



**2023 Carbon Free Energy & Standalone  
Storage Projects**

**Request for Proposals (RFP)**

Issuance Date: October 25<sup>th</sup>, 2023

Response Deadline: December 8<sup>th</sup>,  
2023 at 5 PM PPT

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# 1. General Information

## 1.1. Introduction & Purpose

Silicon Valley Clean Energy (SVCE) and its partnered customers through this 2023 Request for Proposals for Carbon Free Energy and Standalone Storage Project ("RFP") intends to make progress towards meeting their respective goals related to Renewable Portfolio Standard (RPS), greenhouse gas emission reductions and reliability requirements by contracting with Carbon Free Energy projects, including California Energy Commission (CEC) eligible Renewable Portfolio Standard (RPS) resources, hydroelectricity, nuclear and paired and standalone storage. SVCE is seeking resources with Initial Delivery Dates between 2024-2030, for a minimum term of ten (10) years and a maximum term of twenty (20) years.

SVCE is a Community Choice Aggregators (CCA) formed under the authority of a joint powers' agency and subject to legislative and regulatory requirements imposed on a load serving entity within the state of California. Through this RFP, SVCE intends to procure resources to meet the collective needs of its customers or may procure on behalf of specific customers.

## 1.2. CCA Background Information

### [SVCE IRP](#) and [Audited Financials](#)

In April 2017, SVCE began providing their member communities in Santa Clara County with renewable and carbon-free electricity. SVCE serves 12 cities and unincorporated communities in Santa Clara County. SVCE's estimated 2021 retail sales are 4,000 GWh with a peak capacity of 900 MW distributed 68% non-residential and 32% residential.

SVCE provides its customers with choice in clean retail product offerings. SVCE's standard rate offering, GreenStart, provides for 100% carbon-free energy, measured annually, from a mix of RPS and carbon-free energy. It's opt-up product, GreenPrime, is 100% RPS sourced with Green-e certified resources. Lastly, SVCE provides certain customers with custom retail offerings consistent with SVCE Board-approved policies and customer specific goals.

## 1.3. RFP Documents

This RFP consists of this protocol and five appendices. Among other things, the protocol (i) offers general information pertaining to this RFP, (ii) describes the purpose and drivers of this RFP and provides high-level considerations for Respondents, (iii) includes a schedule for this RFP, (iv) sets forth terms governing the preparation and submission of proposals and RFP-related communications with SVCE, and (v) provides a high-level overview of the process for evaluating and selecting proposals submitted in response to this RFP. Entities submitting a proposal to this RFP ("Respondents") are responsible for familiarizing themselves with and being fully aware of the terms of this RFP, including the terms of each Appendix.

The Appendices are as follows:

- **Appendix A** to this RFP is the Offer Form,
- **Appendix B** is the Executive Summary Template,
- **Appendix C** contains Expected contract terms,
- **Appendix D** contains instructions for submitting a geospatial footprint file,
- **Appendix E** is an express reservation of the SVCE's rights in connection with this RFP; warranty, liability, and contract acceptance disclaimers; terms addressing the

disclosure of RFP- related information by the SVCE’s and Respondents in this RFP, Respondent’s responsibility for RFP-related costs, and Board approvals; and Respondent’s deemed acceptance of the rights and terms contained in Appendix E and the SVCE’s reliance upon such acceptance.

## 1.4. RFP Website

This RFP and related material and information are posted on SVCE’s website and available for review. The website will be updated from time-to-time with additional information related to this RFP. Interested persons are responsible for monitoring the website to ensure the timely receipt of information about this RFP.

<https://svcleanenergy.org/solicitations/>

## 1.5. RFP Administrator

The RFP Administrator for this RFP is SVCE. The contact information for the RFP Administrator is: Britta Bradshaw, SVCE Power Resource Manager.

The RFP Administrator’s responsibilities include (i) acting as a liaison between the participants in this RFP and SVCE on all RFP-related matters, (ii) ensuring that Respondent questions are addressed in an appropriate manner, (iii) receiving, recording, and maintaining Respondent proposals, (iv) and managing other administrative matters relating to this RFP.

As detailed in Section 6.1 below, all questions, requests, and other inquiries or communications from or on behalf of Respondents to SVCE about this RFP must be directed in email to the RFP Administrator.

**Email:** [procurement@svcleanenergy.org](mailto:procurement@svcleanenergy.org)

## 1.6. Disclosure of Project Information to benefiting Customers

Because SVCE may be procuring on behalf of one or more customers, Respondents must allow for SVCE to share confidential information related to shortlisted proposals with Customer. SVCE may disclose to Customer all the information related to shortlisted proposals that is permitted to be disclosed under a non-disclosure agreement executed by Customer and Seller. SVCE will provide Customer with periodic negotiation updates as permitted under the applicable non-disclosure agreement and will provide Customer with a fully negotiated power purchase agreement prior to its execution.

# 2. RFP Overview

## 2.1. RFP Purpose

The purpose of the RFP is to secure Carbon Free Energy resources to meet SVCE’s clean energy portfolio goals including for specific custom product offerings. Proposals offered into this RFP will be evaluated for their ability to meet SVCE portfolio targets in accordance with the terms of this RFP as based on a best fit and value and at low cost considering, without limitation, reliability, risk mitigation, and other relevant factors including the ability to

provide enhanced grid reliability by providing Resource Adequacy attributes as defined by the California Public Utilities Commission and the California Independent System Operator.

## 2.2. Eligible Resources, Products Sought and Preferred Terms

<p><b>Eligible Resources</b></p>	<p>SVCE is seeking <b>new and existing Carbon Free Energy and standalone storage resources</b> that meet these criteria. This RFO is for resources with expected COD dates as early as June 1, 2024 but no later than 2030.</p> <ol style="list-style-type: none"> <li>1. RPS: The project must meet eligibility criteria for eligible renewable energy resources as defined in PUC Section 399.12 and implemented by the California Energy Commission (CEC) pursuant to its RPS Eligibility Guidebook requirements for Portfolio Content Category One Eligible Renewable Resource (PCC1 ERR)<sup>1</sup>, for which generation technologies include: small hydroelectric generation, solar photovoltaic, wind resources, biomass, biofuel, and geothermal resources.</li> <li>2. Non-RPS: The project must come from energy from any type of electric generation that does not directly emit carbon dioxide – e.g., hydropower. This may also include the MWh from demand response and the MWh from electric generation facilities that use carbon capture and storage.</li> <li>3. Paired RPS and Storage – all storage technologies with the ability for SVCE to set charging and discharging requirements that are physically paired with renewable generation such as small hydroelectric generation, solar photovoltaic, wind resources, biomass, biofuel, and geothermal resources.</li> <li>4. Standalone Storage – all storage technologies with the ability for SVCE to set charging and discharging requirements.</li> </ol>
<p><b>Project Location</b></p>	<p>Within CAISO or at delivery points that are interconnected to the CAISO. Projects that have been identified to reside within Transmission Planning Regions as identified in the CAISO Transmission Planning Process.</p> <p><a href="http://www.aiso.com/Documents/ISO-Board-Approved-2022-2023-Transmission-Plan.pdf">http://www.aiso.com/Documents/ISO-Board-Approved-2022-2023-Transmission-Plan.pdf</a></p>
<p><b>Product(s)</b></p>	<p>Depending on the project types solicited and shortlisted, Product(s) may include energy from generation, energy discharged from storage, Green Attributes, storage capacity, Capacity Attributes (either Energy Only or Full Capacity Deliverability Status (FCDS), as elected in the PPA), and Ancillary Services.</p>
<p><b>Delivery Term</b></p>	<p>Minimum term of ten years and Maximum term of twenty years.</p>

<sup>1</sup> Definition of PCC1 category found in the “Portfolio Content Category Classification Review Process Handbook” located at: <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/energy/rps/pcc-book2020.docx>

<b>Scheduling and Dispatch Flexibility</b>	SVCE is indifferent to who will be the scheduling coordinator (SC). If the Respondent is the SC, then SVCE will require the ability to make schedule changes at any time, consistent with CAISO market scheduling rules.
<b>Price &amp; Settlement</b>	<p>Respondents must price their proposed project, at a fixed price with no escalation, in the following forms:</p> <ul style="list-style-type: none"> <li>• All-in energy and capacity price [\$/MWh] <ul style="list-style-type: none"> <li>○ May only be provided without an escalator.</li> <li>○ This price includes Delivered Energy, Green Attributes, Capacity Rights, and Ancillary Services</li> <li>○ This can include optional structuring of direct ITC/PTC benefits for SVCE</li> </ul> </li> </ul> <p>Or</p> <ul style="list-style-type: none"> <li>• Energy Pricing [\$/MWh] <ul style="list-style-type: none"> <li>○ Index + Carbon-Free/renewable adder a possibility as well.</li> <li>○ For generation resources</li> <li>○ May only be provided without an escalator</li> </ul> </li> </ul> <p>Or</p> <ul style="list-style-type: none"> <li>• Capacity Pricing [\$/kW-month] <ul style="list-style-type: none"> <li>○ Full Toll pricing accepted</li> <li>○ Respondent(s) are encouraged to provide pricing for at least a 4-hour duration</li> <li>○ The offered Price will be assumed to be for non-degrading energy storage capacity over the delivery term</li> </ul> </li> </ul>

	<p>Respondents are required to include the price at the Project P-node (i.e., the CAISO pricing node assigned to the generator).</p> <p>It is strongly encouraged for Respondents to provide pricing at at least one of the following Trading Hubs:</p> <ul style="list-style-type: none"> <li>• SP15</li> <li>• NP15</li> </ul> <p>And the applicable DLAP;</p> <ul style="list-style-type: none"> <li>• SCE DLAP</li> <li>• PG&amp;E DLAP</li> </ul> <p>Note this RFP is <b>not</b> seeking outright ownership of capacity or energy resources. Only the above-mentioned pricing schemes will be considered.</p>
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The foregoing is not intended, and should not be construed, as an exhaustive listing of important commercial terms for a Power Purchase Agreement (“PPA”) resulting from this RFP. Please refer to Appendix C and the sections below for other relevant commercial provisions or considerations.

### 3. RFP Schedule

The RFP Schedule below sets out important dates for Respondents interested in participating in this RFP. This Schedule is subject to change. Notice of any change to the RFP Schedule will be posted on SVCE’s Website.

<b>Activity</b>	<b>Scheduled Date</b>
Issuance of RFP	October 25 <sup>th</sup> , 2023
Deadline to submit proposals	December 8 <sup>th</sup> at 5:00 PM PPT
Notification of final shortlisted Respondents (Tentative)	February 1 <sup>st</sup> , 2024
Execute Exclusivity Agreement	End of February, 2024
PPA negotiations start	End of February, 2024
Target contract execution	June, 2024

#### 4. RFP Questions

Respondents and other interested persons are encouraged to submit questions about this RFP, to the RFP Administrator (using the contact information provided above in 1.5). All questions regarding this RFP must be submitted by email. Interested persons are requested to submit questions as promptly as possible to ensure the timely receipt of SVCE’s response.

Subject to SVCE’s consideration of the confidentiality concerns, SVCE intends to post all questions submitted by Respondents, as well as the SVCE’s responses to those questions, on SVCE’s website. Questions will be posted anonymously, to shield the identity of Respondents who posed the questions. SVCE’s objective in posting questions and answers is to afford Respondents equal access to information potentially relevant to their proposals. Respondents are urged to submit RFP questions to SVCE as early as possible, in consideration of the proposal submission deadlines. SVCE expects to provide answers only to questions posed on or before November 17, 2023, and that are specific to an actual proposal submission issue. SVCE may fail to post or answer any questions in their sole discretion.

#### 5. Proposal Submission

The Proposal submission process requires each Respondent to submit to SVCE, using the contact information in section 1.5, responses to Appendix A , B, and D (collectively referred to as the “Proposal Package”), to have its proposal(s) evaluated under this RFP. Under the current schedule, Respondents must submit a completed Proposal Package by December 8<sup>th</sup>, 2023 at 5:00 PM PPT.

Respondent will each bear the risk of any failure of Respondent to submit the completed Proposal Package by the required deadline as required by this RFP. Proposals for which Respondent does not submit all agreements, information, and material as required by this RFP may be considered non-responsive and may be eliminated from consideration.

Responsive proposals are those which are deemed conforming to all requirements listed in this RFP document. SVCE may waive any irregularities or defects in their sole discretion.

**All proposals must be submitted in email form with the appropriate attached documents to the following email address:**

procurement@svcleanenergy.org

## 6. Proposal Package Review and Evaluation

### 6.1. Proposal Package Requirements

The following is a list of requirements for Proposal Packages to be considered compliant and eligible in this RFP process:

- Proposal Package must be received by December 8<sup>th</sup>, 2023 at 5:00 PM PPT.
- Proposal Package must contain Appendix A, B, and D.
- All portions of Proposal Package must be received in the appropriate digital formats – pdf for narrative documents and Excel spreadsheets for the associated data templates.
- All associated data templates must be completed satisfactorily and provided with the Proposal Package. It is the duty of the Respondent to contact SVCE for clarification regarding completion of data templates and Executive Summary. Incomplete templates are grounds for non-consideration of a Proposal Package.
- After receipt of Proposal Package, SVCE may contact Respondents to request clarification about unclear portions of proposals. Respondents will have a maximum of 5 days to respond back to SVCE or the Proposal Package will be removed from consideration.

### 6.2. Review, Evaluation and Shortlisting Process

Proposal Package will be modeled to yield a final, in-depth understanding of expected performance. The resources that effectively meet the standards of SVCE will be shortlisted and contacted for negotiation of contracts. Proposal Packages will be reviewed and evaluated based on the following standards:

- **Value**
  - The value of the proposed resource(s) is a primary concern for ranking proposals. Proposal Packages will be evaluated based on the competitiveness of their total value from expected energy and capacity relative to other projects of a similar type including pricing, pricing structure, and contract term.
- **Project Viability**
  - Proposal Packages will be evaluated based on a qualitative assessment of the risks inherent in the proposed project. Proposed commercial operation date (“COD”), construction timeline, interconnection status, transmission needs and component procurement and financing plan will be evaluated for viability.
- **Portfolio Fit**
  - Resources that align with the SVCE’s Board directed goals and/or SVCE’s customers’ goals, including hourly load matching with carbon-free energy.
- **Respondent Experience**
  - Respondents will be evaluated for experience as a firm and/or based on the experience of the members of the project team. Experience with the CAISO interconnection process and permitting will be critical.

- **Respondent Workforce/Labor, Environmental, and Social Justice Considerations**
  - Strong preference for projects that commit to sign project labor agreement
  - Developers of construction projects shall attest that the project developer or equipment supplier complies with State and Federal requirements related to environmental impacts
  - Relevant information submitted by Respondents will be used to evaluate potential workforce impacts of proposed projects with the goal of promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing wage base in local communities where contracted projects will be located.
- **Inflation Reduction Act**
  - Describe current and anticipated benefits from the IRA

### 6.3. Notification of Results and Commercial Negotiations (“Shortlist”)

After the completion of the review and evaluation of the Proposal Packages, the RFP Administrator will communicate to each Respondent the status of its proposal(s) including if the project is Shortlisted SVCE may request additional information from Shortlist projects to determine next steps. It is SVCE’s expectation to negotiate the final terms of a PPA with Respondent(s) on the Shortlist however it is not guaranteed. Placement of a proposal on the Shortlist, does not constitute or indicate acceptance by SVCE of any proposal, any term thereof, or any related contract term. Without limiting Appendix C, SVCE (i) has no obligation and makes no commitment of any kind to enter into a transaction with any Respondent, including a Respondent with a proposal on the Shortlist, or to be bound by any term proposed by Respondent, and (ii) have no obligation or liability with respect to a transaction or arising out of this RFP except as may be expressly set forth in a fully executed PPA.

Upon Respondent(s) being shortlisted, Respondent will be required to execute an agreement of exclusivity (“Exclusivity Agreement”) for the project(s), and provide a cash deposit or letter of credit in the amount of \$3/kW. The Shortlist deposit amount is determined by the energy and/or storage capacity. SVCE will return cash deposit or letter of credit of Respondent (i) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (ii) SVCE’s rejection of Respondent’s offer following shortlist selection, (iii) failure of both SVCE and Respondent to agree on the terms of a PPA, (iv) SVCE’s termination of the RFP process, or (v) termination of exclusivity following occurrence of the exclusivity deadline as provided for in the Exclusivity Agreement. SVCE has the right to retain the cash deposit or letter of credit if the Respondent(s) is negligent or provides falsified information during the PPA negotiation process.

## 7. Supplier Diversity

All qualified organizations are encouraged to respond, including minority-owned and women-owned business entities.

SVCE is an equal opportunity entity. All responses to this solicitation will be evaluated under the same criteria. No preference will be given to an applicant regardless of the applicant owner’s race, gender, ethnicity, or national origin. Pursuant to Proposition 209 (1996) (Article I, Section 31 of the California Constitution), a government entity such as SVCE is

prohibited from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

RFP Respondents that execute a contract with SVCE will be required to complete a supplier diversity questionnaire. SVCE asks that Respondents refrain from directly or indirectly providing supplier diversity information when replying to an RFP. SVCE will send the questionnaire after a contract is executed. As a public agency and consistent with state law, SVCE will not use any such provided information in any part of its decision-making or selection process. Rather, SVCE will use that information solely to comply with California Public Utilities Commission (CPUC) reporting requirements. Pursuant to Public Utilities Code §§ 8281-8286, CPUC requires each of SVCE to submit annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned, persons with disabilities-owned and LGBT-owned business enterprises' procurement. Consistent with the California Public Utilities Code and State policy objectives, SVCE will collect information regarding supplier diversity and labor practices from project developers and their subcontractors regarding past, current and/or planned efforts and policies.

Certification creates an opportunity for businesses to be more visible and easier to communicate contracting opportunities. SVCE encourage all Respondents that are women-owned, minority-owned, disabled veteran-owned, persons with disabilities-owned and LGBT-owned businesses to become certified with the CPUC Supplier Diversity Program. This certification is voluntary and cannot be used as a criterion for solicitation evaluation. For information on the certification process and requirements, please visit CPUC's Supplier Clearinghouse. Alternatively, businesses can certify as a small business or a disabled veteran-owned business through the Department of General Services Certification program.

## 8. Miscellaneous RFP Matters

Without limiting the generality of Appendix D, SVCE reserves the right to withdraw, suspend, cancel, or terminate this RFP, or to modify any term of this RFP, including, without limitation, any term concerning the RFP schedule (including any date), at any time in its sole discretion. SVCE will endeavor to notify all participants of any such withdrawal, suspension, cancellation, termination, or modification made prior to the submittal deadline and to post notice of any such action on SVCE's website.

### Appendix A Offer Form

SVCE have posted the RFP Offer Form on SVCE's Website. If the Respondent(s) has any issues accessing the document or questions, please contact the RFP Administrator.

[\[Link to Offer Form on SVCE Website\]](#)

### Appendix B Executive Summary

As part of the RFP, SVCE have posted this Appendix B, which contains a list of due diligence requests, which Offeror should respond to and compose as an Executive Summary. The completion of Appendix B is required.

[\[Executive Summary Template\]](#)

## Appendix C [PPA Terms and Conditions](#)

To expedite the Power Purchase Agreement (PPA) process, SVCE offers the following expected terms to be included in any negotiated PPA. This is not intended to be an exhaustive list of terms and Respondents under an Exclusivity Agreement will be required to include a Term Sheet.

### SVCE's Expected PPA Terms

<b>Security:</b>	Buyer will not post security.
<b>Additional Incentives Passthrough:</b>	Should additional incentives become available to Seller, and the offered project is eligible to receive it, SVCE expects the benefit of such incentives be passed through to SVCE.
<b>Resource Adequacy Failure:</b>	For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to SVCE an amount (the " <b>RA Deficiency Amount</b> ") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, including any adjustments for unforced capacity (UCAP) or similar adjustments, however described, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to SVCE with Replacement RA product information in a written notice to SVCE at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.
<b>Station Use:</b>	SVCE will not be responsible for Station Use and Station Use will not be provided by the Facility.

<p><b>Guaranteed Construction Start Date:</b></p>	<p>The "<b>Guaranteed Construction Start Date</b>" means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&amp;E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions (the "<b>Development Cure Period</b>") extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously. Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the</p>
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	<p>next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from SVCE, Seller shall provide documentation demonstrating to SVCE's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to SVCE, (the "<b>Construction Delay Damages</b>") for each day of delay, in the amount of the Development Security divided by 120. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and SVCE shall have the right, in their sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development Security.</p>
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<p><b>Guaranteed Commercial Operation Date:</b></p>	<p>The "<b>Guaranteed Commercial Operation Date</b>" or "<b>Guaranteed COD</b>" means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis under the Development Cure Period.</p> <p>If Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to SVCE for each day of delay until Seller achieves COD. "<b>COD Delay Damages</b>" are equal to the Development Security divided by 60. COD Delay Damages shall be paid for each day of delay and shall be paid to SVCE in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance.</p> <p>Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and SVCE shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.</p>
<p><b>Credit Requirements:</b></p>	<p>Seller shall post security as follows:</p> <p><b>Development Security</b> – \$125,000 per MW of Guaranteed Capacity</p> <p><b>Performance Security</b> – \$125,000 per MW of Guaranteed Capacity</p> <p>To secure its obligations under this PPA, Seller shall deliver the Development Security to SVCE within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.</p>
	<p>To secure its obligations under this PPA, Seller shall deliver Performance Security to SVCE on or before the Commercial Operation Date.</p> <p>Within five (5) Business Days following any draw by SVCE on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p> <p>Seller performance assurance must be in the form of cash, letter of credit from an Acceptable Issuer, or parent guaranty from an investment-grade parent entity.</p>
<p><b>Prevailing Wage and Project Labor Agreement:</b></p>	<p><b>Prevailing Wage.</b> Seller shall comply with all applicable 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. In addition, 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 ("<b>Prevailing Wage Requirement</b>"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement,</p>

	work site, project labor agreement, collective bargaining agreement, or other similar agreement by Seller's primary EPC contractor related to construction of the Facility.
<b>Exclusivity:</b>	Upon shortlisting, Seller shall execute an Exclusivity Agreement with SVCE.
<b>No Recourse to Members of SVCE:</b>	SVCE is organized as Powers Authorities in accordance with the Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to their Powers Agreement and are public entities separate from their constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller 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.
<b>Force Majeure:</b>	<p><b>"Force Majeure Event"</b> 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 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.</p> <p>Notwithstanding the foregoing, the term <b>"Force Majeure Event"</b> does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including SVCE's ability to buy the Product at a lower price, or Seller's ability to sell Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility 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;</p>

	<p>(vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA.</p> <p>For the avoidance of doubt, so long as the event, despite the exercise of 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, Force Majeure Event may include an epidemic or pandemic but expressly excludes any epidemic or pandemic caused by the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("<b>COVID-19</b>").</p>
<p><b>Prohibition on use of Forced Labor</b></p>	<p>Seller represents and warrants that it has not and shall not knowingly utilize materials, products or components for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("Forced Labor"). Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with this prohibition on the use of Forced Labor. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 13.5. Consistent with the business advisory issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.</p>
<p><b>Performance Assurance</b></p>	<ul style="list-style-type: none"> <li>• Seller performance assurance from PPA execution to commercial operation date of the Facility ("Development Security"): \$125/kW</li> <li>• Seller performance assurance from commercial operation date of the Facility through the end of the Term: \$125/kW</li> <li>• Seller performance assurance must be in the form of cash, letter of credit from an Acceptable Issuer, or parent guaranty from an investment-grade parent entity</li> </ul>
<p><b>Commercial Operation Date</b></p>	<p>The following conditions must be met in order for Seller to notify Buyer of the commercial operation date of the Facility:</p> <ul style="list-style-type: none"> <li>• All governmental approvals, permits (including CAISO approvals), long-term easements and/or real property rights, and commercial arrangements necessary for the construction, engineering, commercial operation and maintenance of the Facility and sale by Seller of Product to Buyer have been obtained (unless typically received after the commercial operation date in</li> </ul>

	<p>ordinary course);</p> <ul style="list-style-type: none"> <li>• (i) The Facility interconnection agreement and any other material agreements between Seller and applicable transmission owners / CAISO that are required for Seller’s performance under the PPA are in full force and effect; (ii) all transmission network and distribution network upgrades required by CAISO have been completed and paid for by Seller; and (iii) commercial operation of the Facility has been achieved in accordance with the terms of the interconnection agreement.</li> <li>• Installed commissioned capacity must be no more than the Contract Capacity (as defined in the PPA) and no less than 95% of the Contract Capacity.</li> <li>• The Facility (including the interconnection facilities and the communication systems required under the PPA) has been completed in all material respects and the facility is capable of delivering to the interconnection point the full installed capacity of the Facility</li> <li>• The Facility has completed all requirements to be able to deliver Green Attributes to, or have Green Attributes recognized by, the registry that can be completed prior to the commercial operation date in accordance with registry rules.</li> <li>• Performance Assurances have been posted and any amounts owed by Seller to Buyer have been paid.</li> <li>• The California Energy Commission (“CEC”) has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for certification of the Facility as an eligible renewable energy resource for purposes of the California renewables portfolio standard.</li> </ul> <p>The Facility must achieve the commercial operation date on or before the Guaranteed Commercial Operation Date defined in the PPA.</p> <ul style="list-style-type: none"> <li>• Excused delay in achieving the commercial operation date includes only: delay resulting from: (a) Force Majeure; (b) a delay by transmission owner not caused by any act or omission of Seller; or (c) any act or omission of Buyer that is in material breach of the PPA or in violation of applicable law.</li> <li>• Minimum daily delay liquidated damages for unexcused delay: \$100/MW/day</li> <li>• Require liquidated damages, on a \$/MW basis, for capacity deficiency (after any applicable cure period), for each MW of installed capacity that is less than contract capacity.</li> <li>• Minimum liquidated damages for failure to achieve commercial operation date by the COD Termination Deadline defined in the PPA: Seller’s Development Security less daily delay damages already paid. In addition, Buyer has the right to terminate the PPA.</li> </ul>
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<b>Interconnection Costs</b>	<ul style="list-style-type: none"> <li>• Seller is responsible for all costs and charges associated with interconnection facilities and network upgrades necessitated by the interconnection of the Facility.</li> </ul>
<b>Facility Environmental &amp; Economic Impacts</b>	<ul style="list-style-type: none"> <li>• In developing the Facility, Seller will adhere to the most current published guidance of the Avian Power Line Interaction Committee for reducing avian collisions with power lines; for a wind project, Seller will also adhere to the most current editions of the U.S. Fish and Wildlife Service Land-Based Wind Energy Guidelines and Eagle Conservation Plan Guidance. <ul style="list-style-type: none"> <li>• Within 5 Business Days of the commercial operation date, Seller will provide Buyer a written report describing (a) the Facility’s actual economic impact through the date of such report, including capital expenditures and number of construction jobs created, (b) the Facility’s anticipated prospective capital expenditures and construction and operations jobs to be created and (c) all Minority-Owned Businesses that supplied goods or services to Seller in connection with the Facility through the date of such report, including certifications or other documentation of such Minority-Owned Businesses’ status as such, and the aggregate amount paid to Minority-Owned Businesses in connection with the Facility.</li> </ul> </li> </ul>
<b>Shared Facilities</b>	<ul style="list-style-type: none"> <li>• If applicable, shared facilities must be governed by shared facilities agreements that clearly designate a single interconnection manager, equally divide costs and charges for operation and maintenance costs based on pro rata share of capacity, and require each user to indemnify all other users for damages caused by such user’s actions or omissions.</li> </ul>
<b>Interconnection Costs</b>	<ul style="list-style-type: none"> <li>• Seller is responsible for all costs and charges associated with interconnection facilities and network upgrades necessitated by the interconnection of the Facility</li> </ul>
<b>Delivery Point</b>	<ul style="list-style-type: none"> <li>• Facility PNode</li> </ul>

<p><b>Overproduction</b></p>	<ul style="list-style-type: none"> <li>• When deliveries plus Deemed Delivered Energy (as such is defined in the PPA) exceed 115% of the Expected Energy (such quantity as specified in the PPA) for a contract year, Buyer does not pay for Product.</li> <li>• When deliveries plus Deemed Delivered Energy (as such is defined in the PPA) exceed 100% but are less than 115% of the Expected Energy (such quantity as specified in the PPA) for a contract year, Buyer pays the lesser of the PNode day-ahead LMP or 75% of the contract price.</li> </ul>
<p><b>Market Curtailment Period</b></p>	<ul style="list-style-type: none"> <li>• The period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which the LMP for the Day-Ahead Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the DA Price Floor; provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.</li> </ul>
<p><b>Curtailment Cap</b></p>	<ul style="list-style-type: none"> <li>• The yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity</li> </ul>
<p><b>Negative Pricing</b></p>	<ul style="list-style-type: none"> <li>• If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such excess MWh in such Settlement Interval will be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller will pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("Negative LMP Costs").</li> </ul>
<p><b>Ancillary Services</b></p>	<ul style="list-style-type: none"> <li>• Ancillary Services, At Buyer's election, Seller will complete any regulatory filing necessary to receive such revenues and other benefits and rights, including, but not limited to any regulatory filing related to Seller's capability to provide reactive power and voltage control services and to be compensated for such capability. Within a commercially reasonable timeframe (to be negotiated with Seller) following Buyer's election, Seller will file with FERC a rate schedule for Reactive Supply and Voltage Control from Generation and Other Resources under Schedule 2 of the CAISO tariff, to establish a reactive revenue requirement; provided, if the cost or technical data regarding the Facility necessary to prepare such filing is not available to Seller within such negotiated period</li> </ul>

	<p>despite Seller’s commercially reasonable efforts, the filing may be delayed until such time as the necessary cost or technical data is reasonably available to Seller. The filing will include the cost-of-service support required by FERC to support a reactive revenue requirement reflecting the Facility’s full reactive power capability. Seller will provide Buyer the opportunity to review and comment on the draft of the filing to FERC submitting such rate schedule and supporting materials, and will use reasonable efforts to accommodate Buyer’s comments. Seller will also provide Buyer with monthly updates regarding the status of the proceeding. Seller will obtain Buyer’s consent for any settlement of the reactive rate proceeding, with such consent not to be unreasonably withheld.</p>
<p><b>Green Attributes</b></p>	<ul style="list-style-type: none"> <li>• Prior to delivery term, Seller will establish a WREGIS account and maintain it for the duration of the term. Issuance, tracking and transfer of the RECs are at Seller’s expense. Seller is responsible for ensuring the facility is eligible for Green-e certification.</li> <li>• To the extent the registry or applicable law establishes a program for time-based tracking of renewable energy information or production of Green Attributes (as such is defined in the PPA), Seller will take, at its sole cost and expense, all commercially reasonable steps to ensure that production of Green Attributes is tracked with the greatest precision feasible (e.g., daily, hourly). Seller will bear all costs associated with such time-based tracking, provided that Buyer will bear all costs related to reporting and tracking that are incurred after it has taken title to such Green Attributes.</li> </ul>
<p><b>Guaranteed Energy Production</b></p>	<ul style="list-style-type: none"> <li>• Starting with the end of the second contract year, and at the end of each contract year thereafter during the delivery term, if the sum of the delivered energy, Deemed Delivered Energy and Excused Output (defined as Product not delivered due to Force Majeure or LMP below the Minimum LMP) during the applicable measurement period (“Annual Output”) does not equal or exceed a customary and agreed upon percentage of the Forecasted Annual Production, such percentage to equal at least 90% of the P90 value for the project (Production Deficiency), then Seller will pay Buyer as liquidated damages an amount equal to the Production Deficiency Payment (a payment in US dollars equal to the product of (a) the positive difference, if any, of (i) the Green Power Price (defined as the sum of the price for replacement energy and the price for replacement Green Attributes) for such measurement period, minus (ii) the contract price, and (b) the Production Deficiency for such measurement period).</li> </ul>

	<ul style="list-style-type: none"> <li>No events of default related to shortfalls in Annual Output</li> </ul>
<b>Metering</b>	<ul style="list-style-type: none"> <li>Facility must have a CAISO resource ID dedicated to the generating facility and may have a second CAISO resource ID dedicated to a storage facility, if any.</li> </ul>
<b>Non-Performance Charges</b>	<ul style="list-style-type: none"> <li>Buyer takes no responsibility for non-performance charges incurred due to actions or omissions of Seller contrary to the agreement.</li> </ul>
<b>Assignment</b>	<ul style="list-style-type: none"> <li>Buyer may withhold consent for Seller’s assignment of the PPA to a Competitor. A “Competitor” is defined as any person or entity which is engaged, directly or indirectly through any of its affiliates, in activities that are competing with (a) cloud or on-demand computing, data storage or related services, (b) datacenter or related infrastructure development, servicing, ownership or management, (c) web-based hosting services, web search services or “software as a service” or (d) other internet-based services, but excluding any person or entity, or wholly owned subsidiary of a person or entity.</li> <li>Buyer may withhold consent for a change of control with respect to Seller or upstream affiliates of such Seller pursuant to which Seller would become owned or controlled by a Competitor.</li> <li>Buyer Limited Assignment: Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the Buyer.</li> </ul>

## Appendix D Instructions for Geospatial Footprint submission

As part of the RFP, SVCE has posted this Appendix D, which contains instructions for creating a geospatial footprint of the project. The completion of Appendix D is required.

### [Instructions for Geospatial Footprint](#)

## Appendix E Reservation of Rights, Waivers, and Acceptances

## **1. Reservation of Rights**

Notwithstanding anything to the contrary, SVCE may, and expressly reserve the right to, at any time and from time to time, without prior notice and without assigning or providing any reason therefor:

- cancel, suspend, withdraw, or terminate this RFP (including, without limitation, after the selection under this RFP of one or more Respondents for a PPA) or cancel or suspend its participation in this RFP;
- modify this RFP, including, without limitation, any Appendix to this RFP, or any of the dates, times or places set forth in the RFP or related to the RFP process;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue or reject any proposal, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any proposal submitted in response to this RFP that is incomplete, is nonconforming, or contains irregularities (or waive any irregularity in any proposal), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some or all Respondents or other persons related to this RFP, and suspend or terminate negotiations with any Respondent or other person at any time, including, without limitation, because of any change in resource needs of SVCE giving rise to this RFP;
- discuss the terms of any proposal or any other material submitted by Respondent with, and obtain clarification or additional information concerning such proposal or such other material from, Respondent or its directors, officers, employees, agents, representatives, and advisors;
- request from Respondent information not detailed in or required by this RFP but that may be necessary or relevant to the evaluation of Respondent's proposal(s) and utilize such information as SVCE deems appropriate in connection with such evaluation of this RFP;
- receive, consider, pursue, or transact on (i) opportunities to acquire other assets or resources offered or that become available outside of the RFP process as such opportunities arise or (ii) proposals offered in response to this RFP that are nonconforming or eliminated from consideration in this RFP;
- invite further proposals in or outside of this RFP or supplemental submissions of proposals;
- determine which Respondents or entities to allow, or continue to allow, to participate in the RFP process;
- pursue or transact on proposals offered in response to this RFP regardless of any rank order established in the RFP evaluation process to promote diversity of supply in this RFP, gain experience with different technologies, limit exposure to a counterparty, technology or resource or a particular set of risks, or achieve other commercial goals SVCE deem appropriate;
- sign or not sign PPA(s) with Respondents or other persons relating to the Transactions solicited by this RFP;
- subject to the terms of any applicable confidentiality agreement entered between SVCE and Respondent, retain, archive, or destroy any information or material provided to or for the benefit of SVCE in the proposal submission process; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFP and the RFP process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised by SVCE or any director, officer, employee, or authorized agent or representative of SVCE or their respective parent. The reservation of rights contained herein is in addition to all other rights reserved or granted to SVCE or any of its Affiliates elsewhere in this RFP

or otherwise held by or available to SVCE or any of its Affiliates.

## **2. No Warranties or Liabilities**

BY PARTICIPATING IN THE RFP PROCESS, EACH RESPONDENT AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN A PPA WITH RESPONDENT:

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF SVCE OR ANY OTHER AFFILIATE OF SVCE, CCCE, PCE & SVCE IN CONNECTION WITH THIS RFP IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND
- (B) SVCE, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS SHALL HAVE NO LIABILITY TO ANY RESPONDENT, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFP.

## **3. Acceptance of Proposals**

Without prejudice to the SVCE's rights at law or in equity, no proposal submitted by any Respondent shall be deemed accepted by, or otherwise binding upon, SVCE or any of their Affiliates and SVCE, their affiliates and their respective directors, officers, members, employees, agents and representatives shall have no obligation or liability of any kind with respect to any such proposal or otherwise in connection with this RFP, unless and until a PPA has been mutually executed and delivered by SVCE or any of their Affiliates and seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by SVCE or any of their affiliates and seller. Notwithstanding anything to the contrary in this RFP, all proposals delivered to SVCE shall become the sole and exclusive property of SVCE upon receipt, and SVCE shall have all rights and privileges of ownership of such property, subject to any provision of this RFP relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between SVCE and Respondent or seller executed in connection with this RFP process.

## **4. Respondent Costs and Expenses**

Each Respondent is solely responsible for all costs and expenses it incurs in connection with this RFP. Through its participation in this RFP, each Respondent agrees that under no circumstance, including, without limitation, SVCE withdrawal from or suspension, cancellation, or termination of the RFP process, will SVCE, any of their affiliates or any of their respective directors, officers, members, partners, employees, agents, representatives or advisors have any responsibility or liability of any kind to Respondent, its affiliates or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors or lenders for any cost or expense directly or indirectly incurred by Respondent (no matter how incurred) in connection with the RFP process. Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

## **5. Respondent Disclosure of RFP Information**

No Respondent may, without the prior consent of SVCE, disclose to any other person (except CCA staff) its participation in the RFP process (other than by attendance at any meeting to which more than one participant is invited by SVCE, which attendance in and of itself will not violate this provision of this RFP).

Further, no Respondent may disclose, collaborate on or discuss with any other person (except CCA staff) bidding strategies or the substance of proposals, including, without

limitation, the price or any other terms or conditions of any contemplated, indicative or final proposal. Any such disclosure, collaboration or discussion would violate this RFP and may result in the rejection of Respondent's proposal or elimination of Respondent from further participation in this RFP.

**6. Respondent Acceptance of this Appendix E**

By participating in the RFP process, each Respondent agrees that it will be deemed to have accepted all the rights and terms included in this Appendix E and to have agreed that its participation in the RFP is subject to such rights and terms. SVCE is conducting this RFP and participating in the RFP process in reliance upon the foregoing agreement.