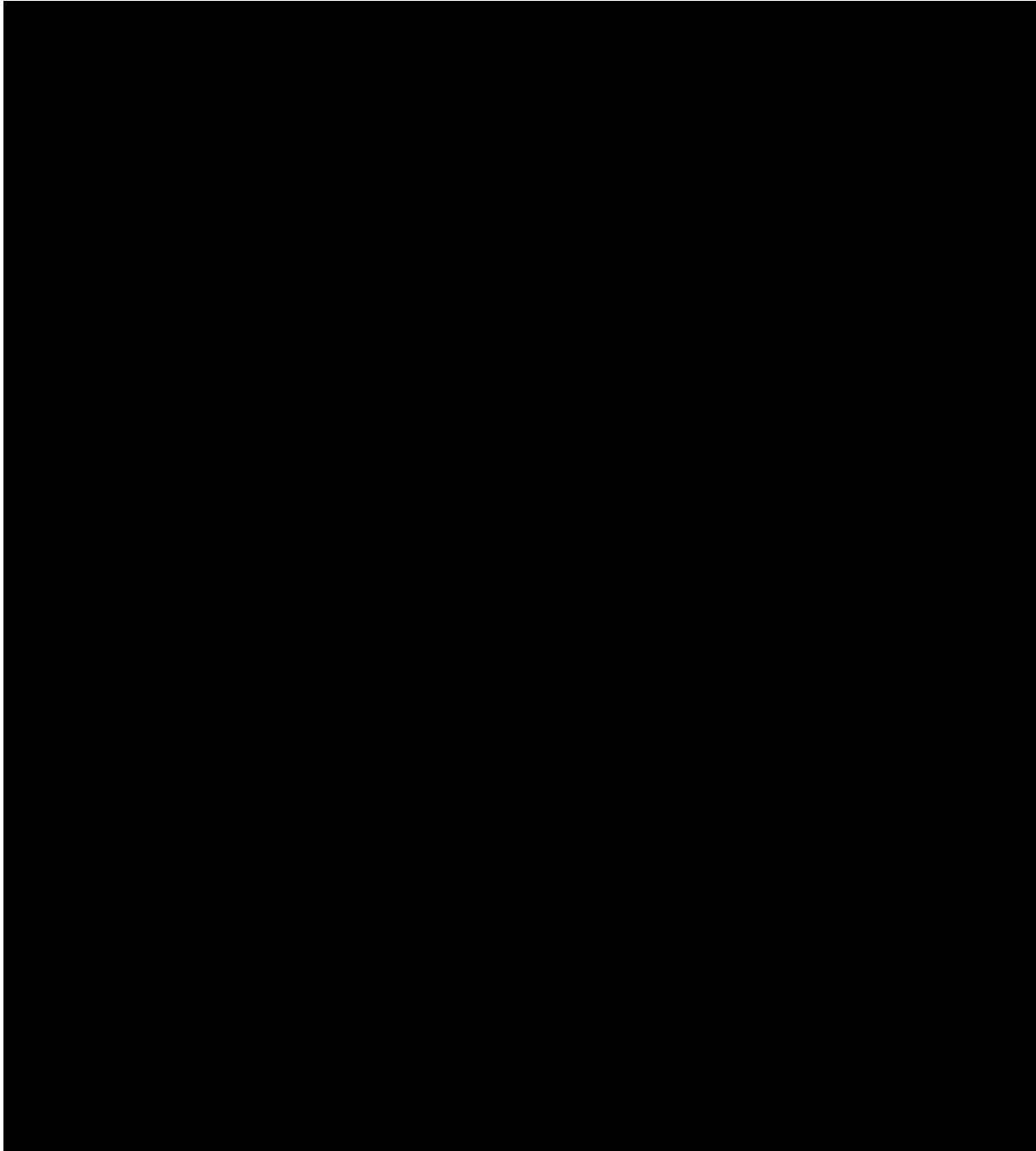
“Seller” has the meaning set forth in the introductory paragraph of this Confirmation.

“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.

APPENDIX C
NOTICE INFORMATION



WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation confirms the transaction between Silicon Valley Clean Energy Authority, a California joint powers authority (“Seller”) and City of Vernon (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of August 5, 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 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

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.

6.3 Dodd-Frank Act

The Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

6.4 Change in Law

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

6.5 Governing Law

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

6.6 Collateral

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

6.7 No Recourse to Members of Purchaser

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

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 by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

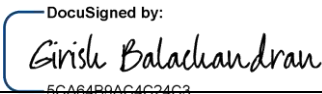
6.10 Entire Agreement; No Oral Agreements or Modifications

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:

Silicon Valley Clean Energy Authority

By: 
5CA64B8AC4C24C3...
Name: Girish Balachandran
Title: CEO

City of Vernon

By: 
Digitally signed by Ramzi Raufdeen
DN: cn=Ramzi Raufdeen, o=City of Vernon,
ou=Integrated Resources Manager,
email=r-raufdeen@cityofvernon.org, c=US
Date: 2022.08.24 11:52:02 -0700
Name: Ramzi Raufdeen
Title: Integrated Resources Manager

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):

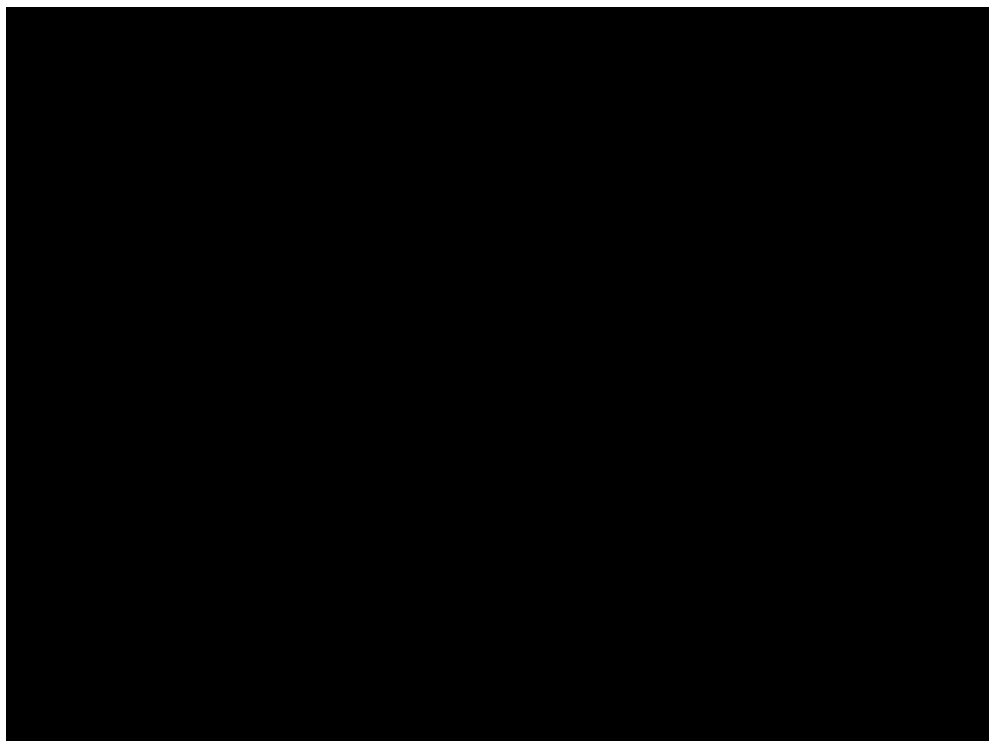
CAISO Zone:

Resource Category (MCC Bucket): 4

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): 1

Delivery period: November 1, 2022, through November 30, 2022 inclusive.

Contract Quantity and Contract Price:

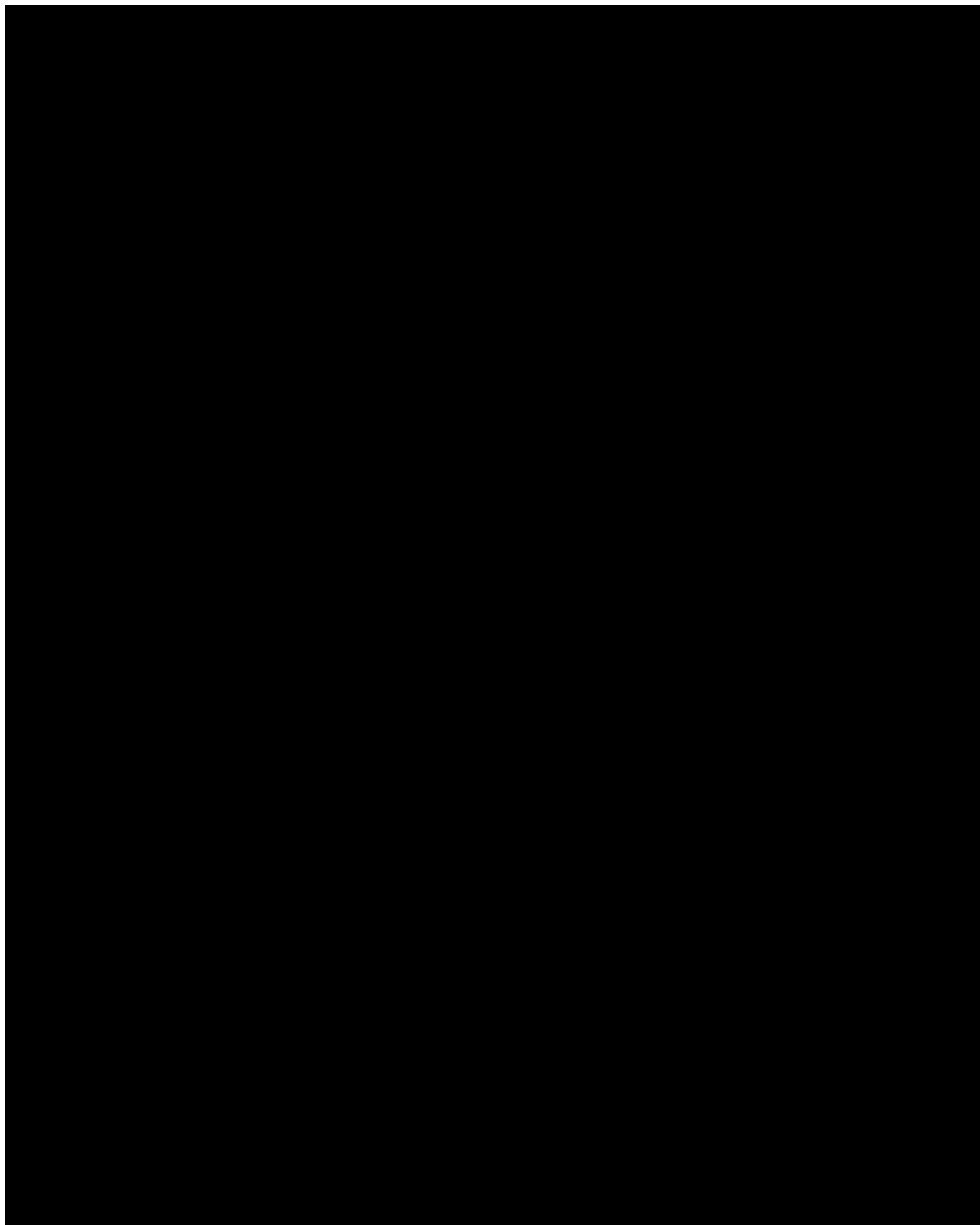
Unit 1

Unit Specific Information	
Resource Name	REDONDO GEN STA. UNIT 8
Physical Location	Redondo Beach, CA
CAISO Resource ID	REDOND_7_UNIT_8
SCID of Resource	EDFR
Unit NQC by month (e.g., Jan=50, Feb=65):	480
Unit EFC by month (e.g., Jan=30, Feb=50)	350
Resource Type (e.g., gas, hydro, solar, etc.)	Natural Gas Steam
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	1
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	CAISO System
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

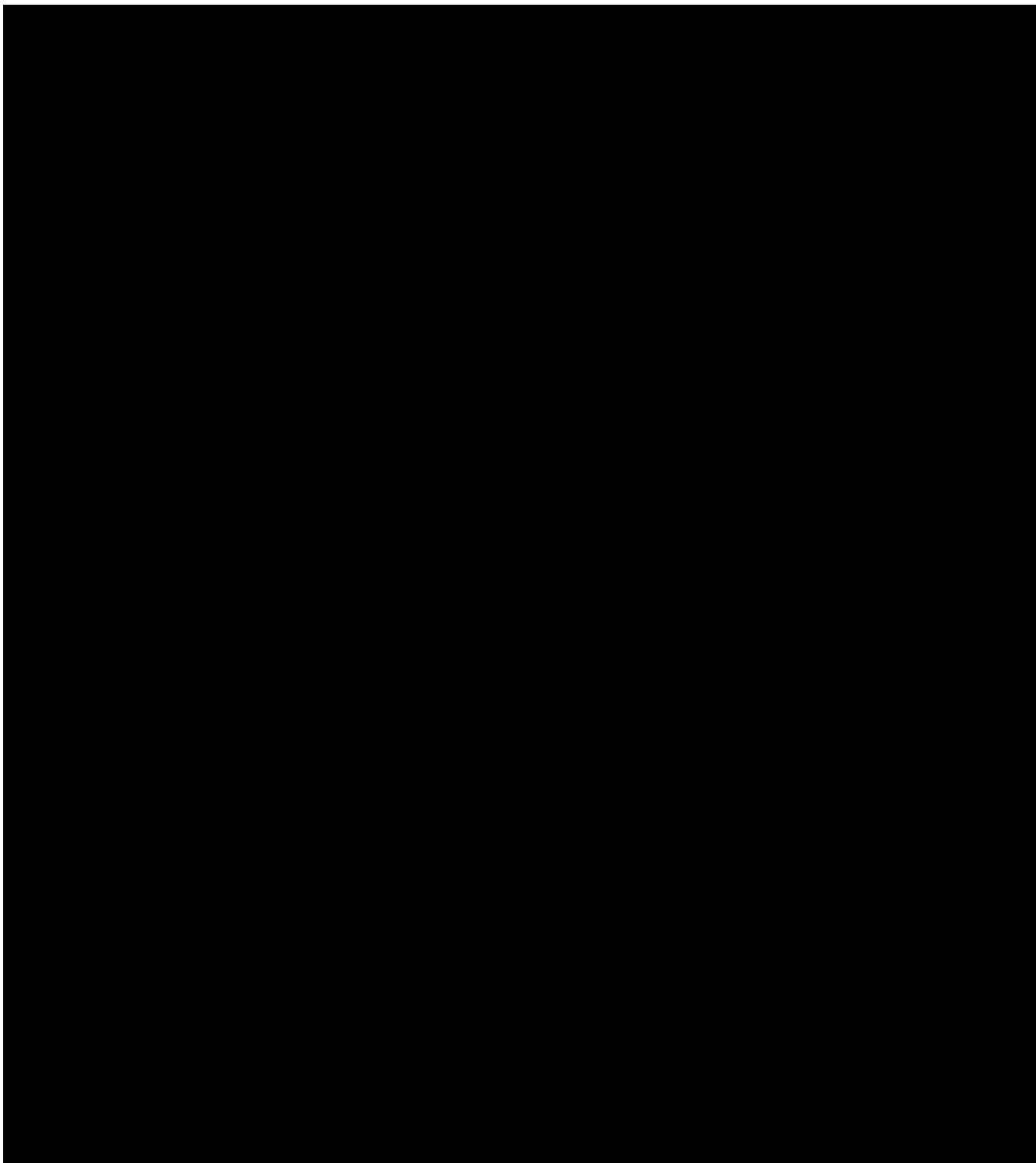
APPENDIX C
NOTICE INFORMATION



**APPENDIX D
PLANNED OUTAGE SCHEDULE**

Unit Name	CAISO Resource ID *	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

APPENDIX C
NOTICE INFORMATION



Bilateral Import Transfer Capability ITC (Buy or Sell)

**CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AND
CITY OF RIVERSIDE**

This Confirmation Letter including all appendices hereto (“Confirmation”) confirms the transaction between Silicon Valley Clean Energy, a California joint powers authority (“Seller”) and City of Riverside (“Buyer”), each individually a “Party” and together the “Parties”, dated as of [7/19/2022] (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 Transaction is governed the Western Systems Power Pool Agreement effective as of July 28, 2020 along with any annexes and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings described to them in the Master Agreement, or the CAISO Tariff. To the extent this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

ARTICLE 1. TRANSACTION TERMS

1.1 Product

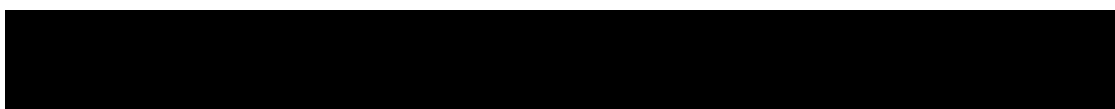
Product: Import Transfer Capability (“ITC”).

1.2 Delivery of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller, the Product at the Delivery Point in the amount of the applicable Contract Quantity for each day of each month of the Delivery Period.

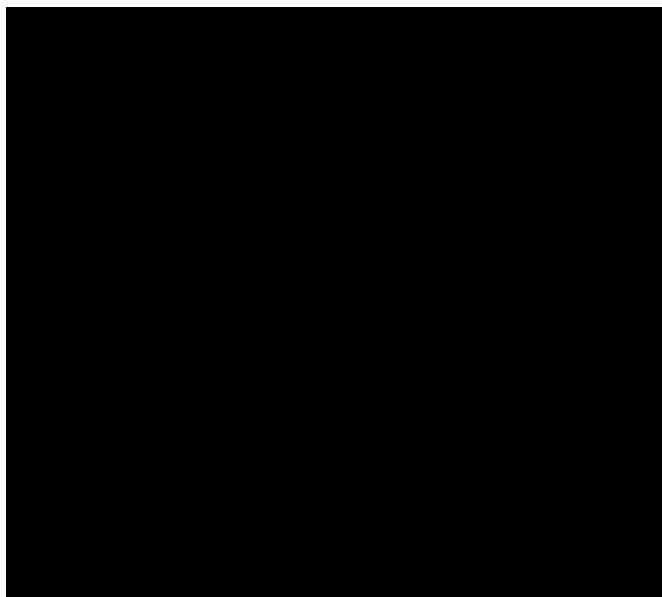
*Bilateral Import Transfer Capability ITC (Buy or Sell)***1.3 Delivery Period and Term**

- (a) Delivery Period. The Delivery Period shall be: January 1, 2023 through December 31, 2023, inclusive, unless terminated earlier in accordance with the terms of this Agreement.
- (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 the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Delivery Point**1.5 Contract Quantity**

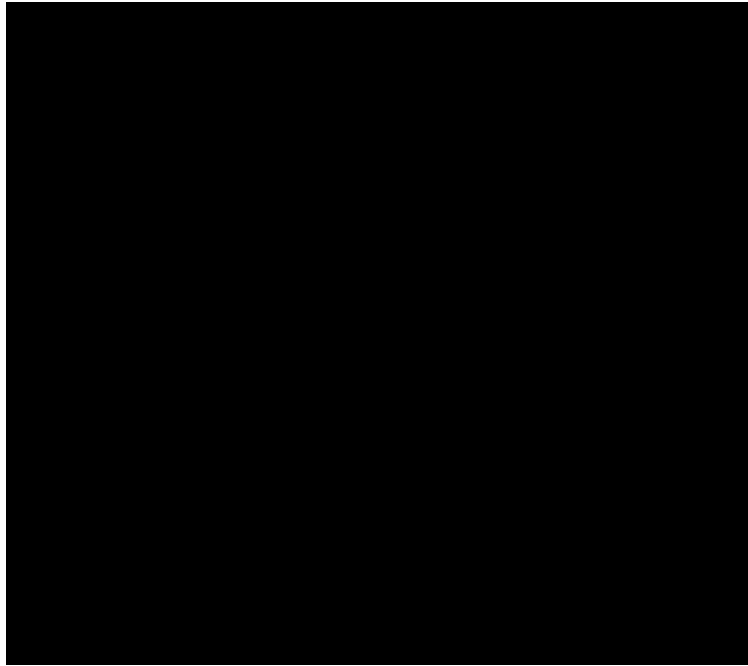
The Contract Quantity for each day of each applicable Contract Month is as follows:

Contract Quantity (MWs for each day of such Contract Month)



1.6 Contract Price

The Contract Price means, for any Contract Month, the price specified in the Contract Price table as set forth below.



*Bilateral Import Transfer Capability ITC (Buy or Sell)***ARTICLE 2. DELIVERY OBLIGATIONS****2.1 Delivery of Product**

Within three (3) Business Days from the date that Seller receives the One-Time ITC Payment from Buyer or (3) Business Days after the Import Capability is available for bilateral transfers in CIRA, whichever is later. Seller shall or shall cause the Unit's SC to register the Bilateral Import Capability Transfer of the Product in the amount of the Contract Quantity at the Delivery Point in CAISO's CIRA Tool (or successor platform) in addition to completing any other actions required by the CAISO to effect such transfer (the "Registration"). If Seller fails to transfer the ITC within three (3) Business Days of the receipt of payment, this Confirmation shall terminate, and Seller shall refund the total payment within twenty (20) business days after receipt of payment.

As soon as reasonably practicable thereafter, but no later than three (3) Business Days from Registration, Buyer shall accept and confirm Seller's Registration in CAISO's CIRA Tool and will then communicate to Seller whether the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful (a successful transfer, the "Transfer Completion Email"). If the Bilateral Import Capability Transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the Registration process set forth in this Section 2.1 again, until the Parties receive a Transfer Completion Email.

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 ITC Payment**

In accordance with the terms of Section 9 of the Master Agreement, Buyer shall make a payment ("One-Time ITC Payment") to Seller no later than (20) Business Days after the date an invoice is received. Seller shall provide Buyer the invoice for the One-Time ITC Payment no later than 5 Business Days from the date this Confirmation is signed by both Parties.

The One-Time ITC Payment shall be calculated as follows:

$$\text{One-Time ITC Payment} = \sum_i^n (A_i \times B_i \times 1000)$$

where:

A = Contract Price (in \$/kW-month) for Contract Month i

B = Contract Quantity i (in MW) transferred by Seller for

Bilateral Import Transfer Capability ITC (Buy or Sell)

Contract Month i

i = Each Contract Month

n = number Contract Months



Bilateral Import Transfer Capability ITC (Buy or Sell)

The 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 under this Confirmation.

ARTICLE 4. CONFIDENTIALITY

- (a) Both Parties may disclose the terms and conditions of this Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, and any Governmental Authority;
- (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. Each Party recognizes that this Confirmation is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.); and, in the event of a public records requests pursuant to this act or any other applicable law, either party may disclose this Confirmation and such disclosure shall not be a violation of this Article 4.

ARTICLE 5. GENERAL PROVISIONS**5.1 Governing Law**

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

*Bilateral Import Transfer Capability ITC (Buy or Sell)***5.2 Collateral/Credit Requirements**

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

5.3 No Recourse to Members of Seller

Seller 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. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Buyer will have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Seller's constituent members, in connection with this Confirmation.

5.4 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.

5.5 Entire Agreement; No Oral Agreements or Modifications

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

Bilateral Import Transfer Capability ITC (Buy or Sell)

Appendix A

In WITNESS WHEREOF, the Parties have caused this Confirmation to be duly executed as of the Confirmation Effective Date:

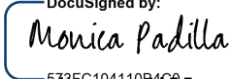
CITY OF RIVERSIDE RX

By: 
Jesus Martinez (Aug 2, 2022 10:26 PDT)

Name: **Jesus Martinez**

Title: **Market Operations Manager**

**SILICON VALLEY CLEAN ENERGY,
a California joint power authority**

By: 
Name: DocuSigned by:
573EC104110B4C6 Monica Padilla

Title: **COO & Director of Power Resources**

*Bilateral Import Transfer Capability ITC (Buy or Sell)***APPENDIX A****DEFINED TERMS**

“Agreement” has the meaning specified 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 specified 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.

“CEC” means the California Energy Commission.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table specified Section 1.5.

“Contract Price” has the meaning specified in Section 1.6.

“Contract Quantity” has the meaning specified in Section 1.5.

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

“CPUC” means the California Public Utilities Commission.

“Delivery Period” has the meaning specified in Section 1.3(a).

“Delivery Point” has the meaning specified in Section 1.4.

Bilateral Import Transfer Capability ITC (Buy or Sell)

“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.

“Import Transfer Capacity” has the meaning set forth in the CAISO Tariff.

“Intertie” has the meaning set forth in the CAISO Tariff.

“Master Agreement” has the meaning specified 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.

“Product” has the meaning specified in Section 1.1.

“Registration” has the meaning specified in Section 2.1.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

“SC” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“Term” has the meaning specified in Section 1.3(b).

“Transfer Completion Email” has the meaning specified in Section 2.1

SVCE_WSPP_Import_Capability_Transfers__Riverside_DRAFT_RVSD Edits-RX

Final Audit Report

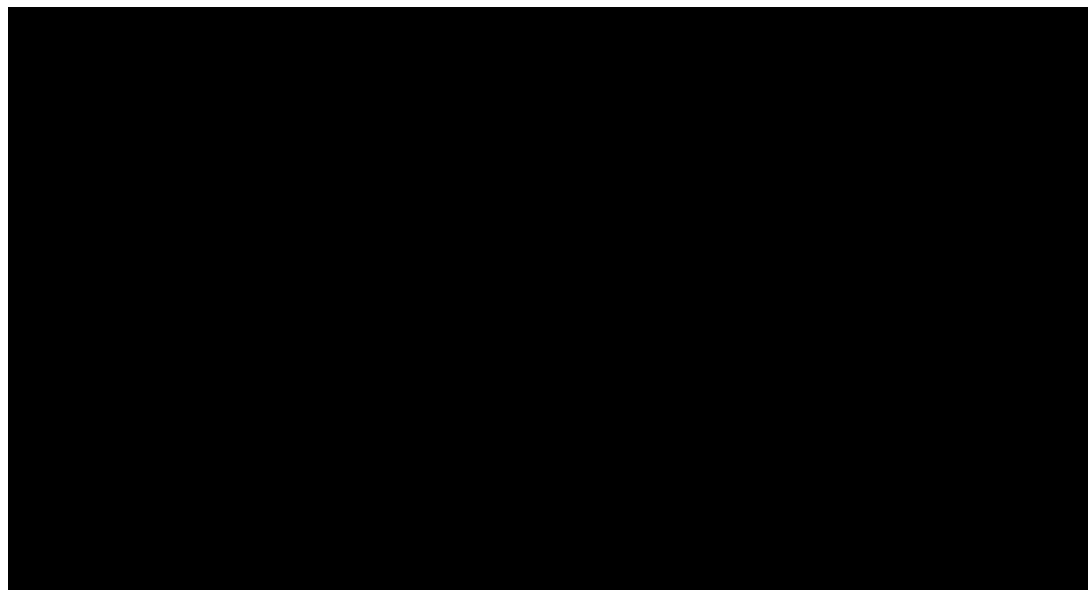
2022-08-02

Created: 2022-08-02

Status: Signed

Transaction ID: CBJCHBCAABAAI_tD84zTqS21O4N7QHpsnlCm2iYbfOaZ

"SVCE_WSPP_Import_Capability_Transfers__Riverside_DRAFT_RVSD Edits-RX" History



**Amended and Restated
WSPP RESOURCE ADEQUACY
CONFIRMATION LETTER
BETWEEN
HIGH DESERT POWER PROJECT, LLC
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") amends and restates that certain WSPP Resource Adequacy Confirmation Letter dated as of August 1, 2022 by and between **HIGH DESERT POWER PROJECT, LLC, a California limited liability company** ("Seller"), and **SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority** ("Buyer"), each individually a "Party" and together the "Parties". Effective as of August 18, 2022 (the "Confirmation Effective Date"), Seller agrees to sell and deliver and Buyer agrees to purchase and receive the right to the Product, as such term is defined in Article 3 of this Confirmation (the "Transaction"). This Transaction is governed by the WSPP Agreement effective as of 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 shall 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 (as defined herein).

**1.
DEFINITIONS**

- 1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.2** "Annual Supply Plan" has the meaning set forth in the Tariff.
- 1.3** "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.
- 1.4** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.5** "Availability Standards" shall mean Availability Standards as defined in Section 40.9 of the Tariff or otherwise applicable to CAISO.
- 1.6** "Buyer" as used herein shall have the same meaning as "Purchaser" under the WSPP Agreement.
- 1.7** "CAISO" means the California Independent System Operator 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 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 Sections 4 and 21.3(2) of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.9** "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy application, or its successor platform.
- 1.10** "Compliance Showings" means the Flexible RAR Showings, LAR Showings, and RAR Showings, as applicable to the Product.
- 1.11** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.12** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.13** "Contingent Firm RA Product" has the meaning specified in Section 3.4 hereof.

- 1.14** "Contract Price" means, for any Monthly Delivery Period, the price specified under the RA Capacity Price Table in Section 4.9.
- 1.15** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW) set forth in the "Contract Quantity (MW)" table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.16** "Control Area" has the meaning set forth in the Tariff.
- 1.17** "CPUC Decisions" means 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, 15-06-063, 16-06-045, 17-06-027, 19-02-022 and 19-06-026, and subsequent decisions related to resource adequacy issued from time to time by the CPUC.
- 1.18** "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.19** "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.20** "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.21** "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to , minus (i) any reductions to Contract Quantity made in accordance with Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity, and (ii) any reductions resulting from events described under an event described at Section B-3.9 of Service Schedule B in the WSPP Agreement that excuse Seller's performance.
- 1.22** "Effective Flexible Capacity" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.
- 1.23** "FCR Attributes" means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines the FCR Attributes of a Unit, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.24** "FCR Showings" means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.
- 1.25** "Firm RA Product" has the meaning specified in the Section 3.3 hereof.
- 1.26** "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.
- 1.27** "Flexible Capacity Requirements" or "FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.28** "Flexible RA Product" has the meaning specified in the Section 3.2 hereof.
- 1.29** "GADS" means the Generating Availability Data System or its successor.
- 1.30** "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.
- 1.31** "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully

- exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.32** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.33** “LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.
- 1.34** “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 having jurisdiction over the LSE.
- 1.35** “LRA” has the meaning set forth in the Tariff.
- 1.36** “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).
- 1.37** “Maximum Cumulative Capacity” or “MCC” shall have the meaning specified in Section 2.1 hereof.
- 1.38** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.39** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.40** “Monthly Supply Plan” has the meaning set forth in the Tariff.
- 1.41** “NERC” means the North American Electric Reliability Council, or its successor.
- 1.42** “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.43** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.44** “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.45** “Notification Deadline” means in respect of a Showing Month the day that is fifteen (15) Business Days before the Compliance Showing deadlines. For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO or CPUC from time to time throughout the Delivery Period.
- 1.46** “Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (defined below).
- 1.47** “Planned Outage” means, subject to and as further described in the CPUC Decisions and the Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that

is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

- 1.48** "Product" has the meaning specified in Article 3 hereof.
- 1.49** "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes for the Delivery Period, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.
- 1.50** "RA Capacity Price" means the price specified in the RA Capacity Price Table in Section 4.9 hereof.
- 1.51** "RAR" or "Resource Adequacy Requirements" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the Tariff, or by an LRA or other Governmental Body having jurisdiction.
- 1.52** "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes. If the CPUC adopts a Slice of Day reform, or another similar type of reform that results in a change in the RA capacity product, these additional attributes shall be included within the definition of "RAR Attributes".
- 1.53** "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff, the CPUC Decisions or LRA having jurisdiction.
- 1.54** "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.55** "Replacement Unit" means a generating unit meeting the requirements specified in Section 4.5.
- 1.56** "Resource Adequacy Plan" has the meaning set forth in the Tariff.
- 1.57** "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.58** "Scheduling Coordinator" or "SC" has the same meaning as in the Tariff.
- 1.59** "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.60** "Showing Month" is the calendar month during the Delivery Period that is the subject of the Compliance Showing. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.
- 1.61** "Shown Unit" means a Unit, or any Replacement Unit meeting the requirements of Section 4.5 of this Confirmation from which RA Capacity will be provided by Seller to Buyer and that Seller identifies annually pursuant to Article 2.
- 1.62** "Subsequent Buyer" means the purchaser of Product from Buyer in a re-sale of Product by Buyer.
- 1.63** "Substitute Capacity" has the meaning set forth in the Tariff for "RA Substitute Capacity."
- 1.64** "Supply Plan" has the meaning set forth in the Tariff.
- 1.65** "Tariff" means the tariff and protocol provisions of the CAISO, including associated rules, procedures and business practice manuals, as amended or supplemented from time to time.
- 1.66** "Transaction" has the meaning specified in the introductory paragraph hereof.
- 1.67** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

- 1.68** “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Confirmation Effective Date of this Confirmation occurs prior to the CAISO’s setting of a Unit EFC for the applicable Unit, the Unit EFC shall be as agreed to by the Parties and specified in Article 2, and Seller represents that, to the best of its knowledge, this Unit EFC is consistent with the CAISO’s methodology for determining Unit EFC as of the Confirmation Effective Date. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 4.4 of this Confirmation.
- 1.69** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

2. UNIT DESIGNATION

2.1 **Seller to Annually Designate Shown Unit**

- (a) On an annual basis during the term of this Transaction, Seller shall designate the Shown Unit(s) from which RA Capacity will be provided to Buyer for the following calendar year by providing Buyer with the specific Unit information contained in Appendix A by no later than the earlier of (i) October 1, or (ii) thirty (30) calendar days before the deadline for the year-ahead Compliance Showing.
- (b) The Shown Unit shall meet the Product characteristics and Contract Quantity specified in Sections 3 and 4 and the Resource Category requirements set forth in Section 2.1(c). Under no circumstances shall the Shown Unit be a coal-fired generating facility.
- (c) The Shown Unit shall qualify as a Maximum Cumulative Capacity (“MCC”) Resource Category 4 resource, which is described in the CPUC’s 2022 Filing Guide as being able to run or operate in “All Hours (planned availability is unrestricted)” and which is available all 24 hours of each day.
- (d) Nothing in this Section 2.1 shall be construed to limit the applicability of Sections 4.4 (Adjustment to Contract Quantity) or 4.5 (Alternate Capacity and Replacement Units) of this Confirmation.
- (e) Seller’s designation of the Shown Unit each year shall not in any way (i) convert the Contingent Firm RA Product being sold under this Confirmation into Firm RA Product, or (ii) cause any change to the Monthly RA Capacity Payment.

3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section 3.2, and the Contract Quantity shall be either a Firm RA Product or a

Contingent Firm RA Product, as specified in either Section 3.3 or 3.4 (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 ☐ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units in the amount of the applicable Contract Quantity.

3.3 ☐ Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than an Uncontrollable Force, including without limitation any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 4.4, then, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 4.5 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 4.5, then Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof.

3.4 ☒ Contingent Firm RA Product

Seller shall provide Buyer with Product from the Unit in the amount of the applicable Contract Quantity; provided, however, that if, and to the extent that the Unit is not available to provide the full amount of the Contract Quantity due to any reduction in Contract Quantity in accordance with Section 4.4, Seller shall have the option to notify Buyer 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 4.5. If Seller fails to provide Buyer with the Designated RA Capacity from the Unit and has failed to supply Alternate Capacity to fulfill the remainder of the Designated RA Capacity during such period, Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

4.

DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be January 1, 2024 through December 31, 2025, inclusive.

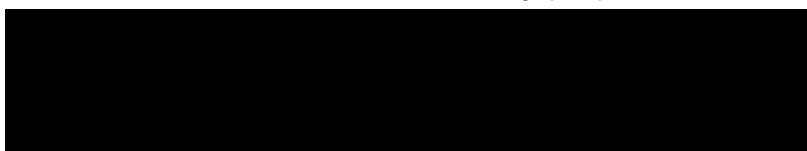
4.2 Delivery Point

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

4.3 **Contract Quantity**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Contract Quantity (MW)



4.4 **Adjustments to Contract Quantity**

- (a) **Planned Outages:** If Seller is providing Contingent Firm RA Product and is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (i) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month, provided such reduction is able to be reflected on the Supply Plans in accordance with the Tariff; or (ii) provide Alternate Capacity in accordance with Section 4.5 up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Reductions in Unit NQC:** If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC after the Confirmation Effective Date as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) the total amount (in MW) Unit NQC was reduced since Confirmation Effective Date, divided by (C) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, subject to written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (x) the same Unit, provided the Unit has sufficient remaining and available Product and/or (y) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.
- (c) **Reductions in Unit EFC:** If Product is both (i) Flexible RA Product specified under Section 3.2, and (ii) Contingent Firm RA Product specified under Section 3.4, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Unit experiences a reduction in Unit EFC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (A) the applicable Showing Month Contract Quantity and (B) the total amount (in MW) Unit EFC was reduced since Confirmation Effective Date, divided by (C) Unit EFC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (x) the same Unit, provided the Unit has sufficient remaining and available Product and/or (y) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 4.5.

- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity (UCAP) or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, Seller shall have the right, but not the obligation, to send written notice to Buyer of such change ("Notice of Successor Value"). Following receipt of such notice from Seller, the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement Seller shall convey to Buyer an amount of qualifying capacity of such Unit of (i) no less than the amount obtained by calculating the Buyer's share of such qualifying capacity but (ii) no more than the Contract Quantity. Under such amendment, Seller's pro-rata delivery obligation shall be equal to the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity).

4.5 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 4.4, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; provided that in each case, Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements and the Resource Category requirements set forth in Section 2.1(c), no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.
- (b) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product. Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if (i) the failure to deliver the full Contract Quantity is due to a reduction in Contract Quantity in accordance with Section 4.4 and (ii) Seller has notified Buyer, no later than the Notification Deadline, of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.

4.6 Delivery of Product

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

- (a) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Monthly Supply Plans and (ii) Annual Supply Plans if the Confirmation Effective Date is prior to the year-ahead Compliance Showing deadline applicable for the Showing Months as specified in Section 4.1, in accordance with the Tariff, identifying and confirming the transfer of the Designated RA Capacity to Buyer for each Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation).
- (b) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing

Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the 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 due solely to a Seller error, and are rejected by CAISO, or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (x) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month, (y) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due solely to a Buyer error or (z) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

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 this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Buyer may replace such portion of the Designated RA Capacity with other capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) ("Replacement Capacity"). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff. Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. 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 WSPP Agreement, the following damages in lieu of damages specified in Section 9, 21.3 and 22 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (B) the actual cost paid by Buyer for any Replacement Capacity, plus (B) each Capacity Replacement Price (excluding amounts included in Section 4.7(a)) times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a), and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

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

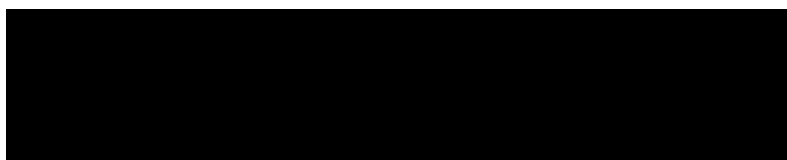
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 4.4 and 4.5;
- (c) A Unit Scheduling Coordinator's failure to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; or
- (d) A Unit Scheduling Coordinator's failure to 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 offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month. 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 actually delivered by Seller to Buyer for the Monthly Delivery Period, and (c) 1,000; provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.6 at the time of the CAISO filing for the respective Showing Month. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Seller shall deliver invoices to the address(es) specified herein; provided, however, that changes to invoice, payment, wire transfer and other banking information must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes.

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) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (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 (c) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP Agreement, all such revenues received by Seller, or a Unit's SC, 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 SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 9 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation.

5.

CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Uncontrollable Force that results in a partial or full Outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

6.

RESERVED CAPACITY AND SUBSTITUTE CAPACITY

- 6.1** For any Showing Month, no later than three (3) Business Days before the applicable Compliance Showing deadline, Buyer may designate 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 that Showing Month ("Reserved Capacity").
- 6.2** Subject to Section 6.3, all Reserved Capacity shall be treated as Designated RA Capacity actually delivered under Section 4.6(b) for purposes of calculating the Monthly RA Capacity Payment.
- 6.3** In any Showing Month in which Buyer has designated Reserved Capacity, Buyer may request, in writing, that Seller make the Reserved Capacity available for Buyer's use as Substitute Capacity within the respective Showing Month ("Substitute Capacity Request") with the following schedule.
 - (a) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO prior to the Showing Month (e.g., through the CAISO RA Substitute Capacity Assessment), the Substitute Capacity Request shall be received by Seller at least two (2) Business Days prior to the applicable CAISO scheduling deadline. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 6.3, provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Unit due to a forced outage of the Unit, including as a result of an Uncontrollable Force, Seller shall not be liable for any amounts under Sections 4.7 and 4.8.
 - (b) For Buyer's Substitute Capacity Requests that are to be scheduled with CAISO after the commencement of the Showing Month, the Substitute Capacity Request shall be received by Seller at least five (5) Business Days before Buyer submits its Substitute Capacity in CIRA. Seller shall, or shall cause the Unit's Scheduling Coordinator to, comply with Buyer's request under this Section 6.3, provided that to the extent Seller is unable to provide the requested Substitute Capacity from the Unit due to a forced outage of the Unit, including as a result of an Uncontrollable Force, Seller shall not be liable for any amounts under Sections 4.7 and 4.8.

- 6.4** Nothing in this Article 6 changes any of Seller or Buyer's rights or obligations under this Confirmation with respect to Contract Quantity not designated as Reserved Capacity.

7.

OTHER BUYER AND SELLER COVENANTS

- 7.1** Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR and/or FCR, as applicable, or that of a Subsequent Buyer under Article 10. Such commercially reasonable actions (neither Party shall be required to spend more than \$10,000 in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Period the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Subject to Section 4.4, 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, CAISO, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR and FCR, in each case occurring after the Confirmation Effective Date, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous capacity 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, 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 and, as applicable, RAR, LAR and/or FCR;
- (g) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (i) Seller shall notify the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller shall notify the SC of each Unit that Seller is obligated to cause each Unit's SC 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 shall notify each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

8. ASSIGNMENT

Neither Party may voluntarily assign its rights under this Transaction without the prior written consent of the other Party; provided, however, that notwithstanding anything in the WSPP Agreement to the contrary, such consent shall not be unreasonably withheld, conditioned, or delayed if the proposed assignee has a Credit Rating that is at least investment grade or its creditworthiness is otherwise reasonably satisfactory.

9. CONFIDENTIALITY

The Parties agree that Buyer may disclose information regarding this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings, and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. Buyer may also disclose to any Subsequent Buyer whatever information regarding this Transaction is commercially reasonable for such party to evaluate the re-sale; provided that any Subsequent Buyer agrees in writing to maintain the confidentiality of such information consistent with this Section 9. Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of confidential information regarding this Transaction, Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be responsible for taking whatever legal steps are necessary to prevent Buyer's release of such information to the third party. Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.).

10.**BUYER'S RE-SALE OF PRODUCT**

- (a) Buyer may re-sell all or a portion of the Contract Quantity of Product hereunder; provided, however, that (i) any Subsequent Buyer assumes all of Buyer's obligations and liabilities hereunder, and (ii) any such re-sale does not increase Seller's obligations or liabilities hereunder. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product. If Seller incurs any liability to a Subsequent Buyer due to the failure of Buyer or the Subsequent Buyer to comply with this Confirmation, Buyer will be liable to Seller for the same amounts Buyer would have owed Supplier under this Confirmation if Buyer had not resold the Product.
- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two (2) Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two (2) Business Days before the Notification Deadline for the Showing Month. Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's reasonable instructions with respect to providing such resold Product to Subsequent Buyers of such resold Product; and (ii) take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct Seller to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day during the Delivery Period provided to Buyer pursuant to this Confirmation for re-sale in such market, and Seller and the Unit's SC shall comply with Buyer's direction and Buyer shall retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Buyer with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

11.**MARKET BASED RATE AUTHORITY**

Seller agrees, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

12.**COLLATERAL REQUIREMENTS**

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.

13.
OTHER WSPP AGREEMENT CHANGES

13.1 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.”

13.2 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.

13.3 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 will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and shall not make any claims, take any actions or assert any remedies against any of 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.

13.4 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.

13.5 Entire Agreement; No Oral Agreements or Modifications

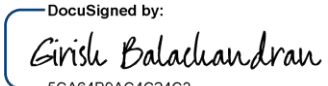
This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed 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.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

HIGH DESERT POWER PROJECT, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

By: 
Name: Girish Balachandran
Title: CEO

13.5 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, 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.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

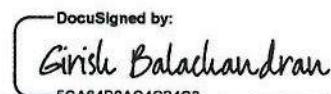
HIGH DESERT POWER PROJECT, LLC
a California limited liability company

By: 

Name: MARK KUBOW

Title: PRESIDENT

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

By: 

Name: Girish Balachandran

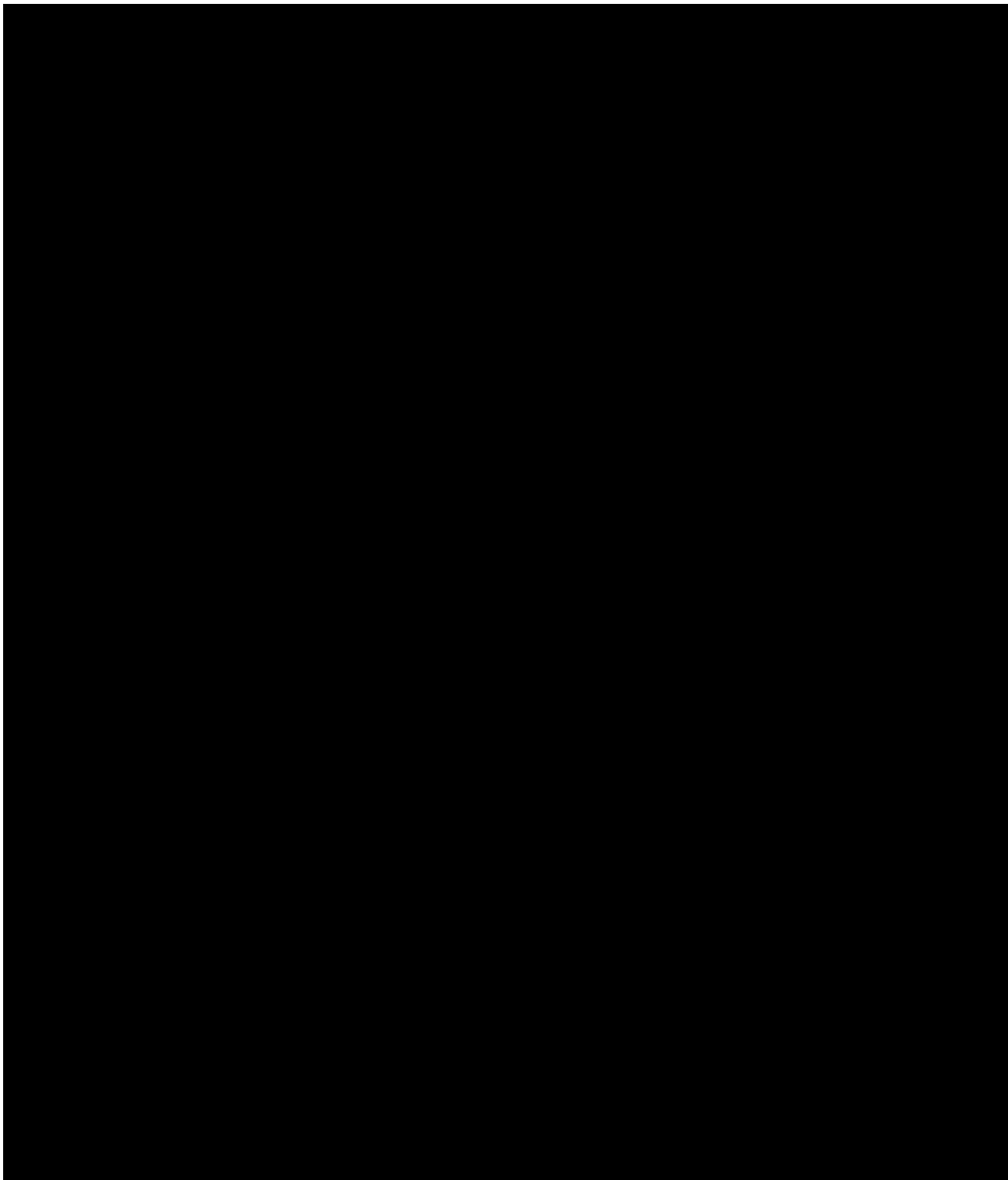
Title: CEO

Appendix A**Shown Unit Information**

Name:	High Desert Power Project Aggregate
Location:	Victorville, CA
CAISO Resource ID:	HIDSRT_2_UNITS
Unit SCID:	TS30
Unit NQC:	830
Unit EFC:	630
Resource Type:	Natural Gas
Resource Category (MCC 1, 2, 3 or 4):	4 - (available all 24 hours)
Flexible Capacity Category (1, 2 or 3):	1
Path 26 (North or South):	South
Local Capacity Area (if any, as of Confirmation Effective Date):	n/a
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	none
Run Hour Restrictions:	None. Available 24 hours per day.

Appendix B

Notice Information





Confirmation - 824577

Buyer

SILICON VALLEY CLEAN ENERGY AUTHORITY

333 WEST EL CAMINO REAL, SUITE 330
SUNNYVALE, CA 94087

Seller

CONSTELLATION ENERGY GENERATION, LLC, formerly known as
EXELON GENERATION COMPANY, LLC

1310 Point Street
Baltimore, MD 21321

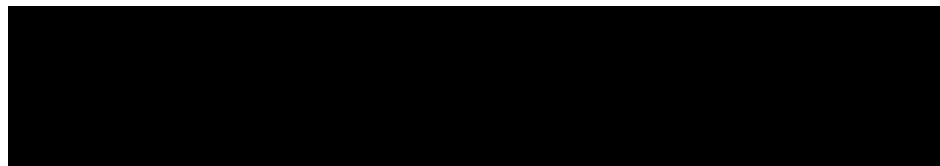
Transaction Date 08/09/2022
Confirmation Date: 08/09/2022
Trader: Edward Mackay
Deal ID: 7251782

This will confirm the verbal agreement reached on the August 09, 2022, specified below, between SILICON VALLEY CLEAN ENERGY AUTHORITY ("Counterparty") and CONSTELLATION ENERGY GENERATION, LLC ("CEG") (each individually a "Party" and collectively the "Parties") regarding a Power Purchase and sale transaction (The "Agreement") on the following terms and conditions.

Transaction Details	
Trade Type:	
Broker:	
Product:	
Delivery Point:	
Delivery Period:	
Total Quantity:	
Hourly Quantity:	
Price:	
Other Terms	

All provisions contained or incorporated by reference in the EEI dated as of November 28, 2016 between SILICON VALLEY CLEAN ENERGY AUTHORITY and CONSTELLATION ENERGY GENERATION, LLC will govern this confirmation except as expressly modified herein.

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via fax or email to the contact information below:



Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the "public interest" standard or review set forth in United Gas Pipe Line Co. v Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission V. Sierra Pacific Power Co., 350 U.S. 348(1956) (the "Mobile-Sierra" doctrine).



Confirmation - 824577

In WITNESS WHEREOF, the Parties have caused this Transaction to be duly executed as of the date first above written.
We are pleased to have concluded this Transaction with you and look forward to your confirmation of this Transaction.



Confirmation - 824577

CONSTELLATION ENERGY GENERATION, LLC

ACKNOWLEDGED AND AGREED:

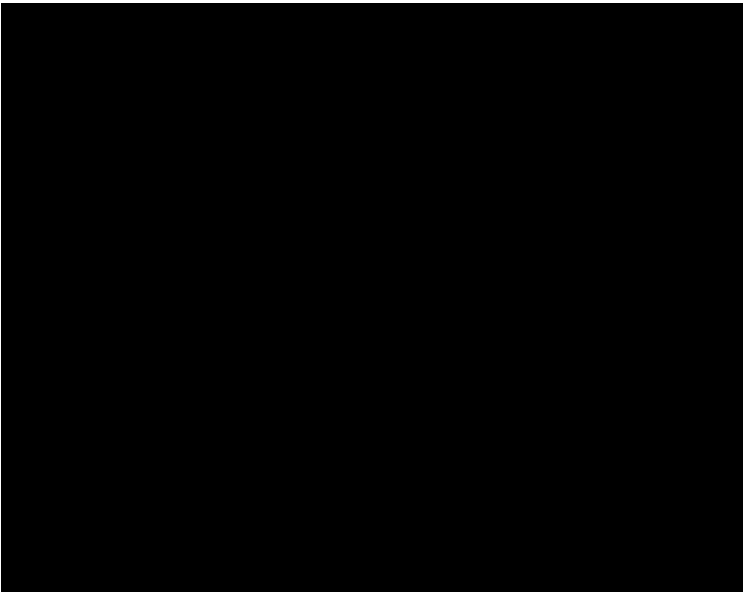
A handwritten signature in black ink, reading "Michael Pechin".
Michael Pechin
Vice President, Wholesale Operations

Michael Pechin
Vice President, Wholesale Operations

A handwritten signature in black ink, reading "Girish Balachandran".
DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3...

SILICON VALLEY CLEAN ENERGY AUTHORITY
Girish Balachandran

CEO



**MASTER POWER PURCHASE AND SALE AGREEMENT
RENEWABLES PORTFOLIO STANDARD ENERGY ALLOCATION
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY (“PARTY A”)
AND
PACIFIC GAS AND ELECTRIC COMPANY (“PARTY B”)**

This confirmation letter (“Confirmation”) confirms the Transaction between Silicon Valley Clean Energy Authority, a California Joint Powers Authority (“Party A” or “Buyer”), and Pacific Gas and Electric Company, a California corporation, (“Party B” or “Seller”), each individually a “Party” and together the “Parties”, which becomes effective on the date fully executed by both Parties (the “Confirmation Effective Date”), in which Seller agrees to provide to Buyer Product, as such term is defined in this Confirmation. This Transaction is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of 10/25/2017, together with the Cover Sheet, the Collateral Annex and Paragraph 10 to the Collateral Annex, and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). The Master Agreement and this Confirmation are collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation, have the meanings specified for such terms in the Master Agreement, the RPS (defined herein) or the Tariff (defined herein), as applicable. If there is a conflict between the terms in this Confirmation and those in the Master Agreement, this Confirmation shall control. Section references herein are to this Confirmation unless otherwise noted.

[Standard contract terms and conditions shown in shaded text are those that “may not be modified” per CPUC Decisions (“D.”) 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.]

**ARTICLE 1
PRODUCT**

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

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

ARTICLE 2

TOTAL ALLOCATION AMOUNT

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

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

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

2.5 Change in Resource Pools. Seller may remove a Resource from the Resource Pools for the following reasons: (i) if Seller’s power purchase agreement corresponding to the Resource has expired or is terminated, (ii) if the Resource is no longer in Seller’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority or Governmental Entity, or (iii) if the Resource is owned by Seller but ceases operation for Seller. Seller may add Resources to the Resource Pools in the following ways: (a) Seller may add Resources with PCIA vintages corresponding to the PCIA vintages where Buyer has an Allocation Share, or (b) Seller may add

Resources from Customer Programs listed in Appendix D. With the exception of expirations of Seller's power purchase agreements listed in Appendix B, Appendix C, and Appendix D, Seller will provide Notice to Buyer identifying the facility or facilities that constitute the Resources being removed or added to the Resource Pools as soon as reasonably practicable. Seller shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements for Resources during the Delivery Period. Buyer shall not have any right to or discretion to request changes to the Resources or the Resource Pools during the Delivery Period.

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

ARTICLE 3 **DELIVERY**

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

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

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

ARTICLE 4 **CONVEYANCE OF GREEN ATTRIBUTES**

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

4.2 Conveyance of Green Attributes. Seller shall convey to Buyer the Green Attributes associated with Product no later than twenty-five (25) Business Days once the following have occurred: (a) Seller has obtained the WREGIS Certificates for the Green Attributes for the

applicable Calculation Period or calendar year and (b) Seller has received Buyer's payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein. Since WREGIS Certificates will only be created for whole MWh amounts of RPS Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. During the Delivery Period, Seller shall transfer all right, title, and interest in and to the WREGIS Certificates to Buyer's WREGIS account in an aggregate amount equivalent to the Total Allocation Amount.

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

ARTICLE 5 **COMPENSATION**

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

5.2 Monthly Cash Settlement Amount. Buyer shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period.

The "Monthly Cash Settlement Amount" for a particular Calculation Period shall be equal to (a) plus (b) minus (c), where:

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

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

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

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

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

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

5.4 Payment. Notwithstanding anything to the contrary in Article Six of the Master Agreement, Buyer shall pay Seller the Monthly Cash Settlement Amount four (4) calendar months following the applicable Calculation Period and on or before the later of: (a) the twenty-fifth (25th) day of the month in which Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or (b) within fifteen (15) days following receipt of an invoice issued by Seller for such applicable Calculation Period, provided that if such payment due date is not a Business Day, then on the next Business Day. This provision shall survive termination or expiration of the Agreement for all amounts due prior to such termination or expiration.

ARTICLE 6

CREDIT TERMS

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

ARTICLE 7

SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1 Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

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

7.2 Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an

Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

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

7.3 Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

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

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

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

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

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

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

ARTICLE 8

TERMINATION AND CALCULATION OF TERMINATION PAYMENT

In the event this Transaction becomes a Terminated Transaction pursuant to Section 5.2 of the Master Agreement, then the Settlement Amount with respect to this Transaction shall not be calculated in accordance with the Master Agreement, but instead shall be calculated as follows:

The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for the Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of the quotes of at least three (3) Broker or Index Quotes based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to the Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event

the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) such Broker or Index Quotes with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third-party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Transaction, the Settlement Amount for this Transaction will be zero.

ARTICLE 9

GENERAL PROVISIONS

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

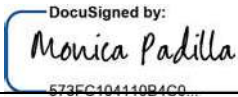
9.2 Governing Law.

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

(b) Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

ACKNOWLEDGED AND AGREED TO:

Buyer, or Party A:
SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California Joint Powers
Authority

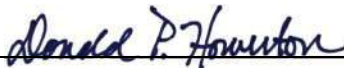
Sign:  _____
573FC104110B4C0...

Print: _____
Monica Padilla

Title: _____
COO & Director of Power Resources

Date: _____
7/20/2022

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

Sign:  _____

Print: Don Howerton

Title: Director, Structured Energy Transactions

Date: 7/25/22

APPENDIX A

DEFINED TERMS

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

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

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

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

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

“Business Day” means all calendar days other than those days on which the Federal Reserve member banks in New York City are authorized or required by law to be closed, and shall be between the hours of 8:00 a.m. and 5:00 p.m. Pacific Prevailing Time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom written communications or payment or delivery is being sent and by whom written communications or payment or delivery is to be received.

“Buyer” means Party A.

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

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

“CPUC” means the California Public Utilities Commission.

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

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

“CEC” means the California Energy Commission.

“CPUC” means the California Public Utilities Commission.

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

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

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

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

“Energy” means electrical energy, measured in MWh

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

“FERC” means the Federal Energy Regulatory Commission.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Resource, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere ; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Electric Energy. Green Attributes do not include (i) any Electric Energy, capacity, reliability or other power attributes from the Resource, (ii) production tax credits associated with the construction or operation of the Resource and other financial incentives in the form of credits, reductions, or

allowances associated with the Resource that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Resource for compliance with local, state, or federal operating and/or air quality permits. If the Resource is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Resource.

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

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

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

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

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

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

“MWh” means megawatt-hour.

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

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

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

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

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

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

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

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

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

“Renewable Energy Credits” or REC has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

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

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

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

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

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

“Seller” means Party B.

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

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

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

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

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

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

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

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

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

“WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

APPENDIX B
LIST OF RESOURCES IN SHORT-TERM RESOURCE POOL

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

APPENDIX C
LIST OF RESOURCES IN LONG-TERM RESOURCE POOL

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

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

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

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

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

APPENDIX E
BUYER'S ALLOCATION SHARE

