



Margaret Abe-Koga, Chair
City of Mountain View

Howard Miller, Vice Chair
City of Saratoga

Liz Gibbons
City of Campbell

Rod Sinks
City of Cupertino

Fred M. Tovar
City of Gilroy

Jeannie Bruins
City of Los Altos

Courtenay C. Corrigan
Town of Los Altos Hills

Marico Sayoc
Town of Los Gatos

Carmen Montano
City of Milpitas

Javed Ellahie
City of Monte Sereno

Yvonne Martinez Beltran
City of Morgan Hill

Susan Ellenberg
County of Santa Clara

Nancy Smith
City of Sunnyvale

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

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

Wednesday, September 11, 2019
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any item not on the Agenda. Speakers are limited to 3 minutes each.

Consent Calendar (Action)

- 1a) Approve Minutes of the August 14, 2019, Board of Directors Meeting
- 1b) Approve Minutes of the August 14, 2019 Board of Directors Special Meeting
- 1c) Receive July 2019 Treasurer Report
- 1d) SVCE 2018 Annual Power Source Disclosure Report Attestation
- 1e) Approve Renewal of \$35 million Line of Credit with River City Bank
- 1f) Approve Amendment No. 2 to Employment Agreement for Chief Executive Officer
- 1g) Authorize the Chief Executive Officer to Execute Agreement with Maher Accountancy for Accountant Services
- 1h) Authorize the Chief Executive Officer to Execute Agreement with Braun Blaising Smith Wynn P.C. ("BBSW")
- 1i) Authorize the Chief Executive Officer to Execute Agreement with Pacific Printing for Printing Services
- 1j) Adopt Resolution to Authorize the Chief Executive Officer to Amend Approved Master Agreement with NextEra Energy Marketing, LLC



Margaret Abe-Koga, Chair
City of Mountain View

1k) Authorize the Chief Executive Officer to Execute Agreement with Pacific Energy Advisors for Technical Consulting Services

Howard Miller, Vice Chair
City of Saratoga

1l) Audit Committee Report

Liz Gibbons
City of Campbell

Regular Calendar

2) CEO Report (Discussion)

Rod Sinks
City of Cupertino

3) Finance and Administration Committee Membership (Action)

Fred M. Tovar
City of Gilroy

4) Adopt Fiscal Year 2019-20 Operating Budget and Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule (Action)

Jeannie Bruins
City of Los Altos

5) Approve the Electric Vehicle Infrastructure Joint Action Plan (Action)

6) Executive Committee Meeting Report (Discussion)

Courtenay C. Corrigan
Town of Los Altos Hills

7) Finance and Administration Committee Report (Discussion)

8) Legislative Ad Hoc Committee Report (Discussion)

Marico Sayoc
Town of Los Gatos

Board Member Announcements and Direction on Future Agenda Items

Carmen Montano
City of Milpitas

Public Comment on Closed Session

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

Javed Ellahie
City of Monte Sereno

Convene to Closed Session (Community Hall Kitchen)

Yvonne Martinez Beltran
City of Morgan Hill

Public Employee Performance Evaluation
Title: Chief Executive Officer

Susan Ellenberg
County of Santa Clara

Conference with Labor Negotiator
Agency Representative: Margaret Abe-Koga, Chair, Board of Directors
Unrepresented Employee: Chief Executive Officer

Nancy Smith
City of Sunnyvale

Report from Closed Session

Adjourn

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087



Silicon Valley Clean Energy Authority
Board of Directors Meeting
Wednesday, August 14, 2019
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Call to Order

Chair Abe-Koga called the meeting to order at 7:06 p.m.

Roll Call

Present:

Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Howard Miller, City of Saratoga
Director Javed Ellahie, City of Monte Sereno
Director Marico Sayoc, Town of Los Gatos
Director Nancy Smith, City of Sunnyvale
Director Rod Sinks, City of Cupertino
Director Courtenay Corrigan, Town of Los Altos Hills
Director Susan Ellenberg, County of Santa Clara
Alternate Director Anthony Eulo, City of Morgan Hill

Absent:

Director Jeannie Bruins, City of Los Altos
Director Bob Nuñez, City of Milpitas
Director Liz Gibbons, City of Campbell
Director Fred Tovar, City of Gilroy

Public Comment on Matters Not Listed on the Agenda

No speakers.

Consent Calendar

Chair Abe-Koga opened public comment for those wishing to pull an item from the consent calendar.
No speakers.

Chair Abe-Koga closed public comment for those wishing to pull an item from the consent calendar.

MOTION: Director Ellenberg moved and Alternate Director Eulo seconded the motion to approve the Consent Calendar.

The motion carried unanimously with Directors Bruins, Gibbons, Nuñez and Tovar absent.

- 1a) Approve Minutes of the June 12, 2019, Board of Directors Meeting**
- 1b) Receive May and June 2019 Treasurer Reports**
- 1c) Approve Human Resources Policy 5, Paid Time Off Cash-Out Option Policy**
- 1d) Receive Rate Update Effective August 1, 2019**

- 1e) Adopt Resolution to Authorize the Chief Executive Officer to Execute Master Agreements with NRG Power Marketing, LLC, Wellhead Power Exchange, LLC, and DTE Energy Trading, Inc. and to Amend Approved Master Agreement with TransAlta Energy Marketing (US) Inc.
- 1f) Approve Time Extension and Authorize Chief Executive Officer to Execute Second Amendment to Agreement with Calpine Energy Solutions, LLC
- 1g) Authorize the Chief Executive Officer to Execute Agreement with Richards, Watson & Gershon for Legal Services
- 1h) Authorize the Chief Executive Officer to Execute Amended Agreement Increasing the Not-to-Exceed Amount for Accounting Services with Maher Accountancy
- 1i) Receive Decarbonization Programs Update
- 1j) Executive Committee Report
- 1k) Audit Committee Report

Regular Calendar

2) CEO Report (Discussion)

CEO Girish Balachandran introduced the item by addressing the materials at the dais, and initiated a sparkling cider toast for SVCE's California Energy Commission award of \$6 million grant money for electric vehicle charging structures. CEO Balachandran introduced new SVCE staff members Community Outreach Specialist Colleen McCamy, and Associate Data Analyst Rebecca Fang; both provided brief comments. CEO Balachandran provided brief comments on the Regulatory and Legislative Update included in the CEO report.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

3) Approve 2020 Time-of-Use Rate Transition for Residential Customers (Action)

Director of Account Services and Community Relations Don Bray presented a PowerPoint presentation and responded to Board member questions.

Chair Abe-Koga opened public comment.
Bruce Karney, Mountain View resident, commented on the time-of-use rate program proposal and questioned if the PG&E modeling tool that predicts cost will be accurate for solar customers without storage the same way it is for people who do not have solar. Karney commented his belief that the E1 rate category will go away.

Director of Account Services and Community Relations Bray responded to Karney's inquiry regarding the PG&E modeling tool.

Chair Abe-Koga closed public comment.

Director Ellahie requested information on cost savings during the time of day affecting the duck curve.

MOTION: Director Corrigan moved and Director Sinks seconded the motion to confirm SVCE's participation in the Time-of-Use Transition as of October 1, 2020, and confirm that SVCE will offer bill protection for the first 12 months following implementation.

The motion carried unanimously with Directors Bruins, Gibbons, Nuñez, and Tovar absent.

4) Proposed FY 19-20 Operating Budget (Discussion)

Director of Finance and Administration Don Eckert presented a PowerPoint presentation and responded to Board member questions.

Chair Abe-Koga opened public comment.
No speakers.
Chair Abe-Koga closed public comment.

Chair Abe-Koga left the meeting at 8:15 p.m. and Vice Chair Miller presided over the remainder of the meeting.

Board members discussed the reserves target and Alternate Director Eulo cautioned against building too much reserve; CEO Balachandran noted a discussion would be brought back to the Board in the first quarter of 2020. Director Sinks requested staff help the Board understand the impact some actions have and how quickly reserves could disappear.

Vice Chair Miller summarized comments from the Board which included the following:

1. Human Resources Parameters

A need for on-site;
Market based element;
Discussion of benefits, pay, reviewing SVCE's policies, help in hiring, and diversity; and,
Feeling the organization is big enough, SVCE probably needs more focus and attention in the HR professions.

2. Account services

The Board fully understands there is a big goal on direct access (DA), but the Board would like some money/time introspection into marketing and other opportunities in addition to DA.

3. Request for Cost/Margin of service of residential versus commercial customers (introspection)

4. Reserves

Request for more discussion about how SVCE is going to tail off of budget reserve growth;
The organization is under a lot of unknowns and board members would feel more comfortable with money in the bank; and,
Suggestions for the 2020-21 budget cycle about potentially buying a building, more programs, and taking less money from customers.

5) Reach Codes Update (Discussion)

Director of Decarbonization and Grid Innovation Programs Aimee Bailey and Account Services Manager John Supp presented a PowerPoint presentation; staff responded to Board member questions.

Vice Chair Miller opened public comment.
Bruce Karney, Carbon Free Mountain View, commented on the organizations which he is a member of, and noted they would be interested in helping with the support of implementation of reach codes in member agencies. Karney suggested staff work as closely and communicate as frequently as possible with activist groups. Karney announced a meeting at the Quinlan Center in Cupertino of the Youth Climate Activists, and encouraged board members to attend.

Bryan Mekechuk, resident of Monte Sereno, provided feedback on what was said at the Monte Sereno council meeting, volunteered to help with outreach to other member agencies, and encouraged board members engage and involve youth commissions.

Vice Chair Miller closed public comment.

Vice Chair Miller summarized Board comments that Directors are doing what they can in terms of engagement, and staff is doing an exceptional job in helping member agencies.

6) Finance and Administration Committee Report (Discussion)

Vice Chair Miller reported the Finance and Administration Committee met and discussed the proposed FY 2019-20 Operating Budget, discussed Human Resources Policy 5, Paid Time Off Cash-Out Option Policy, and expansion of the legal services contract. The next Finance and Administration Committee is scheduled for September 3rd.

Vice Chair Miller opened public comment.

No speakers.

Vice Chair Miller closed public comment.

7) Legislative Ad Hoc Committee Report (Discussion)

Director Sinks reported the Legislative Ad Hoc Committee met July 9th to discuss priority bills and recent events in the 2019 legislative session. July 12th was the start of summer recess and the deadline for bills to pass through the required policy committees in the second house. Bills under discussion included those considering centralized procurement, such as AB 56, as well as bills touching on Integrated Resource Planning, the CCA Code of Conduct, defining the Provider of Last Resort and Diversity in CCA procurement. Committee members reviewed the progress of bills of interest and thanked those who contacted Senator Jerry Hill for his opposition vote on AB 56. The Legislative Ad Hoc committee will reconvene on August 27th to plan for the remainder of the session, which ends September 13th.

Board Member Announcements and Direction on Future Agenda Items

Director Ellahie announced SVCE Accounts Manager John Supp would be presenting on reach codes October 2, 2019 at 7:30 a.m. at the Los Gatos morning rotary. Director Ellahie announced the Los Gatos Rotary *Claws for Cause* fundraiser September 7th at the Los Gatos Lodge and encouraged anyone who may be interested in attending contact him for details.

Alternate Director Eulo invited Board members to cook with induction cooktops, and shared his experience.

Director Corrigan commented the difficulty in finding a large induction cooktop.

Director Smith announced the Sunnyvale City Council approved Sunnyvale's Climate Action Plan 2.0. Director Smith shared highlights of the plan, and noted she would send a link of the final version through staff.

Adjourn

Chair Abe-Koga adjourned the meeting at 9:25 p.m.



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

Wednesday, August 14, 2019

5:30 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

DRAFT MINUTES

Call to Order

Chair Abe-Koga called the meeting to order at 5:32 p.m.

Roll Call

Present:

Chair Margaret Abe-Koga, City of Mountain View
Vice Chair Howard Miller, City of Saratoga
Director Javed Ellahie, City of Monte Sereno
Director Marico Sayoc, Town of Los Gatos
Director Nancy Smith, City of Sunnyvale
Director Rod Sinks, City of Cupertino
Director Courtenay Corrigan, Town of Los Altos Hills
Director Jeannie Bruins, City of Los Altos (participating by teleconference from 1711 Larkellen Lane
Los Altos, CA 94024)
Director Susan Ellenberg, County of Santa Clara
Director Yvonne Martinez Beltran, City of Morgan Hill (participating by teleconference from 17295
Markross Ct, Morgan Hill, CA 95037)

Absent:

Director Liz Gibbons, City of Campbell
Director Bob Nuñez, City of Milpitas
Director Fred Tovar, City of Gilroy

Public Comment on Matters Not Listed on the Agenda

No speakers.

Public Comment on Closed Session

No speakers.

The Board convened to Closed Session in the Community Hall Kitchen at 5:34 p.m.

Convene to Closed Session (Community Hall Kitchen)

Public Employee Performance Evaluation
Title: Chief Executive Officer

Conference with Labor Negotiator
Agency Representative: Margaret Abe-Koga, Chair, Board of Directors
Unrepresented Employee: Chief Executive Officer

Conference with Legal Counsel – Existing Litigation

Government Code Section 54956.9(d)(1)

Name of Case: In re Pacific Gas and Electric Company, Debtor, United States Bankruptcy Court,
Northern District of California, San Francisco Division, Case No. 19-30088

Director Martinez Beltran joined the meeting via teleconference during closed session.

Director Corrigan arrived at 5:46 p.m.

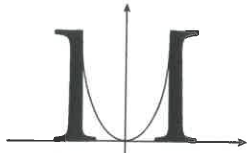
The Board returned to the Council Chambers at 7:02 p.m. with Directors Gibbons, Nuñez and Tovar absent.

Report from Closed Session

No report.

Adjourn

Chair Abe-Koga called the regular board meeting to order immediately following the Board's return from closed session at 7:06 p.m.



MAHER ACCOUNTANCY 1101 FIFTH AVENUE • SUITE 200 • SAN RAFAEL, CA 94901

Financial Plumbline

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Silicon Valley Clean Energy Authority

Management is responsible for the accompanying financial statements of Silicon Valley Clean Energy Authority (a California Joint Powers Authority) which comprise the statement of net position as of July 31, 2019, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. Silicon Valley Clean Energy Authority's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
September 3, 2019

TEL 415.459.1249
FAX 415.459.5406
WEB www.mahercpa.com



TREASURER REPORT

**Fiscal Year to Date
As of July 31, 2019**

(Preliminary & Unaudited)

Issue Date: September 11, 2019

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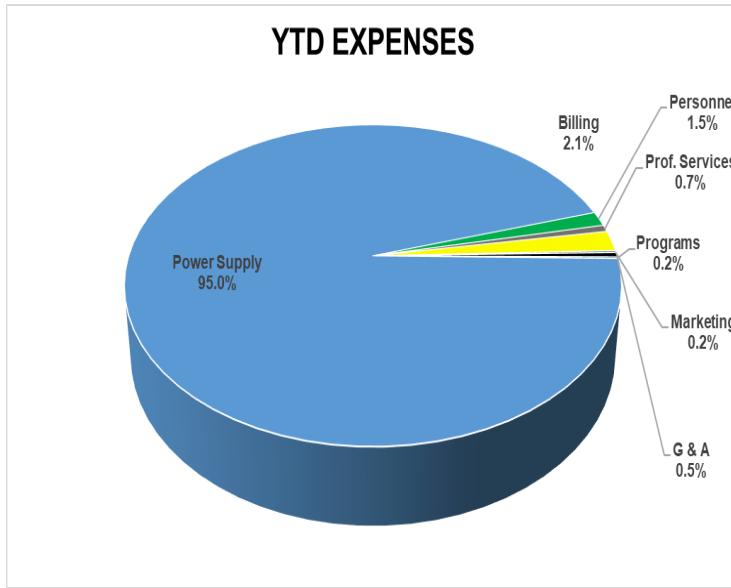
SILICON VALLEY CLEAN ENERGY AUTHORITY Financial Statement Highlights (\$ in 000's)

Financial Highlights for the month of July 2019:

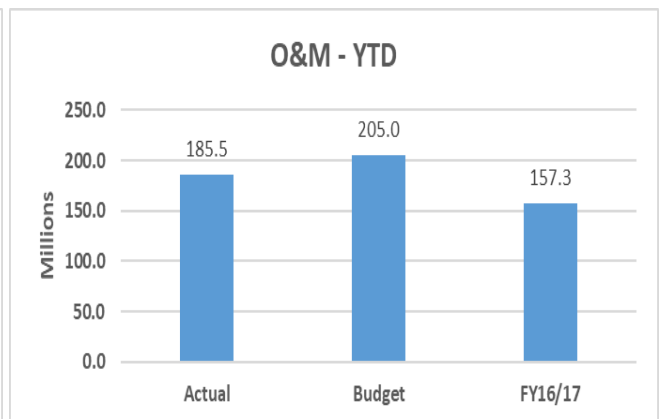
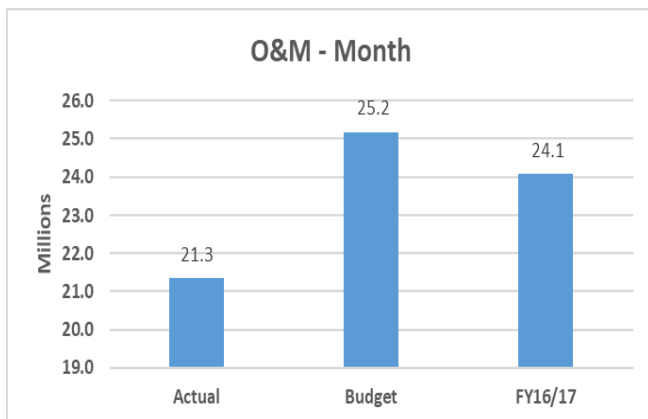
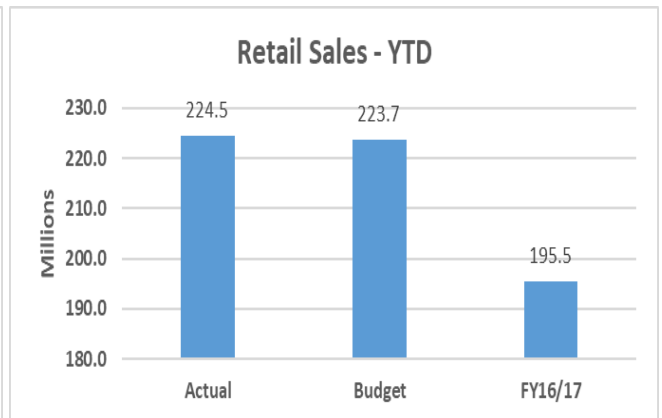
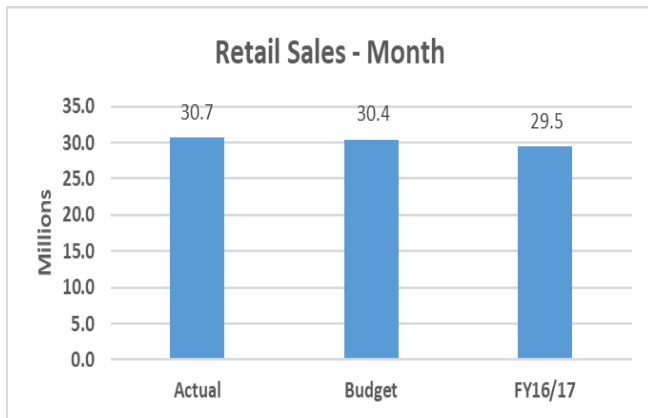
Note: SVCE is expected to finish the year well ahead of budget due to favorable rate changes and lower than budgeted power supply cost.

- > SVCE operations resulted in a positive change in net position for the month of \$9.5 million and year-to-date change in net position of \$39.9 million.
 - o July revenue of \$30.7 million accounted for 359 GWh in net retail consumption.
 - o Year-to-date operating margin is \$48.4 million and \$14.4 million above budget.
 - o SVCE is above the minimum cash reserve target with 133 expense coverage days and is financially stable.
- > Retail GWh sales for the month were 6 GWh above budget.
 - o Year-to-date energy sales are on target.
 - o July weather was normal compared to the 15-year average.
- > Power Supply costs are 7% below budget year-to-date.
 - o Power supply costs for the month were on target for the month.
 - o Joint Long-Term PPA RFO was issued in May from SVCE and MBCP. A short-list of suppliers was selected by July.
 - o Favorable adjustments for December through March power supply costs were recognized based on updated settlements from CAISO.
- > Decarbonization and Grid Innovations
 - o The Programs Roadmap was approved by the Board of Directors in December 2018.
 - o The Board has approved ~\$3 million of project specific budgets for Programs.
 - o Programs continue to ramp up.
- > Investing/Financing
 - o SVCE currently has a \$35 million line of credit.
 - o SVCE is investing ~90% of available funds with a year-to-date return of \$1.0 million.

Change in Net Position	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Actual	8,092	953	1,947	(4,819)	(523)	4,026	4,650	7,917	8,186	9,449	-	-	39,877	29,584
Power Supply Costs	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Energy & REC's	14,735	13,930	12,890	18,224	14,103	12,080	12,019	14,084	16,003	16,653			144,721	
Capacity	985	912	1,082	1,554	1,596	1,308	1,484	1,620	2,053	2,738			15,332	
CAISO Charges	798	1,043	438	1,768	917	(804)	(1,036)	280	654	10			4,068	
NEM Expense	74	(82)	(242)	(287)	(146)	(81)	(154)	260	324	585			251	
Charge/Credit (IST/Net Rev)	569	1,089	3,383	2,064	497	516	455	809	2,045	309			11,736	
Net Power Costs	17,161	16,892	17,551	23,323	16,968	13,019	12,769	17,053	21,079	20,295	-	-	176,108	234,330
Other	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Capital Expenditures	2	-	6	1	1	7	-	3	-	-			20	200
Energy Programs	37	3	-	1	3	16	59	71	74	36			300	5,640
Load Statistics - GWh	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Total	Amended Budget
Retail Sales Actual	323	318	354	336	299	311	307	305	347	359			3,259	
Retail Sales Budget	323	318	354	336	322	302	308	310	328	353	345	337	3,936	3,936



Other Statistics and Ratios	
Working Capital	\$118,025,722
Current Ratio	4.2
Operating Margin	22%
Expense Coverage Days	133
Expense Coverage Days with LOC	176
Long-Term Debt	\$0
Total Accounts	271,097
Opt-Out Accounts (July)	39
Opt-Up Accounts (July)	9



SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of July 31, 2019

ASSETS

Current Assets

Cash & Cash Equivalents	\$ 101,108,295
Accounts Receivable, net of allowance	23,716,782
Accrued Revenue	19,159,916
Other Receivables	248,762
Prepaid Expenses	3,012,101
Deposits	2,255,634
Restricted cash - lockbox	5,000,000

Total Current Assets **154,501,490**

Noncurrent assets

Capital assets, net of depreciation	156,476
Deposits	129,060

Total Noncurrent Assets **285,536**

Total Assets **154,787,026**

LIABILITIES

Current Liabilities

Accounts Payable	674,096
Accrued Cost of Electricity	34,188,169
Accrued Payroll & Benefits	302,742
Other accrued liabilities	360,020
User Taxes and Energy Surcharges due to other gov'ts	922,421
Supplier Security Deposits	28,320

Total Current Liabilities **36,475,768**

NET POSITION

Net investment in capital assets	156,476
Restricted for security collateral	5,000,000
Unrestricted (deficit)	113,154,782
Total Net Position	\$ 118,311,258

**STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2018 through July 31, 2019**

OPERATING REVENUES

Electricity Sales, Net	\$ 223,735,368
GreenPrime electricity premium	786,769
TOTAL OPERATING REVENUES	<u>224,522,137</u>

OPERATING EXPENSES

Cost of Electricity	176,108,397
Staff Compensation and benefits	2,734,501
Data Management	2,849,240
Service Fees - PG&E	960,612
Consultants and Other Professional Fees	1,222,170
Legal	342,068
Communications & Noticing	365,210
General & Administrative	830,072
Depreciation	42,002
TOTAL OPERATING EXPENSES	<u>185,454,272</u>
OPERATING INCOME(LOSS)	<u>39,067,865</u>

NONOPERATING REVENUES (EXPENSES)

Interest Income	933,769
Financing costs	(129,096)
TOTAL NONOPERATING EXPENSES	<u>804,673</u>

CHANGE IN NET POSITION

Net Position at beginning of period	78,434,720
Net Position at end of period	<u>\$ 118,311,258</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS
October 1, 2018 through July 31, 2019

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from electricity sales	\$ 222,255,469
Receipts from wholesale sales	579,940
Supplier security deposits	28,320
Tax and surcharge receipts from customers	4,278,954
Energy settlements received	5,794,370
Deposits and collateral received	13,558,737
Payments to purchase electricity	(183,934,004)
Payments for staff compensation and benefits	(2,699,465)
Payments for data manager fees	(2,857,771)
Payments for PG&E service fees	(862,995)
Payments for consultants and other professional services	(1,190,588)
Payments for legal fees	(329,144)
Payments for communications and noticing	(398,613)
Payments for general and administrative	(1,051,386)
Payments of deposits and collateral	(1,758,101)
Return of security deposits to suppliers	(585,000)
Tax and surcharge payments to other governments	(4,394,440)
Net cash provided (used) by operating activities	<u>46,434,283</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Interest and related expense payments	(208,937)
Net cash provided (used) by non-capital financing activities	<u>(208,937)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(14,160)</u>
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CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Interest income received	<u>933,769</u>
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Net change in cash and cash equivalents	47,144,955
Cash and cash equivalents at beginning of year	<u>58,963,340</u>
Cash and cash equivalents at end of period	<u><u>\$ 106,108,295</u></u>

SILICON VALLEY CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (Continued)

October 1, 2018 through July 31, 2019

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

Operating Income (loss)	\$ 39,067,865
 Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	42,002
Revenue reduced for uncollectible accounts	1,128,254
(Increase) decrease in net accounts receivable	(1,183,887)
(Increase) decrease in other receivables	(162,501)
(Increase) decrease in accrued revenue	(2,228,555)
(Increase) decrease in prepaid expenses	(1,804,414)
(Increase) decrease in current deposits	11,800,636
Increase (decrease) in accounts payable	(46,442)
Increase (decrease) in accrued payroll & benefits	111,453
Increase (decrease) in energy settlements payable	483,968
Increase (decrease) in accrued cost of electricity	(479,472)
Increase (decrease) in accrued liabilities	360,020
Increase (decrease) in taxes and surcharges due to other governments	(97,964)
Increase (decrease) in supplier security deposits	(556,680)
Net cash provided (used) by operating activities	<u>\$ 46,434,283</u>

**SILICON VALLEY CLEAN ENERGY
BUDGETARY COMPARISON SCHEDULE
October 1, 2018 through July 31, 2019**

	FYTD <u>Actual</u>	FYTD Amended <u>Budget</u>	<u>Variance</u> \$	%	FY 2018-19 Amended <u>Budget</u>	% Budget <u>Spent</u>
REVENUES & OTHER SOURCES						
Energy Sales	\$ 223,735,368	\$ 223,087,289	\$ 648,079	0%	\$ 281,890,000	
GreenPrime Premium	786,769	543,489	243,280	45%	630,000	
Other Income	-	75,000	(75,000)	-100%	100,000	
Investment Income	933,769	700,617	233,152	0%	850,000	
TOTAL REVENUES & OTHER SOURCES	<u>225,455,906</u>	<u>224,406,395</u>	<u>1,049,511</u>	<u>0%</u>	<u>283,470,000</u>	
EXPENDITURES & OTHER USES						
CURRENT EXPENDITURES						
Power Supply	176,108,397	189,727,255	(13,618,858)	-7%	234,330,000	75%
Data Management	2,849,240	2,967,674	(118,434)	-4%	3,560,000	80%
PG&E Fees	960,612	937,532	23,080	2%	1,120,000	86%
Salaries & Benefits	2,734,501	3,482,014	(747,513)	-21%	4,300,000	64%
Professional Services	1,266,992	1,841,973	(574,981)	-31%	2,290,000	55%
Marketing & Promotions	290,523	699,845	(409,322)	-58%	910,000	32%
Notifications	74,687	123,857	(49,170)	-40%	160,000	47%
Lease	271,055	274,016	(2,961)	-1%	330,000	82%
General & Administrative	557,691	680,032	(122,341)	-18%	836,000	67%
TOTAL CURRENT EXPENDITURES	<u>185,113,698</u>	<u>200,734,197</u>	<u>(15,620,499)</u>	<u>-8%</u>	<u>247,836,000</u>	<u>75%</u>
OTHER USES						
Customer Programs	298,572	4,240,120	(3,941,548)	-93%	5,640,000	5%
Office Equipment	19,919	155,556	(135,637)	-87%	200,000	10%
Financial Security Requirement	-	-	-	0%	147,000	
Refund of Bond	-	-	-	0%	(100,000)	
TOTAL OTHER USES	<u>318,491</u>	<u>4,395,676</u>	<u>(4,077,185)</u>	<u>-93%</u>	<u>5,887,000</u>	<u>5%</u>
DEBT SERVICE						
Financing	125,096	90,000	35,096	39%	90,000	139%
Interest	-	90,000	(90,000)	-100%	120,000	0%
TOTAL DEBT SERVICE	<u>125,096</u>	<u>180,000</u>	<u>(54,904)</u>	<u>-31%</u>	<u>210,000</u>	<u>60%</u>
Total Expenditures, Other Uses & Debt Service	<u>185,557,285</u>	<u>205,309,873</u>	<u>(19,752,588)</u>	<u>-10%</u>	<u>253,933,000</u>	<u>73%</u>
Net Increase(Decrease) in Available Fund Balance	<u>\$ 39,898,621</u>	<u>\$ 19,096,522</u>	<u>\$ 20,802,099</u>	<u>109%</u>	<u>\$ 29,537,000</u>	

SILICON VALLEY CLEAN ENERGY AUTHORITY

**BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION**

Net Increase (decrease) in available fund balance per budgetary comparison schedule	\$ 39,898,621
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position	
Subtract depreciation expense	(42,002)
Add back capital asset acquisitions	<u>19,919</u>
Change in Net Position	<u>39,876,538</u>

SILICON VALLEY CLEAN ENERGY AUTHORITY
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
October 1, 2018 through July 31, 2019

	October	November	December	January	February	March	April	May	June	July	August	YTD	
OPERATING REVENUES													
Electricity sales, net	\$ 26,013,308	\$ 18,589,640	\$ 20,295,540	\$ 19,278,907	\$ 17,206,905	\$ 17,794,266	\$ 18,251,186	\$ 25,670,969	\$ 30,086,479	\$ 30,548,168		\$ 223,735,368	
Green electricity premium	76,005	66,459	67,567	73,924	61,034	69,967	71,198	80,664	100,923	119,028		786,769	
Other income	-	-	-	-	-	-	-	-	-	-		-	
Total operating revenues	26,089,313	18,656,099	20,363,107	19,352,831	17,267,939	17,864,233	18,322,384	25,751,633	30,187,402	30,667,196	-	224,522,137	
OPERATING EXPENSES													
Cost of electricity	17,160,575	16,892,744	17,551,069	23,433,656	16,893,908	12,980,824	12,768,605	17,052,324	21,078,947	20,295,745		176,108,397	
Staff compensation and benefits	236,907	256,926	264,613	269,608	250,743	287,282	275,835	293,282	293,358	305,947		2,734,501	
Data manager	301,479	300,856	301,200	301,385	301,626	302,227	303,253	153,148	291,172	292,894		2,849,240	
Service fees - PG&E	94,279	94,000	94,377	94,000	99,753	94,263	94,613	99,147	99,475	96,705		960,612	
Consultants and other professional fees	130,737	114,869	129,909	123,353	230,634	161,132	256,854	236,477	286,604	258,879		1,929,448	
General and administration	99,316	70,743	74,028	73,621	106,969	117,599	78,370	60,525	60,359	88,542		830,072	
Depreciation	4,179	4,179	4,335	4,393	3,969	4,160	4,130	4,219	4,219	4,219		42,002	
Total operating expenses	18,027,472	17,734,317	18,419,531	24,300,016	17,887,602	13,947,487	13,781,660	17,899,122	22,114,134	21,342,931	-	185,454,272	
Operating income (loss)	8,061,841	921,782	1,943,576	(4,947,185)	(619,663)	3,916,746	4,540,724	7,852,511	8,073,268	9,324,265	-	39,067,865	
NONOPERATING REVENUES (EXPENSES)													
Interest income	30,474	30,758	58,997	128,308	96,180	109,063	108,802	115,167	122,271	133,749		933,769	
Interest and related expense	-	-	(55,856)	-	-	-	-	(50,608)	(9,316)	(9,316)		(125,096)	
Total nonoperating revenues (expenses)	30,474	30,758	3,141	128,308	96,180	109,063	108,802	64,559	112,955	124,433	-	808,673	
CHANGE IN NET POSITION	\$ 8,092,315	\$ 952,540	\$ 1,946,717	\$ (4,818,877)	\$ (523,483)	\$ 4,025,809	\$ 4,649,526	\$ 7,917,070	\$ 8,186,223	\$ 9,448,698	\$ -	\$ -	\$ 39,876,538

PERSONNEL REPORT FOR JULY 2019

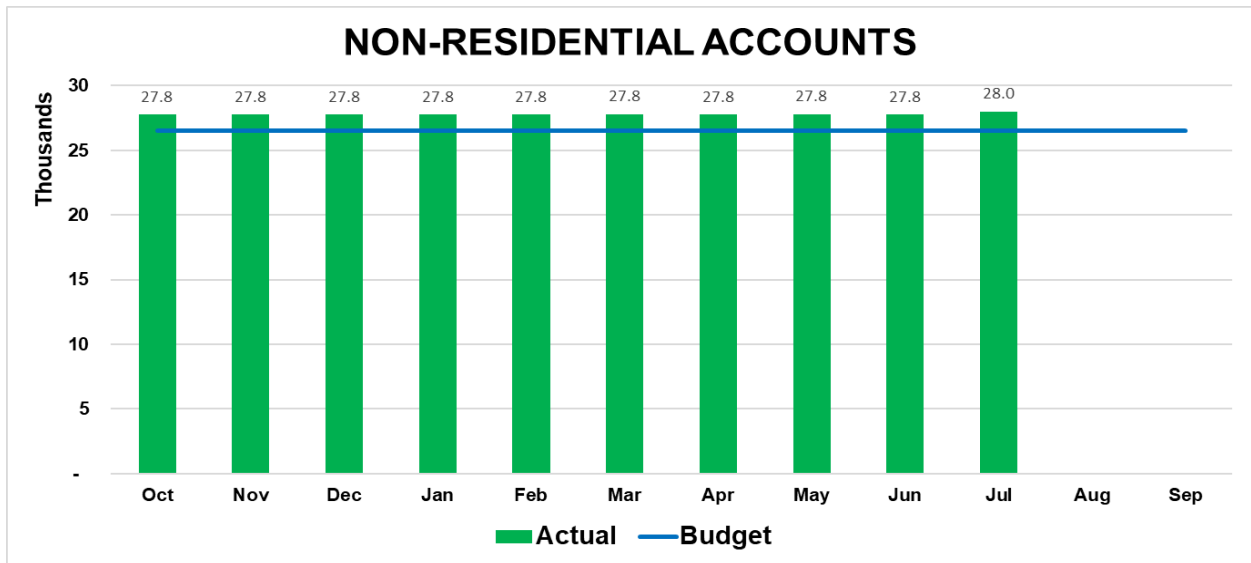
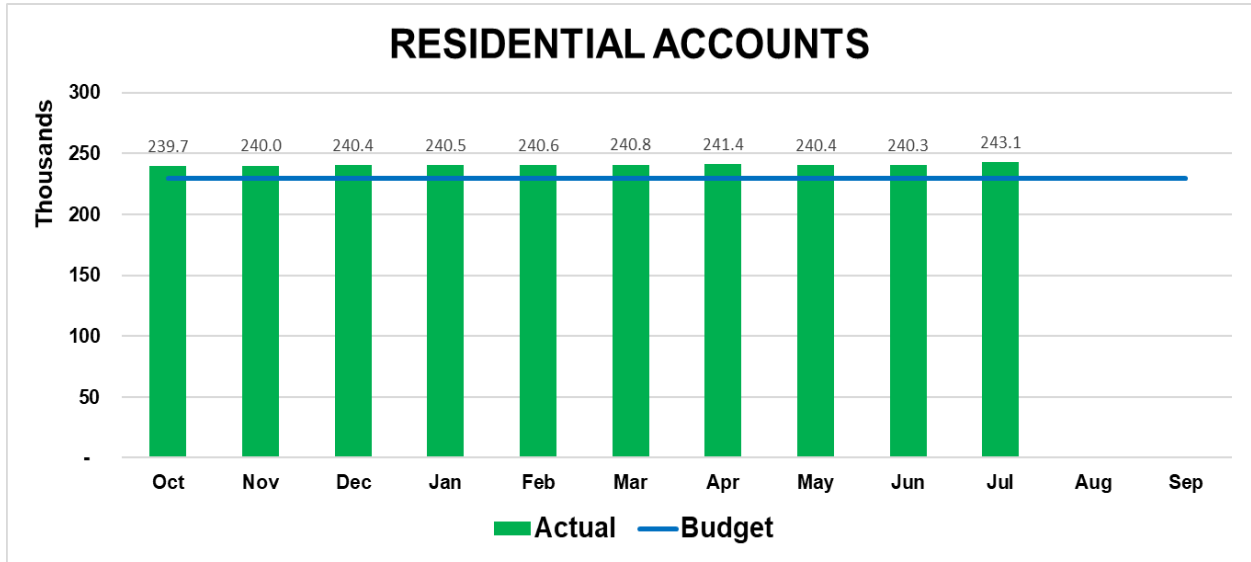
HEADCOUNT				
<u>Position</u>	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>	
Director of Account Services and Community Relations	1	1	0	
Account Services Manager	1	1	0	
Energy Consultant	2	1	1	
Energy Associate	2	0	2	
Communications Manager	1	1	0	
Community Outreach Specialist	1	1	0	
Communications Specialist	1	1	0	
Board Clerk/Executive Assistant	1	1	0	
Chief Executive Officer	1	1	0	
Director of Finance and Administration	1	1	0	
Administrative Services Manager	1	0	1	
Management Analyst	1	1	0	
Administrative Analyst	1	1	0	
Administrative Assistant	1	1	0	
Director of Power Resources	1	1	0	
Power Resources Manager	1	1	0	
Power Resources Planner	1	1	0	
Power Settlements & Compliance Analyst	1	1	0	
Manager of Regulatory and Legislative Affairs	1	1	0	
Senior Regulatory Analyst	1	1	0	
Director of Decarbonization and Grid Innovation Programs	1	1	0	
Data Analyst	1	1	0	
Analyst	<u>1</u>	<u>1</u>	<u>0</u>	
Total*	<u>25</u>	<u>21</u>	<u>4</u>	

**SILICON VALLEY CLEAN ENERGY AUTHORITY
INVESTMENTS SUMMARY
October 1, 2018 through July 31, 2019**

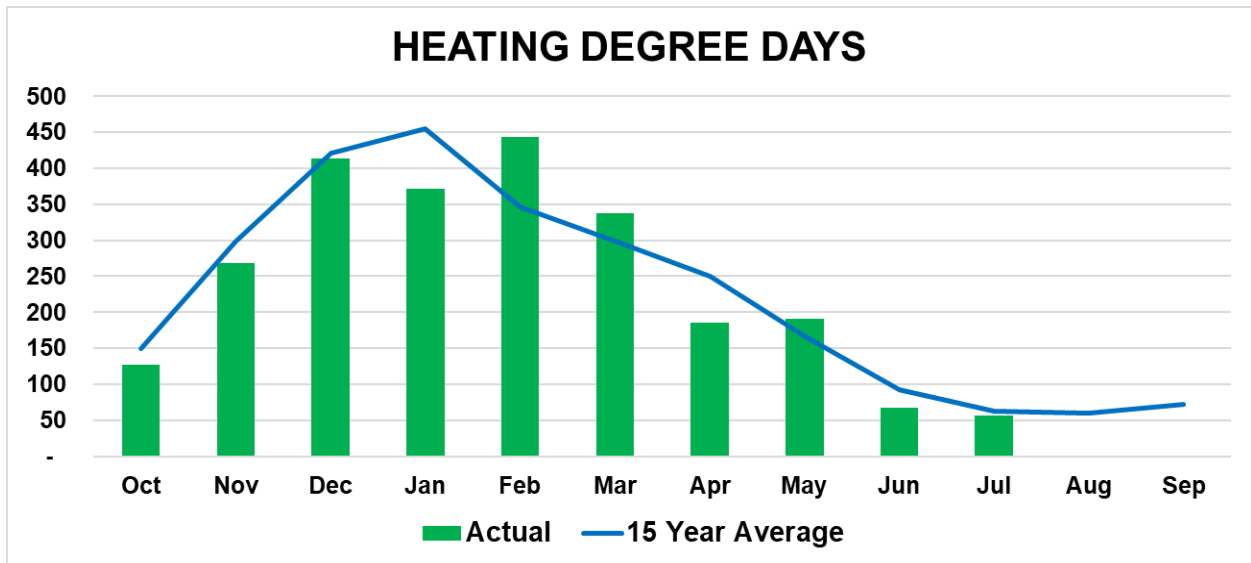
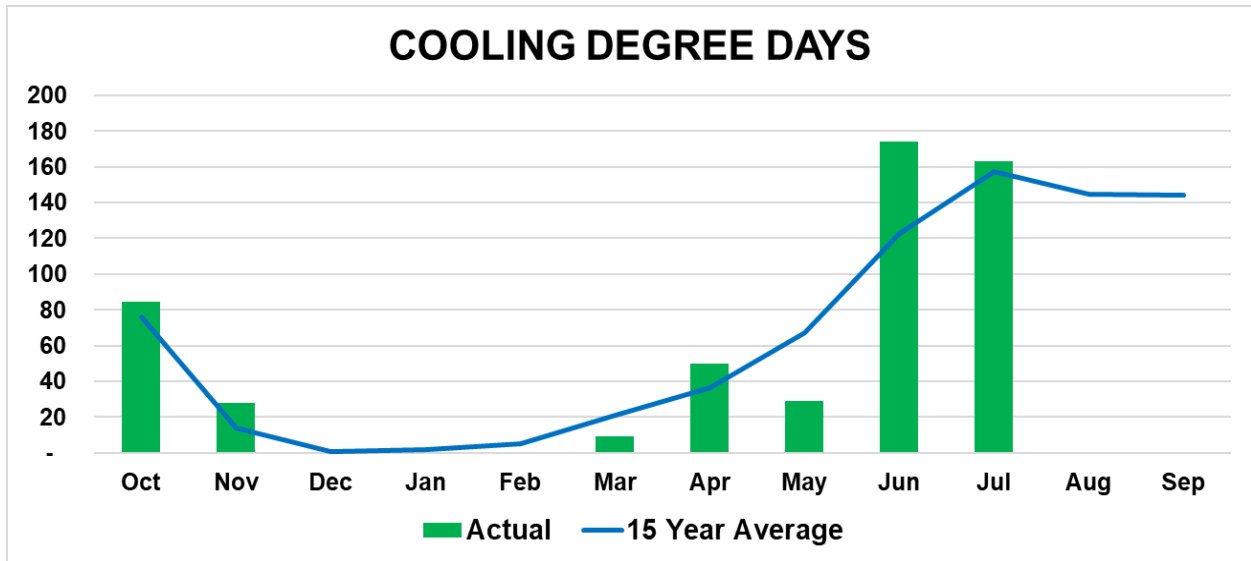
Return on Investments	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	YTD Total
<i>Money Market</i>	\$30,474	\$30,758	\$58,997	\$128,308	\$96,180	\$109,063	\$108,802	\$115,167	\$122,271	\$133,749	\$0	\$0	\$933,769
<hr/>													
Portfolio Invested													
<i>Average daily portfolio available to invest*</i>	55,148,395	63,583,109	62,254,625	69,135,839	70,770,817	\$71,496,022	71,216,494	74,309,263	76,499,135	81,955,494			
<i>Average daily portfolio invested</i>	20,154,823	20,185,339	35,700,846	60,277,386	60,380,303	\$60,476,566	60,585,707	60,693,659	70,923,535	70,927,788			
<i>% of average daily portfolio invested</i>	36.5%	31.7%	57.3%	87.2%	85.3%	84.6%	85.1%	81.7%	92.7%	86.5%			
<hr/>													
Detail of Portfolio													
	<u>Opening Rate %</u>		<u>Current Rate %</u>		<u>Carrying Value</u>								
<i>Money Market - River City Bank</i>	1.26%		2.23%		\$70,923,535								

* Note: Balance available to invest does not lockbox or debt serve reserve funds.

CUSTOMER ACCOUNTS



WEATHER STATISTICS



**SILICON VALLEY CLEAN ENERGY AUTHORITY
ACCOUNTS RECEIVABLE AGING REPORT**

	Total	Days				
		0-30	31-60	61-90	90-120*	Over 120*
Accounts Receivable	\$26,573,048	\$24,205,088	\$694,764	\$236,214	\$193,874	\$1,243,108
Period %	100%	91.1%	2.6%	0.9%	0.7%	4.7%

*Note: A portion of accounts that are greater than 90 days old have been sent back to PG&E, however the receivable remains outstanding until PG&E writes the account off.



Staff Report – Item 1d

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1d: SVCE 2018 Annual Power Source Disclosure Report Attestation

Date: 9/11/2019

RECOMMENDATION

Staff recommends that the Board approve the use of statistics reflected in SVCE’s 2018 annual Power Source Disclosure reports for purposes of preparing SVCE’s 2018 Power Content Label and endorse the accuracy of information presented in SVCE’s 2018 Power Source Disclosure report for GreenStart service.

BACKGROUND

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

Information presented in the PCL includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. SVCE’s Public Affairs team is in the process of designing the 2018 Power Content Label.

ANALYSIS & DISCUSSION

During the 2018 calendar year, SVCE successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal, hydroelectricity, biomass and biogas – for Green-Start customers, the percentage of supply attributable to renewable energy sources approximated 54 percent; for GreenPrime customers, renewable energy comprised 100 percent of the supply portfolio.

Consistent with applicable regulations, SVCE will complete requisite customer communications following the Board’s approval of pertinent information to be included in the 2018 PCL. Customers receiving PCL communications will include those enrolled in the SVCE program as of December 31, 2018 – the distribution list was derived based on prior discussions with designated CEC staff.

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

Agenda Item: 1d**Agenda Date: 9/11/2019**

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

While preparing SVCE's 2018 annual PSD report, staff performed a detailed review of all power purchases completed for the 2018 calendar year. This review included an inventory of all renewable energy transfers within SVCE's Western Renewable Energy Generation Information System (WREGIS) accounts, pertinent transaction records, and requisite independent audits for SVCE's voluntary GreenPrime, 100% renewable energy program, which also provides 100% renewable energy to participating customers. Based on staff's review of available data and findings of the independent auditor (related to the GreenPrime product offering), the information presented in the annual report was determined to be accurate. Again, such information will be reflected in SVCE's upcoming PCL for 2018 operations.

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

Because SVCE's GreenPrime product offering is independently audited (a process that was completed in June 2019 for the 2018 operating year), SVCE is proceeding with self-certification of its annual report for the Green-Start product offering, consistent with PSDP regulations. Evidence of such attestation (for Green-Start) as well as the aforementioned audit report (for GreenPrime) must be provided to the CEC by October 1st.

Should the Board endorse staff's recommendation, a copy of this staff report, related meeting minutes and a copy of SVCE's 2018 Audit Report for the GreenPrime product offering will be forwarded to the CEC, thereby completing SVCE's obligations under the PSD Program for the 2018 calendar year.

STRATEGIC PLAN

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

ALTERNATIVE

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

FISCAL IMPACT

N/A

ATTACHMENTS

1. 2018 SVCE Power Content Label



2018 POWER CONTENT LABEL			
Silicon Valley Clean Energy			
www.svcleanenergy.org			
ENERGY RESOURCES	GreenPrime	GreenStart	2018 CA Power Mix**
Eligible Renewable	100%	55%	31%
Biomass & Biowaste	0%	1%	2%
Geothermal	0%	8%	5%
Eligible Hydroelectric	0%	3%	2%
Solar	23%	12%	11%
Wind	77%	31%	11%
Coal	0%	0%	3%
Large Hydroelectric	0%	46%	11%
Natural Gas	0%	0%	35%
Nuclear	0%	0%	9%
Other	0%	0%	<1%
Unspecified sources of power*	0%	0%	11%
TOTAL	100%	100%	100%
* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.			
** Percentages are estimated annually by the California Energy Commission based on the electricity generated in California and net imports as reported to the Quarterly Fuel and Energy Report database and the Power Source Disclosure program.			
For specific information about this electricity product, contact:	Silicon Valley Clean Energy 1-844-474-SVCE (7823)		
For general information about the Power Content Label, please visit:	http://www.energy.ca.gov/pcl/		
For additional questions, please contact the California Energy Commission at:	Toll-free in California: 844-454-2906 Outside California: 916-653-0237		



Staff Report – Item 1e

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1e: Approve Renewal of \$35 million Line of Credit with River City Bank

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board approve Silicon Valley Clean Energy (SVCE) to renew the \$35 million line of credit for two years with River City Bank (RCB).

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration committee, with two members absent, met September 3, 2019 and were unanimous in recommending the Board approve renewing the \$35 million line of credit with River City Bank for two years.

BACKGROUND

The Board approved the establishment of a \$20 million line of credit with RCB in September 2019. In response to Pacific Gas & Electric's (PG&E) bankruptcy announcement, the Board approved expansion of the current line of credit to \$35 million. The current credit agreement will expire on October 20, 2020.

ANALYSIS & DISCUSSION

Having access to external liquidity to supplement SVCE's balance sheet will provide time for SVCE to react with its locally controlled rate setting and to implement other mitigation strategies. The line of credit will be advantageous for future negotiations of power supply and may help avoid SVCE having to post collateral to suppliers that are not agreeable to the lockbox credit structure due to the PG&E bankruptcy.

A line of credit is viewed positively by the credit rating agencies with SVCE pursuing a credit rating in Fiscal Year 2019-20.

Highlights of the credit agreement include:

- Duration of 2 years with an expiration date of October 21, 2021. The longer duration reduces legal and administrative costs compared to an annual renewal.
- Minimum Tangible Net Position Covenant of \$100,000,000 (current agreement is \$75,000,000).
- There are no early termination fees.
- Financial reports sent to RCB quarterly (current agreement is monthly).
- Interest expense for draws against the line of credit is 175 basis points plus 1-month LIBOR (same as current agreement). The current 1-month LIBOR rate is 2.09%.

STRATEGIC PLAN

The recommendation supports the Fiscal and Power Procurement goals of the strategic plan.

ALTERNATIVE

Staff is open to suggestions from the committee regarding the renewal of a line of credit.

FISCAL IMPACT

An annual fee of \$87,500 and a Non-Utilization fee of 0.15% to be assessed annual on the unused portion of the line of credit (maximum of \$52,500).

ATTACHMENTS

1. Credit Agreement with River City Bank

CREDIT AGREEMENT

Dated as of October 22, 2019

by and between

**SILICON VALLEY CLEAN ENERGY AUTHORITY,
as Borrower**

and

**RIVER CITY BANK,
as Lender**

Loan No. 5084548931

CREDIT AGREEMENT

This CREDIT AGREEMENT (this “*Agreement*”) is entered into as of October 22, 2019, by and between **SILICON VALLEY CLEAN ENERGY AUTHORITY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

W I T N E S S E T H:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a revolving line of credit upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION.

Section 1.1. Definitions. All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them on **Exhibit A**.

Section 1.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

Section 1.3. Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

SECTION 2. THE REVOLVING LINE OF CREDIT.

Section 2.1. Revolving Credit. Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the sole purpose of providing (a) short-term working capital (“*Working Capital Advance*”) and (b) to support the issuances of Letters of Credit (each a “*Letter of Credit Advance*” and, collectively the “*Letter of Credit Advances*”) in accordance with Section 4, such Revolving Credit to be in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “*Advance*” and, collectively, the “*Advances*”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

Section 2.2. Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

Section 2.3. Promissory Note. The Revolving Credit will be evidenced by a Revolving Credit Promissory Note (the "*Promissory Note*") made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as **Exhibit C** (a "*Letter of Credit Note*") in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining the Revolving Credit Commitment. However, each Letter of Credit Note will evidence Borrower's obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the "*Unreimbursed Amount*") of any drawing actually paid by Lender to a beneficiary under a Letter of Credit, in accordance with Section 4.3. All references to "Advances" in Sections 2.4 and 4 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

Section 2.4. Repayment. All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the applicable Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

Section 3.1. Interest Payments.

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date beginning with the first Payment Date immediately following the initial Advance with all subsequent interest payments due and payable on each Payment Date thereafter. Interest on the Advances will be payable monthly in arrears on each Payment Date. Interest on any installment of principal will be due on a Payment Date; provided however, that any principal amount that is not paid when due (whether by lapse of time, acceleration or otherwise) will be due and payable on demand. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under any Note or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates. All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

Section 3.3. Prepayments.

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of the Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the Maturity Date or the Revolving Credit Termination Date, as the case may be.

(b) Mandatory Prepayment. Borrower will, upon demand, prepay Advances at any time and to the extent that the outstanding principal amount of all Advances exceeds the Revolving Credit Commitment.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

Section 3.4. Place and Application of Payments and Collections. All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank
Loan Center
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

Section 3.5. Notations. All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in

any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of a Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

SECTION 4. LETTERS OF CREDIT.

Section 4.1. Letter of Credit Commitment.

(a) Subject to the terms and conditions of this Agreement, Lender agrees, in reliance upon the agreements of Borrower, (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit would occur more than 11 months after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by cash collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit requires Lender to provide a notice of non-renewal, if any, earlier than 120 days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin Lender from issuing such Letter of Credit, or any law applicable to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or

shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate principal amount of all Advances to exceed the Revolving Credit Commitment at the time of issuance.

Section 4.2. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than five (5) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

Section 4.3. Drawings and Reimbursements of Letters of Credit. Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "*Reimbursement Date*") that is three (3) Business Days after

any payment by Lender under a Letter of Credit (each such date, an “*Honor Date*”), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower’s failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

Section 4.4. Unexpired Letters of Credit. Borrower agrees that, if (i) any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date or (ii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, Borrower shall immediately provide cash collateral to Lender with a value of not less than 110% of (i) the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit or (ii) the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

Section 4.5. Obligations Absolute.

(a) The obligation of Borrower to reimburse Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) any waiver by Lender of any requirement that exists for Lender’s protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;
- (v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the International Standby Practices (“*ISP*”) or the Uniform Customs and Practice for Documentary Credits (“*UCP*”), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

Section 4.6. Role of Lender as L/C Issuer. Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender's willful misconduct or gross negligence or Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunications ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

Section 4.7. Applicability of ISP, Limitation of Liability. Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender's rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Section 4.8. Letter of Credit Fees. Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the ("*Issuance Fee*") or Four Hundred and 00/100 Dollars (\$400.00) (the "*Flat Fee*"), (ii) a documentation fee in connection with the issuance of each Standby Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars (\$250.00), and (iii) fees upon the occurrence of any other activity with respect to any Standby Letter of Credit (including without limitation, the transfer, amendment or cancellation of any Standby Letter of Credit) in an amount equal to the greater of the Issuance Fee or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Standby Letters of Credit issued by Lender's correspondent banks. All Letter of Credit Fees, other than the Issuance Fee will be due and payable in full upon request by Lender.

Section 4.9. Billing and Payment of the Issuance Fee. The Issuance Fee will be calculated by Lender and due and payable upon issuance. Lender will calculate the Issuance Fee by taking the outstanding face amount of the Letter of Credit, multiplying by .02, and dividing by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee. The Issuance Fee may be subject to change based on increases, decreases, or early termination of the Letter of Credit.

SECTION 5. FEES.

Section 5.1. Borrower shall pay to Lender fees for this Agreement as follows:

- (a) Loan Fee. A Loan Fee in an amount equal to .25% of the Revolving Credit Commitment (\$87,500.00) payable upon each of (i) execution of this Agreement and (ii) on or before October 21, 2020.
- (b) Legal Fees. Lender's legal fees incurred in connection with this Agreement.
- (c) Non-Utilization Fee. A Non-Utilization Fee in an amount equal to 0.15% of the average annual unused amount of the Revolving Credit Commitment, payable (i) on or before October 21, 2020 and (ii) within thirty (30) days after the Maturity Date. The average annual unused amount of the Revolving Credit Commitment shall be equal to the difference between the

Revolving Credit Commitment and the actual average outstanding principal amount of the Revolving Credit during the term of the Revolving Credit.

(d) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other fees incurred by Lender associated with the origination and documentation of this Agreement.

SECTION 6. COLLATERAL – REVOLVING CREDIT COMMITMENT.

Section 6.1. Debt Service Reserve Account. As a condition to Lender's obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the "*Debt Service Reserve Account*") with a balance of not less than \$3,500,000.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

Section 6.2. Assignment of Debt Service Reserve Account. As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in the Debt Service Reserve Account and all other deposit accounts Borrower has with Lender (the "*Other RCB Accounts*") and (i) all replacements, substitutions or proceeds thereof, (ii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account and/or the Other RCB Accounts, (iii) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account and/or the Other RCB Accounts, including the right to make withdrawals therefrom, and (iv) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$3,500,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and/or, subject to the limitation in Section 11.6, the Other RCB Accounts and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Promissory Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit

Accounts in the form of **Exhibit D** attached entered into as of the date hereof between Borrower and Lender shall be cumulative.

Section 6.3. Transfers from Lockbox Account. All revenues from Borrower's customers shall be deposited into the Lockbox Account. On the 10th day of each month, funds due to Borrower's energy suppliers shall be wired out after a dual authentication process by Lender. All amounts then remaining in the Lockbox Account (other than reserve amounts determined in accordance with the agreements governing the Lockbox Account) shall be transferred to Borrower's operating and/or savings account with Lender and shall be subject to the assignment and security interest described in Section 6.2, free and clear of any liens in favor of anyone other than Lender.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

Section 7.1. Organization and Qualification; Authority; Consents. Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute Promissory Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any Power Purchase Agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

Section 7.2. Legal Effect. This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

Section 7.3. Subsidiaries. Borrower has no Subsidiaries.

Section 7.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

Section 7.5. Financial Reports. Effective with the delivery to Lender of the financial statements required by Section 9.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

Section 7.6. Full Disclosure. The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

Section 7.7. Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

Section 7.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

Section 7.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 7.10. Compliance with Laws. Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in

compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 7.11. Other Agreements. Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 7.12. No Default. No Default or Event of Default has occurred or is continuing.

SECTION 8. CONDITIONS PRECEDENT.

The obligation of Lender to make any Advance is subject to the following conditions precedent:

Section 8.1. All Advances. As of the time of the making of each Advance (including the initial Advance unless otherwise specified):

(a) each of the representations and warranties set forth in Section 7 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 7.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 9.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Accounts and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

Section 8.2. Initial Advances under the Revolving Credit Commitment. At or prior to the making of the first Advance under the Revolving Credit Commitment, the following conditions precedent must also be satisfied:

(a) Lender shall have received properly completed and executed originals of the following in form and substance approved by Lender:

- i. this Agreement;
- ii. favorable written legal opinion from Borrower's counsel;
- iii. the Request for Advance in the form of **Exhibit E**;
- iv. the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- v. an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- vi. evidence of Borrower's good standing in the state of California;

- vii. payment by Borrower of the Loan Fee and all payments and expenses required to be paid by Borrower pursuant to Sections 5.1 and 11.4(a) of this Agreement; and
- viii. copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request.

(b) The Debt Service Reserve Account shall have been established and funded with Lender;

(c) The Advance is either a) a Working Capital Advance or b) a Letter of Credit Advance provided in Section 4; and

(d) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

Section 8.3. Permitted Revolving Credit Advances. The following Advances are permitted under the Revolving Credit Commitment: Working Capital Advances, which shall be requested in substantially the form of **Exhibit E**, and Letter of Credit Advances, which shall be requested in accordance with Section 4.

SECTION 9. COVENANTS.

Borrower agrees that, so long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Lender:

Section 9.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

Section 9.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, shall furnish to Lender:

(a) as soon as available, and in any event within forty-five (45) days after the close of each calendar quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred twenty (120) days after each Fiscal Year End, a copy of the audited balance sheet of Borrower as of the last day of the

Fiscal Year End and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(d) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(e) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 9.2 shall be accompanied by a written certificate signed by the chief financial officer of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

Section 9.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.

Section 9.4. Exclusive Deposit Relationship with Auto Pay. Borrower shall maintain all of Borrower's deposit accounts, including the Lockbox Account, exclusively with Lender and authorize all scheduled payments on the Revolving Credit to be automatically debited from a designated account with Lender. If this covenant is not satisfied, as determined by Lender, it shall not constitute an Event of Default, but the interest rate on all outstanding Notes will immediately increase by adding an additional 2.00 percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 9.5. Total Liabilities to Tangible Unrestricted Net Position. Borrower shall maintain a maximum Total Liabilities to Tangible Adjusted Unrestricted Net Position not at any

time greater than 2.00:1.00, measured quarterly. As used herein, “*Total Liabilities to Tangible Adjusted Unrestricted Net Position*” is defined as the total of current liabilities, non-current liabilities and contingent Liabilities, then divided by Tangible Adjusted Unrestricted Net Position. “*Tangible Adjusted Unrestricted Net Position*” is defined as total Adjusted Unrestricted Net Position less any intangible assets. “*Adjusted Unrestricted Net Position*” is defined as total net assets (i.e. total assets less total liabilities) less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the Debt Service Reserve Account. “*Contingent Liabilities*” is defined as a present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities will include the outstanding Letters of Credit issued and will exclude power purchase contingencies and the available Revolving Credit Commitment.

Section 9.6. Unrestricted Tangible Net Assets. Borrower to maintain minimum Unrestricted Tangible Net Assets not at any time less than One Hundred Million and 00/100 Dollars (\$100,000,000), measured quarterly.

“*Unrestricted Tangible Net Assets*” is defined as total assets less temporarily and permanently restricted assets, less any intangible assets, less total liabilities.

Section 9.7. Positive Change in Net Assets. Borrower will show a minimum positive change in Unrestricted Tangible Net Assets of no less than One and 00/100 Dollars (\$1.00), measured annually for the twelve month period beginning the first day after Fiscal Year End through the Fiscal Year End.

Section 9.8. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event, no more than six (6) times during any twelve (12) month period so long as no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower each authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

Section 9.9. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower or any Subsidiary; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker’s compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of

business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) the Liens pursuant to an approved Power Purchase Agreement; and

(e) the Liens established by the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (e) of this Section 9.9 are collectively referred to in this Agreement as the "*Permitted Liens*."

Section 9.10. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

Section 9.11. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 9.12. Burdensome Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 9.13. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 9.14. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 9.15. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 9.16. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 9.17. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 9.18. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money. Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

Section 10.1. Events of Default. Any one or more of the following will constitute an "Event of Default" hereunder:

- (a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under a Note, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or
- (b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired; or

(g) Borrower (i) takes any steps to effect a Winding-Up, (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(h) a custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(i) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

Section 10.2. Non-Insolvency Default Remedies. Upon the occurrence of any Event of Default described in clauses (a) through (g) and (i) of Section 10.1, Lender or any permitted holder of any Note may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

Section 10.3. Insolvency Default Remedies. Upon the occurrence of any Event of Default described in Section 10.1(h), all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

SECTION 11. MISCELLANEOUS.

Section 11.1. Holidays. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

Section 11.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of any Promissory Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 11.3. Amendments, Etc. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by

Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 11.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender, if any, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

Section 11.5. Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "*Indemnified Person*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or

findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 11.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

Section 11.6. Right of Set Off. To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's Other RCB Accounts (whether checking, savings, or some other account) other than the Lockbox Account. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

Section 11.7. Survival of Representations. All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 11.8. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Silicon Valley Clean Energy Authority
girish@svcleanenergy.org
Attention: Chief Executive Officer

With a copy (not constituting notice) to:

Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087
Attention: Board Clerk/Executive Assistant

To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Telephone: (916) 567-2700
Telecopy: (916) 567-2780
Attention: Jennifer Ballard
Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 11.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

Section 11.9. Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 11.10. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 11.11. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

Section 11.12. Assignments, Binding Nature, Governing Law, Etc. This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

Section 11.14. Time is of the Essence. Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

Section 11.15. Consent to Loan Participation . Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in a Note and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in a Note. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 11.16. No Recourse Against Constituent Members of Borrower. Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

[remainder of page intentionally left blank]

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

Silicon Valley Clean Energy Authority

By: _____

Girish Balachandran

Its: Chief Executive Officer

By: _____

Margaret Abe-Koga

Its: Chairperson of the Board

RIVER CITY BANK

By: _____

Name: _____

Its: _____

EXHIBIT A

Definitions

“*Advance*” and “*Advances*” is defined in Section 2.1.

“*Agreement*” means this Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Applicable Rate*” means a variable rate of interest equal to the One-Month LIBOR plus the Margin, subject to an overall floor of 1.75% per annum. The Applicable Rate is subject to increase as provided in Section 9.4.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 8.2(a)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*CPUC*” means the California Public Utilities Commission.

“*CAL ISO*” means California ISO, the independent grid operator.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Debt Service Reserve Account*” is defined in Section 6.1.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Default Rate*” means the Applicable Rate plus five percent (5.0%).

“*Dollars and \$*” mean lawful money of the United States.

“*Event of Default*” is defined in Section 10.1.

“*Fiscal Year End*” means September 30th.

“*Flat Fee*” is defined in Section 4.8.

“*GAAP*” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Honor Date*” is defined in Section 4.3.

“*Indebtedness for Borrowed Money*” means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

“*Indemnified Liabilities*” is defined in Section 11.5.

“*Indemnified Person*” is defined in Section 11.5.

“*Initial Rate Set Date*” means the date of issuance of each Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

“*ISP*” is defined in Section 4.5(a)(vi).

“*Issuance Fee*” is defined in Section 4.8.

“*JPA Members*” mean the City of Campbell, City of Cupertino, City of Gilroy, City of Los Altos, Town of Los Altos Hills, Town of Los Gatos, City of Milpitas, City of Monte Sereno, City of Morgan Hill, City of Mountain View, County of Santa Clara (Unincorporated Area), City of Saratoga and the City of Sunnyvale.

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of March 31, 2016, and as amended from time to time.

“*Lender*” is defined in the introductory paragraph.

“*Letter of Credit*” means any letter of credit issued hereunder.

“*Letter of Credit Advance*” and “*Letter of Credit Advances*” are defined in Section 2.1.

“*Letter of Credit Note*” is defined in Section 2.3.

“*Lien*” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Loan Documents*” means this Agreement, the Notes, the Assignment of Deposit Accounts, and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Revolving Credit.

“*Loan Fee*” means one-quarter of one percent (0.25%) of the Revolving Credit Commitment.

“*Lockbox Account*” means the lockbox agreement and lockbox account established with Lender, as custodian into which all revenues generated by Borrower must be deposited.

“*Maintenance and Operation Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“*Margin*” means, percentage points per annum as adjusted for any maximum or minimum rate limitations as provided in the Loan Documents above the One-Month LIBOR. The ‘**Revolving Credit Margin**’ is equal to **1.75%**.

“*Maturity Date*” means, for any Note, the date so specified in such Note as the Maturity Date.

“*Notes*” refers collectively to the Promissory Note and, if applicable, the Letter of Credit Note(s).

“*Obligations*” means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to Borrower or payable by Borrower thereunder.

“*One-Month LIBOR*” means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on Bankrate.com (or, if such rate becomes unavailable to Lender, a substitute rate based on an index selected by Lender in its sole discretion) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

“*Other RCB Accounts*” is defined in Section 6.2.

“*Payment Date*” means, other than the Termination Date or any Maturity Date, the first day of each calendar month.

“*Permitted Liens*” is defined in Section 9.9.

“*Person*” means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“*Promissory Note*” is defined in Section 2.3.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“*Power Purchase Agreement*” means (i) that certain Master Power Purchase and Sale Agreement, to be entered into by Borrower with one or more of the following: 3 Phases Renewable Inc., Energy America, LLC, Exelon Generation Company, LLC, Morgan Stanley Capital Group, Inc., Powerex Corp. and Shell Energy North America (US), L.P., (ii) the Security Agreement, (iii) the Collateral Account Agreement, and (iv) any and all amendments, modifications, and restatements of the documents referred to in the preceding clauses (i) through (iii).

“*Rate Change Date*” means the first calendar day of each calendar month.

“*Reimbursement Date*” is defined in Section 4.3.

“*Related Parties*” means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

“*Responsible Officer*” means the Chief Executive Officer.

“*Revolving Credit*” is defined in Section 2.1.

“*Revolving Credit Commitment*” means, at any time of determination, an amount equal to \$35,000,000.00 less the aggregate principal amount of Advances made by Lender under the Revolving Credit.

“*Revolving Credit Termination Date*” means October 21, 2021.

“*SWIFT*” is defined in Section 4.6.

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*UCC*” means the Uniform Commercial Code as enacted in the State of California.

“*Unreimbursed Amount*” is defined in Section 2.3.

“*UPC*” is defined in Section 4.5(a)(vi).

“*Winding-Up*” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.

“*Working Capital Advance*” is defined in Section 2.1.

EXHIBIT B
REVOLVING CREDIT PROMISSORY NOTE

\$35,000,000.00
Loan No. 5084548931

Date: October 22, 2019

FOR VALUE RECEIVED, **SILICON VALLEY CLEAN ENERGY AUTHORITY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of THIRTY-FIVE MILLION and/100 DOLLARS (\$35,000,000.00), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of October 22, 2019, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note ("*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of each Advance, or (b) November 1, 2019, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an

agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____

Girish Balachandran

Its: Chief Executive Officer

By: _____

Margaret Abe-Koga

Its: Chairperson of the Board

EXHIBIT C

LETTER OF CREDIT NOTE

\$ _____

Date: _____

FOR VALUE RECEIVED, **SILICON VALLEY CLEAN ENERGY AUTHORITY**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of _____ (\$_____,000.00) pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of October 22, 2019, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Letter of Credit. This Note is executed in connection with a Letter of Credit issued by _____ ("*Issuing Bank*"), dated _____, in the face amount of \$_____, in favor of _____ (as Beneficiary) and identified as number: _____ (the "*Letter of Credit*").

Draw or Demand under the Letter of Credit. Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

Payment Terms. Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than 3 calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

Credit Agreement and Cash Collateral. If (i) the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, or (ii) the Revolving Credit Commitment terminates or is unavailable to Borrower for any reason prior to the surrender of the Letter of Credit as provided above, or (iii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, upon request by Lender, Borrower shall immediately provide

cash collateral to Lender with a value of not less than 110% of the stated principal amount of this Note or the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: _____
Name: _____
Title: _____

DRAFT

EXHIBIT D

ASSIGNMENT OF DEPOSIT ACCOUNTS

Grantor: Silicon Valley Clean Energy Authority
333 W. El Camino Real, Suite 290
Sunnyvale, CA 94087

Lender: RIVER CITY BANK
Business Banking Group
2485 Natomas Park Drive
Sacramento, CA 95833

THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated October 22, 2019 is made and executed among Silicon Valley Clean Energy Authority ("Grantor") and RIVER CITY BANK ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" means the following described deposit account(s) ("Accounts"):

(i) **A deposit account from Grantor with Lender with reference number 5469968313, and all amendments, extensions, renewals, replacements of the accounts (all called the "Debt Service Reserve Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Debt Service Reserve Account, and all proceeds. The Debt Service Reserve Account will at all times maintain the following minimum account balance:**

Minimum Required Balance: \$3,500,000.00; and

(ii) **All other deposit accounts Grantor maintains with Lender.**

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account) other than the Lockbox Account (as defined in the Credit Agreement). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Collateral. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. Grantor will promptly notify Lender of any change to Grantor's name or its jurisdiction of organization.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there is no longer any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the applicable rate charged under any one of the Notes (as selected by Lender in its sole discretion) from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of such Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Any Default or Event of Default under the Credit Agreement shall constitute an Event of Default under this Agreement.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all Indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Accounts and apply them to the Indebtedness. If an Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Accounts to the Indebtedness. Lender also shall have all the rights of a secured party under the California Uniform Commercial Code ("Code"), even if the Accounts are not otherwise subject to the Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

Transfer Title. Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement.

Remedies Cumulative. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and any election by Lender to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration

of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. **This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.**

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Sacramento County, State of California.

Joint and Several Liability. All obligations of Borrower and Grantor, if they are different, under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Agreement.

Preference Payments. Any monies Lender pays because of an asserted preference claim in Borrower's or Grantor's bankruptcy will become a part of the Indebtedness and, at Lender's option, shall be payable by Borrower and Grantor as provided in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

Waiver of Co-Obligor's Rights. If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Code:

Accounts. The word "Accounts" means the deposit account(s) described in the "Collateral Description" section.

Agreement. The word "Agreement" means this Assignment of Deposit Accounts, as this Assignment of Deposit Accounts may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Accounts from time to time.

Borrower. The word "Borrower" means Silicon Valley Clean Energy Authority and includes all co-signers and co-makers signing the Notes and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Credit Agreement. The words "Credit Agreement" mean the Credit Agreement dated as of October 22, 2019 between Borrower and Lender, as amended or modified from time to time.

Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means Silicon Valley Clean Energy Authority.

Indebtedness. The word "Indebtedness" means all indebtedness of Borrower under the Credit Agreement, the Notes or any of the Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or any of the Related Documents.

Lender. The word "Lender" means RIVER CITY BANK, its successors and assigns.

Notes. The word "Notes" means any and all Promissory Notes (as defined in the Credit Agreement) executed by Borrower in connection with a Revolving Credit (as defined in the Credit Agreement), together with all renewals, extensions, modifications, consolidations and replacements of such Promissory Notes.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNTS AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED OCTOBER 22, 2019.

**GRANTOR:
SILICON VALLEY CLEAN ENERGY AUTHORITY**

By: _____
Its _____

EXHIBIT E

REQUEST FOR ADVANCE

\$35,000,000 REVOLVING CREDIT

BORROWER: SILICON VALLEY CLEAN ENERGY AUTHORITY, HEREBY REQUESTS AN ADVANCE UNDER THE \$35,000,000 REVOLVING CREDIT NOTE IN ACCORDANCE WITH THE CREDIT AGREEMENT.

ADVANCE DATE: _____

AMOUNT OF REQUESTED ADVANCE: \$ _____

PURPOSE OF ADVANCE:

- ___ - **THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE POWER PURCHASE AGREEMENT AND FUNDS ARE TO BE DEPOSITED INTO THE LOCKBOX ACCOUNT: _____.**
- ___ - **THIS IS A WORKING CAPITAL ADVANCE TO COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING _____.**
- ___ - **ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT**
- ___ - **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:**

COMPANY NAME: _____

WIRE INSTRUCTIONS:

BANK NAME: _____

ADDRESS: _____

ROUTING NUMBER: _____

ACCOUNT NUMBER: _____

OTHER REFERENCE: _____

BORROWER CERTIFICATION:

BORROWER HEREBY CERTIFIES THAT:

- (I) AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL ADVANCES SHALL NOT EXCEED THE REVOLVING COMMITMENTS THEN IN EFFECT;

- (II) AS OF THE ADVANCE DATE, THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND
- (III) AS OF THE ADVANCE DATE, NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.
- (IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING LOSSES.

SILICON VALLEY CLEAN ENERGY AUTHORITY

BY: _____

GIRISH BALACHANDRAN
Chief Executive Officer

BY: _____

MARGARET ABE-KOGA
Chairperson of the Board

EXHIBIT F

DOCUMENT SUMMARY AND NOTICE OF FINAL AGREEMENT

Borrower has been provided with the following documents issued in connection with the loan evidenced by a Revolving Credit Promissory Note in the original principal balance of \$35,000,000 (the "Note"):

Credit Agreement with Exhibits

A – Definitions

B – Form of Revolving Credit Promissory Note

C – Form of Letter of Credit Note

D – Assignment of Deposit Accounts Agreement

E – Form of Request for Advance (RLOC)

F – Form of Document Summary and Notice of Final Agreement

BORROWER REPRESENTS AND WARRANTIES:

- 1) IT HAS READ, UNDERSTANDS AND AGREES WITH THE TERMS OF EACH DOCUMENT LISTED ABOVE AND THIS AGREEMENT;
- 2) IT CONFIRMS THAT THERE ARE NO CONFLICTS BETWEEN THE TERMS OF THE DOCUMENTS AND ITS UNDERSTANDING OF THE TRANSACTION;
- 3) THE WRITTEN DOCUMENTS ISSUED IN CONNECTION WITH THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- 4) THE WRITTEN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.
- 5) IT HAS HAD AN OPPORTUNITY TO DISCUSS THE LOAN TRANSACTION WITH ITS COUNSEL.

BORROWER:

Silicon Valley Clean Energy Authority

By: _____

Girish Balachandran

Its: Chief Executive Officer

By: _____

Margaret Abe-Koga

Its: Chairperson of the Board



Staff Report – Item 1f

To: Silicon Valley Clean Energy Board of Directors

From: Greg Stepanicich, General Counsel

Item 1f: Approve Amendment No. 2 to Employment Agreement for Chief Executive Officer

Date: 9/11/2019

RECOMMENDATION

The CEO Employment Agreement Ad Hoc Committee recommends approving Amendment No. 2 to the Employment Agreement for Chief Executive Officer ("CEO Contract").

BACKGROUND

Girish Balachandran was hired as the Chief Executive Officer ("CEO") on February 19, 2018 pursuant to an employment agreement. This contract was amended last year after the CEO's performance evaluation. The 2019 performance evaluation of the CEO has been completed and a salary increase is being proposed along with certain benefit amendments.

ANALYSIS & DISCUSSION

Amendment No. 2 to the CEO Contract makes the following changes to the CEO Contract:

1. Increases the CEO annual salary from \$290,000 to \$315,000 per year.
2. Makes an additional contribution of \$3,500 to the CEO's 457 retirement plan based on the amount that cannot be contributed to his 401(a) plan due to the contribution cap imposed by federal law. Without this amendment, EMPLOYEE would not receive the full benefit of the 10% salary match for the 401(a) retirement plan that is available to all employees.
3. Allows the CEO to take the same amount of unpaid leave as other employees subject to the approval of the Board Chair.
4. Increases Paid Time Off (PTO) from 280 to 320 hours per year.

ATTACHMENT

1. Amendment No. 2 to Employment Agreement for Chief Executive Officer

**AMENDMENT NO. 2 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 on November 14, 2018, is further amended by this Amendment No. 2 (Amendment) effective September 12, 2019.

- A. SVCEA and Employee entered into an Employment Agreement, as identified above, (Agreement) providing for the employment of Employee as Chief Executive Officer of SVCEA, commencing on February 19, 2018.
- B. On November 14, 2018, the Board of Directors approved Amendment No. 1 to the Agreement providing for a salary increase, revising the evaluation process and amending the Paid Time Off (PTO) benefit.
- C. The parties desire to further amend the Agreement with this Amendment No. 2 to provide for an annual salary increase and revisions to the leave benefits.

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

1. Section 5, titled "Salary" is amended to read in full as follows:

Salary. Effective September 12, 2019, SVCEA shall pay Employee a base salary of \$315,000 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. Section 7, titled "Benefits" is amended by amending the first paragraph to read in full 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 contribution to his 457 Plan in lieu of participating in SVCEA's group insurance plan. 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 to read in full as follows:

a. Paid Time Off. 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.

4. 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.

Silicon Valley Clean Energy Authority

Employee

Chair, Board of Directors

Girish Balachandran

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Gregory W. Stepanicich
General Counsel

ATTEST:

Secretary/Clerk



Staff Report – Item 1g

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

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

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board of Directors approve and authorize the Chief Executive Officer to execute an agreement with Maher Accountancy for \$227,670 through September 2020.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration committee, with two members absent, met September 3, 2019 and were unanimous in recommending the Board authorize the CEO to execute the proposed agreement with Maher Accountancy.

BACKGROUND

SVCE has been utilizing the services of Maher Accountancy since March 2017 with the current agreement expiring on September 30, 2019. The difference in cost between the proposed agreement and the current agreement is inflationary change and the support of hosting a new portal system to assist with contracts management.

Maher Accountancy services strengthens internal controls and provides 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.

Agenda Item: 1g**Agenda Date: 9/11/2019**

11. Provide hosting and portal to assist with contracts management.

Maher Accountancy shall also assist with coordination of an independent auditor for the annual audit and prepare annual financial statements.

FISCAL/BUDGETARY IMPACT

This recommendation results in a \$227,670 fiscal impact to the agency but is offset with the avoidance of SVCE in hiring staff to perform these duties.

The recommended contract is an increase of \$20,295 consisting of inflationary increase on existing services and \$12,000 for support of a contract portal that assist staff with contracts management.

ATTACHMENTS

1. Draft Agreement with Maher Accountancy

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

THIS AGREEMENT, is entered into this 1st day of October, 2019, 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").

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, 2019, and shall terminate on September 30, 2020, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" which is 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 twenty-seven thousand and six hundred seventy dollars (\$227,670.00.) based on the rates and terms set forth in Exhibit "B," 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 and agrees that all services shall be performed by qualified and experienced personnel.

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.

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. Contractor 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**

Consultant agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liabilities, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of or related to the negligence or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors in the performance of this Agreement, except where caused by the sole or active negligence or willful misconduct of Authority or its members, officers, officials, agents, employees and volunteers. 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. The acceptance of the services provided by this Agreement

by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the services 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 presently has 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 will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and 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.

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 shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Maher Accountancy shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

Consultant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by Authority.

18. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second

business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
333 W. El Camino Real
Suite 290
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 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 Chief Executive Officer may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Chief Executive Officer 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.

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.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws.

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.

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

RECOMMENDED FOR APPROVAL

Don Eckert, Director of Finance & Administration

CONSULTANT NAME
MAHER ACCOUNTANCY

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
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 twenty-seven thousand and six hundred seventy dollars (\$227,670.00), 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.

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

Task	Not to Exceed Amount
1. Accounting Services (Monthly)	\$16,761.33
2. Prepare annual financial statements and coordinate with external auditor (Annual)	\$14,534
3. Contract Portal Management (Annual)	\$12,000
Total	\$227,670

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).

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’s Chief Executive Officer prior to commencement of any additional services. Consultant shall submit, at the Chief Executive Officer’s request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit C
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

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) **Cyber Coverage**
Cyber Coverage with an aggregate limit of liability of 1 million dollars (\$1,000,000).



Staff Report – Item 1h

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1h: Authorize the Chief Executive Officer to Execute Agreement with Braun Blaising Smith Wynne P.C. (“BBSW”)

Date: 9/11/2019

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 and legislative legal counsel services for an amount not to exceed \$330,000.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration committee, with two members absent, met September 3, 2019 and were unanimous in recommending the Board authorize the CEO to execute the proposed agreement with Braun Blaising Smith Wynne P.C.

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 combined with an increase over the previous annual budget (\$135,000) in order to expand engagement at the California Independent System Operator (CAISO) and address new emerging issues in the regulatory space.

ANALYSIS & DISCUSS

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.

The increase in annual budget reflects the increasing complexity of the regulatory space for CCAs. The confluence of increasing GHG mitigation requirements, fossil generation and nuclear retirements, proliferation of CCAs, expansion of direct access, and the ongoing challenge of the duck curve has created extensive crossover between formerly disparate regulatory activities. This new reality requires nuanced and proactive engagement to navigate, including outreach to stakeholders beyond the CPUC. In particular, SVCE would like to increase our activity and engagement at the California Independent System Operator (CAISO) in the coming years. While CCAs do not have direct regulatory compliance obligations to the CAISO as we do to the CPUC, the CAISO is responsible for the system-wide studies and directives that the CPUC eventually translates into compliance requirements for individual load-serving entities. The unprecedented complexity and rapid pace of change in today’s energy industry means that system needs are changing faster than compliance

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requirements of programs such as Resource Adequacy can adapt to reflect them. The CAISO has explicitly requested greater CCA engagement in order to increase shared understanding of system status and needs and adapt to change more quickly, and SVCE would like to step up.

STRATEGIC PLAN

Approving this contract will directly support Goal 8 of SVCE's Strategic Plan, "Engage regulators and legislators in developing policy that protects CCA rights and facilitates CCA contributions to decarbonization, grid reliability, affordability, and social equity."

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 budget request for these services is a total of \$330,000; invoices will include name, title, rate and hours.

The recommended contract will now provide for \$165,000/year over the next two fiscal years. This reflects a continuation of current services combined with an increase over the previous annual budget (\$135,000) in order to expand engagement at the California Independent System Operator (CAISO) and address new emerging issues in the regulatory space.

ATTACHMENT

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

Second Legal Services Agreement

This **Second 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 Smith 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 a legal services agreement, dated January 1, 2017 (First 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 First 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, 2019 and shall continue in effect through September 30, 2021, unless earlier terminated as described below. The First 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 First 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:	\$420
Junior Shareholders:	\$360

Senior Associates:	\$310
Junior Associates:	\$275
Paralegal / Law Clerk:	\$165
Administrative Assistant:	\$60

(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 First 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 year 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: Don Eckert
don.eckert@svcleanenergy.org

Firm: **Braun Blaising Smith 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: _____

DRAFT

Exhibit A

List of Clients
Braun Blasing Smith Wynne, P.C.
(August 2019)

Balancing Authority of Northern California (BANC)
California Choice Energy Authority (CCEA)
California Community Choice Association (CalCCA)
California Municipal Utilities Association (CMUA)
Clean Power Alliance of Southern California
City of Cerritos
City of Colton
City of Corona
Eastside Power Authority
City of Escondido
Friant Power Authority
Lamb Energy
Lathrop Irrigation District
Local Energy Aggregation Network (LEAN)
City of Los Angeles, Department of Water and Power
Marin Clean Energy
Merced Irrigation District
Minter Field Airport District
Monterey Bay Community Power
Monterey County Water Resources Agency
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
City of San Jose
City of Shasta Lake
Silicon Valley Clean Energy
Sonoma Clean Power Authority
The Energy Authority (in its role as service provider to CCA programs)
Turlock Irrigation District
City of Victorville



Staff Report – Item 1i

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1i: Authorize the Chief Executive Officer to Execute Agreement with Pacific Printing for Printing Services

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board of Directors authorize the Chief Executive Officer to execute a three-year agreement with Pacific Printing for \$150,000.00 through September 2022.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration committee, with two members absent, met September 3, 2019 and were unanimous in recommending the Board authorize the CEO to execute the renewal agreement with Pacific Printing.

BACKGROUND

SVCE has been utilizing Pacific Printing since 2018 to provide print services for collateral materials to support all SVCE departments. The FY 2018-2019 contract with Pacific Printing totaled \$80,000 but the proposed contract is less annually based on historical usage but provides flexibility to respond to fluctuating demand.

ANALYSIS & DISCUSSION

Pacific Printing is a union printing company offering a variety of printing services including business cards, brochures, booklets, flyers and banners. SVCE utilizes Pacific Printing for print services for a variety of collateral needs such as business cards, flyers, brochures, window clings and banners. Pacific Printing offers sustainable printing practices such as using recycled paper stock, soy ink printing and LED UV ink that does not emit volatile organic compounds.

Printing services are an ongoing need for SVCE as a means for effectively engaging with customers. Effectively communicating SVCE's mission, community benefits and upcoming programs is an ongoing need. With customer programs launching on a rolling basis, SVCE needs to continue utilizing printing services to advertise and promote new decarbonization efforts for customers. In addition to launching programs, there are various ongoing projects where SVCE needs to continue utilizing the services of a professional printer. Customer awareness and education efforts align with several SVCE communications strategies and tactics.

Staff solicited several bids from local printers for these services, and Pacific Printing costs, customer service and sustainable printing options are competitive and a great option for SVCE, and the company has a proven track record for these services. In advance of this renewal agreement's expiration in Sept. 2022, staff will issue an RFP for printing services in early-summer 2022 to re-evaluate local print vendors.

STRATEGIC PLAN

SVCE's Board-adopted Strategic Plan includes the following Goals related to customer awareness and education.

- Maintain competitive rates to acquire and retain customers (Goal 2)

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- Promote customer awareness (Goal 3)

ALTERNATIVE

Do not approve the extended contract with Pacific Printing. Staff will pursue a new print services vendor.

FISCAL IMPACT

This recommendation results in a \$150,000 fiscal impact to the agency over three years. Funds may not be evenly dispersed each year due to the fluctuating demands of the agency such as program launch dates and the 2020 Time-of-Use transition.

ATTACHMENTS

1. Draft Agreement with Pacific Printing for Printing Services

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PACIFIC PRINTING
FOR
PRINTING SERVICES**

THIS AGREEMENT, is entered into this 1st day of October 2019, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Pacific Printing, a California corporation whose address is 1445 Monterey Highway, San Jose, CA 95110 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties").

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 printing 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, 2019, and shall terminate on September 30, 2022, 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 one-hundred fifty-thousand dollars and no/100 (\$150,000.00) based on the rates and terms set forth in Exhibit "B," 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 and agrees that all services shall be performed by qualified and experienced personnel.

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.

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. Contractor 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**

Consultant agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liabilities, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of or related to the negligence or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors in the performance of this Agreement, except where caused by the sole or active negligence or willful misconduct of Authority or its members, officers, officials, agents, employees and volunteers. 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. The acceptance of the services provided by this Agreement

by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the services 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 presently has 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 will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and 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.

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 shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Andrew Goett shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

Consultant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by Authority.

18. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given

in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
333 W. El Camino Real
Suite 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
Andrew Goett
Pacific Printing
1445 Monterey Highway
San Jose, CA 95112

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 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 Chief Executive Officer may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Chief Executive Officer 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.

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.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws.

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.

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

RECOMMENDED FOR APPROVAL

Don Bray, Director of Account Services & Community Relations

RECOMMENDED FOR APPROVAL

Don Eckert, Director of Finance & Administration

CONSULTANT NAME
PACIFIC PRINTING

By: _____
Name: Andrew Goett
Title: President
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

Silicon Valley Clean Energy will utilize Pacific Printing for print services for a variety of collateral needs such as business cards, flyers, brochures, window clings and banners. A list of expected items and estimates are provided in Exhibit B.

History of Pacific Printing:

With a combined experience of over 35 years, Pacific Printing brings to you unparalleled service and cost-effective savings, backed by a 100% guarantee. And because we work so closely with labor unions, we are sensitive to the demands and needs of your busy schedule and budget.

Here are some reasons why you should allow us to help you with your printing needs:

- We are a union printer that helps fuel union printing needs
- We are family owned and operated
- We serve both local and out-of-state unions
- We use top quality paper stock and inks
- We use industry-trusted presses
- We offer sustainable printing practices such as using recycled paper stock, soy ink printing and LED UV ink that does not emit volatile organic compounds
- All of our work is 100% guaranteed

Since we are a union printing company, you can be assured that the men and women who work on your printed materials receive decent wages and benefits. So, when you patronize our services, you are helping to maintain the union advantage in the printing industry.

Exhibit B
Schedule of Performance

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

Item Description	Specs	Quote (in quantity breakdowns)
Flyers	100lb matte text - 100% Recycled 8.5x11 Full Color 2 Sides	500 - \$471.00 1,000 - \$621.00 2,500 - \$812.00 5,000 - \$1074.00
Business Cards	80lb uncoated cover - 100% Recycled 2 Sides 3.5x2 2 PMS Colors	250 - \$150.00 500 - \$200.00
Brochures	100lb matte text - 100% Recycled 8.5x11 Full Color 2 Sides Tri-Fold	500 - \$340.00 1,000 - \$420.00 2,500 - \$710.00 5,000 - \$1,000.00
Booklets	16 pages including the cover Insides – 80lb matte text – 100% Recycled Cover – 80lb matt cover - 100% Recycled Full Color 11x17 Saddle Stitch to 8.5x11	10,000 - \$9,200.00 12,000 - \$10,400.00 15,000 - \$12,200.00 20,000 - \$15,250.00
Pinwheel	100lb dull text – 100% Recycled Full color 1 Side Die Cut	2,500 - \$775.00 5,000 - \$1,500.00
Info postcards	5x7 Full Color 2 sides 100lb dull cover – 100% Recycled	1,000 - \$411.00 2,500 - \$746.00 5,000 - \$1090.00
Pop-Up Banners	Full Color 33x78 inches	\$250 each

Exhibit C
Compensation

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of one hundred fifty thousand dollars and no/100 (\$150,000.00), 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.

<u>Task</u>	<u>Not to Exceed Amount</u>
Printing	\$150,000.00
Total	\$150,000.00

Rates:

Depends on project, see Exhibit B

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).

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 and shall only be reimbursed to the extent consistent with Authority's travel policy.

Additional Services:

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority's Chief Executive Officer prior to commencement of any additional services. Consultant shall submit, at the Chief Executive Officer's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit D
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

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.



Staff Report – Item 1j

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1j: Adopt Resolution to Authorize the Chief Executive Officer to Amend Approved Master Agreement with NextEra Energy Marketing, LLC

Date: 9/11/2019

RECOMMENDATION

Adopt Resolution No. 2019-14 to authorize the Chief Executive Officer (“CEO”) to:

- 1) Amend the Approved Master Agreement with NextEra Energy Marketing, LLC (“NextEra”) with non-substantive changes.

BACKGROUND

Silicon Valley Clean Energy Authority (“SVCE”) transacts for the majority of its power supply arrangements under the industry-standard Edison Electric Institute (“EEI”) master power purchase and sale agreement (“Master Agreement”). The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The SVCE Board of Directors (“Board”) by resolution and/or minute action, has previously authorized the CEO to execute Master Agreements (once approved by the Board, an “Approved Master Agreement”) with multiple counterparties.

The attached resolution provides authority to amend the Approved Master Agreement with NextEra that was originally approved by the board on March 13th, 2019. The amendment increases the collateral threshold amount which enables SVCE to execute larger transaction amounts before having to post collateral. The amendment has been reviewed by SVCE’s energy counsel and is consistent with the terms approved by the Board under existing Master Agreements.

ANALYSIS & DISCUSSION

Staff requests that the Board adopt the attached resolution authorizing the CEO to amend an Approved Master Agreement to allow SVCE to continue transacting among the largest possible pool of qualified, Master Agreement-enabled counterparties, leading to greater liquidity and more competitive prices and rates for SVCE’s customers. By increasing the collateral threshold amount, SVCE can execute larger transactions without an immediate need for posting collateral due to market fluctuations associated with mark to market accounting of the transaction.

NextEra Master Agreement Amendment

NextEra Energy, Inc. is a Fortune 200 corporation with two principal subsidiaries, Florida Power & Light and NextEra Energy Resources. The amended Master Agreement is with NextEra Energy Marketing, LLC, the trading arm of NextEra Energy Resources. NextEra is a long-standing supplier in California’s wholesale market for compliance products for renewable energy and resource adequacy and fixed-price, forward energy for the purposes of hedging. SVCE executed the Approved Master Agreement on March 13th, 2019.

The CEO requests authority to execute the Amendment to the Approved Master Agreement as provided for in Attachment 2, which contains the proposed amendment terms.

STRATEGIC PLAN

The amendment of the Approved Master Agreement will better enable Staff to meet its power supply procurement and cost management goals as provided for in SVCE's Strategic Plan, Power Supply Goals 9, 10 and 11. Having more counterparties participate in SVCE's energy, resource adequacy and RPS compliance product RFOs, provides more competitive pricing and liquidity.

ALTERNATIVES

An alternative to the recommended resolution of amending the Approved Master Agreement may include not approving Staff's recommendation and limiting SVCE to the existing collateral threshold from the Approved Master Agreement. This alternative would be difficult to implement and may result in posting of more collateral with the counterparty and SVCE unable to conduct certain transactions with the counterparty.

FISCAL IMPACT

Adoption of the recommended resolution does not in itself create a fiscal impact.

ATTACHMENTS

1. Resolution 2019-14 of the Board of Directors of Silicon Valley Clean Energy Authority to Authorize the Chief Executive Officer to Amend an Approved Master Agreement with NextEra Energy Marketing, LLC
2. Draft Amendment to Master Agreement with NextEra Energy Marketing, LLC
3. Master Agreement with NextEra Energy Marketing, LLC

RESOLUTION NO. 2019-14

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO APPROVE AND EXECUTE AN AMENDMENT TO THE APPROVED MASTER AGREEMENT WITH NEXTERA ENERGY MARKETING, LLC.

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

WHEREAS, the Silicon Valley Clean Energy Authority (“Silicon Valley Clean Energy”) was formed on March 31, 2016;

WHEREAS, Silicon Valley Clean Energy launched service under a community choice aggregation program on April 3, 2017;

WHEREAS, to provide such service, Silicon Valley Clean Energy purchases energy, renewable energy, carbon free energy, resource adequacy and related products and services (the “Product”) from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices;

WHEREAS, the EEI Master Agreement (“Master Agreement”) is an industry standard framework agreement used for the purchase of Product that establishes certain terms and conditions for the contractual relationship between an energy purchaser and energy supplier, but which does not require a purchaser to purchase or a supplier to supply the Product without further written agreements executed in accordance with the terms and conditions of a Confirmation (“Confirmations”);

WHEREAS, the following Suppliers are currently parties to an Approved Master Agreement:

3 Phases Renewables Inc.

Calpine Energy Services, L.P.

Direct Energy Business Marketing, LLC

DTE Energy Trading, Inc.

Exelon Generation Company, LLC

Morgan Stanley Capital Group, Inc.

NextEra Energy Marketing, LLC

NRG Power Marketing, LLC

Pacific Gas and Electric Company
 Powerex Corp.
 Regenerate Power LLC
 Shell Energy North America (US), L.P.
 Southern California Edison Company
 TransAlta Energy Marketing (US) Inc.
 Wellhead Power Exchange, LLC

WHEREAS, Silicon Valley Clean Energy desires to amend the Approved Master Agreement with NextEra Energy Marketing, LLC to increase the collateral threshold amount.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

Approve and execute an amendment to the current Approved Master Agreement with NextEra Energy Marketing, LLC to increase the collateral threshold amount with terms consistent with the form agreement presented to the Board of Directors.

ADOPTED AND APPROVED this 11th day of September, 2019 by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Bruins				
Town of Los Altos Hills	Director Corrigan				
Town of Los Gatos	Director Sayoc				
City of Milpitas	Director Montano				
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 Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

ATTEST:

Chair

Secretary

**AMENDMENT NO. 1
TO MASTER AGREEMENT**

THIS AMENDMENT NO. 1 TO MASTER AGREEMENT (“Amendment”) dated as of August 21, 2019 (the “Effective Date”) is entered into between NextEra Energy Marketing, LLC (“NextEra” or “Party A”) and Silicon Valley Clean Energy Authority, a California joint powers authority (“SVCE” or “Party B”) NextEra and SVCE are each a “Party” and, collectively, the “Parties”.

WHEREAS, NextEra and SVCE are Parties to that certain Master Power Purchase and Sale Agreement, including the Cover Sheet, Collateral Annex and Paragraph 10 to the Collateral Annex, dated as of March 14, 2019 (the “Master Agreement”, and together with all Transactions, the “Agreement”);

WHEREAS, the Parties now desire to amend the Master Agreement to increase the Collateral Threshold of each of the Parties, and make other related changes; and

WHEREAS, in accordance with Article 2 of the Master Agreement, any amendment, modification or supplement to the Master Agreement shall be entered into only upon a writing signed by both Parties.

NOW, THEREFORE, the Parties agree as follows:

1. Amendments to the Master Agreement.

- a. The term “Party A Collateral Threshold” in Section I.A. in Paragraph 10 of the Collateral Annex shall be deleted and replaced with the following:

“Party A Collateral Threshold: On any day of determination, (a) the lower of (i) the amount of the guaranty in force or effect from Party A’s Guarantor and supporting Party A’s obligations hereunder or (ii) \$ [REDACTED]; provided, however, that Party A’s Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing”.

- b. The term “Party B Collateral Threshold” in Section I.B. in Paragraph 10 of the Collateral Annex shall be deleted and replaced with the following:

“Party B Collateral Threshold: \$ [REDACTED]; provided, however, that Party B’s Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing”.

- c. The term “Minimum Transfer Amount” in Section IV.A. and B. shall be amended to replace the number “ [REDACTED] ” in both instances with the number “ [REDACTED] ”.

2. Miscellaneous.

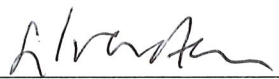
- a. **Capitalized Terms.** All capitalized terms used herein unless otherwise defined shall have the meanings given to them in the Agreement.

- b. **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto. Except as expressly set forth in this Amendment, all terms and conditions of the Agreement remain unchanged, are in full force and effect, and remain binding upon the Parties.
- c. **Governing Law.** This Amendment shall be governed by, construed, performed and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of law.
- d. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Amendment. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Amendment.
- e. **Delivery.** Delivery of an executed signature page of this Amendment by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

IN WITNESS WHEREOF, the Parties have executed this Amendment by their respective duly authorized representatives as of the Effective Date.

NEXTERA ENERGY MARKETING, LLC

**SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

By: 
 Name: Lawrence Silverstein
 Senior Vice President and
 Managing Director
 Title: Nextera Energy
 Marketing, LLC

By: _____
 Name: _____
 Title: _____



Execution Version

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) (“*Master Agreement*”) is made as of the following date: March 14, 2019 (“*Effective Date*”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Name: NextEra Energy Marketing, LLC (“Party A”)

Name: Silicon Valley Clean Energy Authority, a California joint powers authority (“Party B”)

All Notices:

Street: 700 Universe Blvd.
City: Juno Beach, FL Zip: 33408
Attn: Contracts/Legal Department
Phone: n/a
Facsimile: (561) 625-7504
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

All Notices:

Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087
Attn: Girish Balachandran, CEO
Phone: (408) 721-5301
Email girish@svcleanenergy.org
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

Invoices:

Attn: Manager, NEM Accounting
Phone: 561-304-5830
Facsimile: 561-625-7651
michael.coller@nee.com
Power-Settlements.SharedMailbox@nee.com

Invoices:

Attn: Power Supply Group
Phone: (408) 721-5301
Email:
SVCEpowersettlements@svcleanenergy.org

Scheduling:

Attn: Scheduling Desk
Phone: (561) 625- 7100
Facsimile: (561) 625-7604

Scheduling:

Attn: ZGlobal
Phone: (916) 221-4327
Email: eric@zglobal.biz

Option Exercise:

Phone: (561) 625- 7100

Option Exercise:

Phone:

Payments:

Attn: Manager, NEM Accounting
Phone: 561-304-5830
Facsimile: 561-625-7663
michael.coller@nee.com
Power-Settlements.SharedMailbox@nee.com

Payments:

Attn: Finance Group
Phone: (408) 721-5301
Email:
SVCEpowersettlements@svcleanenergy.org

Execution Version

Wire Transfer Only:

Pay: Bank of America

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Wire Transfer:

BNK: River City Bank

[REDACTED]
[REDACTED]

ACH Transfer Only:

Pay: Bank of America

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Credit and Collections:

Attn: Credit Manager

Phone: (561) 694-3440

Facsimile:

Email: DL-CREDIT-GAS&OIL@nee.com

Credit and Collections:

Attn: Finance Group

Phone: (408) 721-5301

Email:

SVCEpowersettlements@svcleanenergy.org

Confirmations:

Attn: Confirmation Desk

Phone: (561) 304-2488

Facsimile: (561) 625- 7517

Confirmations:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: Contracts/Legal Department

Phone: n/a

Facsimile: (561) 625-7504

With additional Notices of an Event of Default
or Potential Event of Default to:

Hall Energy Law PC

Attn: Stephen Hall

Phone: (503) 477-9354

Email: steve@hallenergylaw.com

Execution Version

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff Market-Based Rate Dated: January 9, 2017 Docket Number: ER17-838-000

Party B Tariff Tariff N/A Dated N/A Docket Number N/A

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____

Other Entity: NextEra Energy Capital Holdings, Inc. [REDACTED]

Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ [REDACTED]

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B (as amended pursuant to this Cover Sheet)
- Option C (No Setoff)

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A <if there is no Guarantor>
 - Option B Specify: [Name of Guarantor] <Guarantor, when there is one>

Execution Version

Option C Specify: <*choose when we wish to specify different financial info*>

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, the provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the *Collateral Annex* attached hereto.

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

Applicable

Not Applicable

(e) Guarantor for Party B: _____

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: NextEra Energy, Inc.

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

Execution Version

If applicable, the provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the *Collateral Annex* attached hereto.

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if NextEra Energy Capital Holding, Inc.’s Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if NextEra Energy Capital Holding, Inc. is rated by neither S&P nor Moody’s.
- Other:
Specify: _____

(e) Guarantor for Party A: NextEra Energy Capital Holding, Inc.’s

Guarantee Amount: \$ ██████████

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

Part 1. GENERAL TERMS AND CONDITIONS.

(A) Definitions. The following definitions are amended as set forth below:

(1) Section 1.3 is amended in its entirety to read as follows:

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding

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or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.”

(2) Section 1.12 is amended in its entirety to read as follows:

“Credit Rating” means, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured senior long-term debt or deposit obligations (not supported by third party credit enhancement), by S&P, Moody’s or such other rating agency or agencies as are specified; and if no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by such rating agency, the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity.

(3) A new Section 1.26A is added to read as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

(4) Section 1.27 is deleted in its entirety and replaced with the following: “Letter of Credit” means an irrevocable, non-transferable, standby letter of credit, issued by a commercial bank that has an office, branch, or place of business in the United States where claims can be presented having assets of at least \$10 billion and a Credit Rating of at least “A-” from S&P or “A3” from Moody’s, substantially in the form set forth in Exhibit B attached hereto. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.” For purposes of this definition, Schedule 1 as referenced in the Edison Electric Institute’s Collateral Annex, Version 1.0, dated February 21, 2002, as the same may be amended from time to time, is hereby replaced with Exhibit B attached hereto.

(5) Section 1.50 is amended by changing “Section 2.4” to “Section 2.5.”

(6) Section 1.51 is amended by (i) adding the phrase “for delivery” immediately before the phrase “at the Delivery Point” in the second line and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the following: “absent a purchase.”

(7) Section 1.53 is amended by (i) deleting the phrase “at the Delivery Point” from the second line, and (ii) deleting the phrase “at Seller’s option” from the fifth line and replacing it with the following: “absent a sale.”

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(8) The following definition is added as Section 1.62: “‘Merger Event’ means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party or other entity hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity’s creditworthiness is materially weaker than that of such Party or other entity immediately prior to such action.”

(9) The following definition is added as Section 1.63: “Qualified Institution” means a commercial bank that has an office, branch, or place of business in the United States where claims can be presented having assets of at least \$10 billion and a Credit Rating of at least “A-” from S&P or “A3” from Moody’s.

(B) Confirmation.

- (1) In Section 2.1, delete the first sentence in its entirety and replace with the following:
“A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”
- (2) Section 2.3 is hereby deleted in its entirety and replaced with the following:
2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”
- (3) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.
- (4) Section 2.5 is amended by inserting at the end of the first sentence the phrase “, provided that such Recording would be admissible in accordance with the applicable law of such proceeding or action; provided, further, the parties agree not to contest or assert any defense to the validity or enforceability of Transactions entered into pursuant to this *Master Agreement* solely under Statute of Fraud laws or laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound.”

(C) Transmission and Scheduling.

- (1) Section 3.2 is amended by inserting at the end thereof the following:
“Product deliveries shall be Scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and Scheduling practices for the relevant region and system operator.”

(D) Seller/Buyer Failure.

- (1) The following is inserted as Section 4.3:
“4.3 With respect to Section 4.1 and Section 4.2, the origin of the values used in said calculations must be derived from a commercially reasonable source. Each Party agrees

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and covenants to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement."

(E) Events of Default.

- (1) Section 5.1(f) is deleted in its entirety and replaced with the following: "a Merger Event occurs with respect to such Party;"
- (2) Section 5.1(h) is amended by insertion of the following as clause (vi): "(vi) a Merger Event occurs with respect to a Guarantor".
- (3) Section 5.1 is amended by insertion of the following as subsections (i) and (j):

"(i) the Defaulting Party repudiates any Transaction or this Agreement;

(j) an event of default or termination event occurs (howsoever determined) with respect to the Defaulting Party under any agreement between Party A and Party B under any forward contract or swap agreement (the "Specified Transactions") in each case as defined in the United States Bankruptcy Code and there occurs a liquidation of, an acceleration of obligations under, or an early termination of all transactions under the documentation applicable to the Specified Transactions."
- (4) Section 5.2 is amended by reversing the placement of "(i)" and "to".
- (5) The following shall be added to the end of Section 5.2:

"If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision in this Section or any provision in this Agreement to the contrary."

(F) Declaration of an Early Termination Date and Calculation of Settlement Amount. Section 5.2 is amended by inserting the following at the end of the section:

"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."

(G) Close-out Setoffs. Option B of Section 5.6 is deleted in its entirety and replaced with the following:

"Option B: Upon the designation of an Early Termination Date the non-defaulting party (the "Non-Defaulting Party" or "X") may, at its option and in its discretion, setoff, against any amounts Owed to the Defaulting Party ("Y") by X or any Affiliate of X under this Agreement or under any other agreement, instrument and/or undertaking, any amounts Owed by Y to X or any of X's Affiliates (irrespective of the place of payment or booking office of the obligation) under this Agreement or under any other agreement, instrument and/or undertaking (the "Net Settlement Amount"). The obligations of Y and X under this Agreement in respect of such Net Settlement Amount shall be

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deemed satisfied and discharged to the extent of any such setoff exercised by X and/or X's Affiliates. X will give Y notice of any setoff effected under this Section as soon as practicable after the setoff is effected provided that failure to give such notice shall not affect the validity of the setoff. For purposes of this Section, "Owed" shall mean any amounts owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) as of the Early Termination Date. Amounts subject to the setoff permitted in this Section may be converted by X into any currency in which any obligation Owed is denominated at the rate of exchange at which X, acting in a reasonable manner and in good faith, would be able to purchase the relevant amount of the currency being converted. If an obligation is unascertained, X may in good faith estimate that obligation and setoff on the basis of such estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this Section shall be effective to create a charge or other security interest except as may be provided under applicable law. This setoff provision shall be without limitation and in addition to any right of setoff, netting, offset, combination of accounts, counterclaim, recoupment, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise). Each of the parties represents and acknowledges that the rights set forth in this Section are an integral part of this Agreement between the parties and that without such rights the parties would not be willing to enter into the Agreement."

(H) Other Terminating Events. The following is inserted as Section 5.8:

"5.8 Other Terminating Events. In the event that Buyer is regulated by a federal, state or local regulatory body, and such body shall disallow recovery of all or any portion of any costs incurred or yet to be incurred by Buyer under any provision of this Agreement or in respect of any Transaction, such action shall not operate to excuse Buyer from performance of any obligation hereunder nor shall such action give rise to any right of Buyer to any refund or retroactive adjustment of the Contract Price with respect to any Transaction. Notwithstanding the foregoing, if performance by either Party (an "Affected Party") under this Agreement or in respect of any Transaction becomes subject to regulation of any kind whatsoever under any applicable law to a greater or different extent than that existing on the Effective Date and such regulation either (i) renders this Agreement illegal or unenforceable, or (ii) would render performance by the Affected Party of some but not all outstanding Transactions (the "Affected Transactions") illegal, unenforceable, then such Party (or either Party if both Parties are Affected Parties) may declare an Early Termination Date in the manner contemplated by Section 5.2, which notice shall specify the basis for declaring such Early Termination Date and (in the circumstances described in clause (ii) above) identify which Transactions are Affected Transactions. If an Early Termination Date is declared under circumstances described in clause (i) above, both Parties shall calculate their respective Gains, Losses or Costs in respect of terminated Transactions and endeavor in good faith to agree upon the Termination Payment payable by either Party, and, if an Early Termination Date is declared under circumstances described in clause (ii) above, only the Party that is not the Affected Party shall calculate its Gains, Losses and Costs in respect of all terminated Transactions and notify the Affected Party of the Settlement Amount, as provided in Section 5.2. Only the Affected Transactions shall be terminated on the Early Termination Date under the circumstances described in clause (ii) above. All other Transactions shall remain unaffected as if no Early Termination Date had been declared. The terms and provisions of this Section 5.8 will apply notwithstanding any inconsistency with Section 10.8 hereof and will govern to the extent of any inconsistency therewith."

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(I) Credit and Collateral Requirements.

- (1) Section 8.1(d) is amended by inserting the phrase “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing” after the words “receipt of notice” in the fifth line thereof.
- (2) Section 8.2(d) is amended by inserting the phrase “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing” after the words “receipt of notice” in the fifth line thereof.

(J) New Taxes. Article Nine is amended by inserting the following as Section 9.3:

“9.3 New Taxes. For purposes of this Section 9.3, New Taxes shall mean means (i) any Taxes enacted and effective after the date of agreement with respect to a Transaction, or (ii) any law, order, rule or regulation, or interpretation thereof, enacted and effective after the date of agreement with respect to a Transaction resulting in application of any Tax to a new or different class of persons (“New Tax(es)”). If any New Tax is imposed for which Buyer or Seller is responsible, the Party affected by the New Tax (“New Tax Affected Party”) may require the other Party to enter into good faith negotiations to apportion liability for the New Tax equitably between the Parties. If, after fifteen Business Days the Parties are not able to resolve the issue, the New Tax Affected Party may terminate such “New Tax Affected Transaction”, upon thirty days written notice. Unless otherwise agreed, the New Tax Affected Transaction shall be liquidated in accordance with Article 5 as though the New Tax Affected Party has defaulted on the New Tax Affected Transaction without taking into effect the impact of the New Tax.”

(K) Representations and Warranties. Subsection (ix) of Section 10.2 is deleted in its entirety and replaced with the following:

“(ix)(A) it is a ‘forward contract merchant’ within the meaning of the United States Bankruptcy Code; and (B) it is an ‘eligible contract participant’ as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(18)).”

(L) Indemnity. Section 10.4 is amended by inserting the phrase “except to the extent attributable to the indemnitee Party’s gross negligence, willful misconduct or bad faith” at the end of the first sentence.

(M) Assignment. Section 10.5 is amended by deletion of the phrase “tax and enforceability assurance” in the eleventh and twelfth lines thereof and replacement therewith of the phrase, “tax, credit and enforceability assurance.”

(N) In Section 10.6 change “State of New York” to “State of California” and add the following after the last line:

“FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, OR IF SUCH FEDERAL COURTS DO NOT HAVE JURISDICTION, TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS OF THE STATE OF CALIFORNIA LOCATED IN SAN FRANCISCO, CALIFORNIA, AND EACH PARTY EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

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(O) General. Section 10.8 is amended by inserting the following at the end thereof:

“This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original. Copies of this Agreement (and each amendment, modification and waiver in respect of it) are deemed acceptable and may be used in lieu of originals for all purposes, including, but not limited to admissibility, authenticity or other purposes related to legal proof.”

(P) Confidentiality. Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the employees, lenders, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure is reasonably required (with respect to a Party, its “Representatives”)) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11. Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq.). Party B will notify Party A in writing promptly upon receipt of any request for information regarding the Master Agreement and/or any Confirmations executed in connection therewith pursuant to the California Public Records Act (Government Code Section 6250 et seq.).”

(Q) Index Transactions. Article 10 is amended by inserting the following as Section 10.13:

“10.13 Index Transactions.

(a) Market Disruption. If a Market Disruption Event occurs during the Determination Period, the Floating Price for the affected Trading Day(s) shall be determined pursuant to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then each Party shall reasonably and in good faith obtain a calculation of the relevant Floating Price from a Reference Market-maker, and the Floating Price shall be the average of the two calculations.

“Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

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“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means the Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (i) the failure of the Price Source to announce or publish information necessary for determining the Floating Price; (ii) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (iii) the temporary or permanent discontinuance or unavailability of the Price Source; (iv) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (v) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Reference Market-maker” means a leading dealer in the relevant market selected by a Party in good faith from among dealers which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

“Trading Day” means a day in respect of which the relevant Price Source published the relevant price.

(b) Corrections to Published Prices. For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.”

(R) Miscellaneous. Article 10 is amended by inserting the following as Sections 10.14, 10.15, 10.16, and 10.17:

“10.14 FERC Standard of Review; Mobile-Sierra Waiver.

(A) 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

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proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” 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) (the “Mobile-Sierra” doctrine).

(B) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation 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 the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

“10.15 Section 366. Each Party acknowledges and agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in Section 366 of the Bankruptcy Code, and each Party agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further agrees to waive the right to assert that the other Party is a provider of last resort.”

“10.17 Joint Powers Authority. Party A hereby acknowledges and agrees that Party B 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 the Joint Powers Agreement and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Party A agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B’s members in connection with this Agreement, any cities participating in Party B’s aggregation program, or any of Party B’s retail customers in connection with this Agreement or any of the Transactions.”

Part 2. SCHEDULE M.

The Cover Sheet under Schedule M is amended by deleting the reference to “Section 8.6” and replacing it with “Section 8.4”.

Schedule M: Amend Schedule M as follows:

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(1) Add the following definition in Article One:

“Act” means Joint Powers Act of the State of California (Government Code Section 6500 et seq.)

(2) Section 3.4 of Schedule M is deleted in its entirety and replaced with the following addition to Article Three:

“Section 3.4 Party B’s Deliveries. As a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A (i) copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith.”

(3) Section G of Schedule M is amended to insert the relevant state of California.

Part 3. SCHEDULE P

The following shall be added at the end of Schedule P:

“If the parties agree to a service level/product defined by reference to the WSPP Agreement, as such agreement may be amended or supplemented from time to time, and any related WSPP agreements and/or operating guidelines for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable.”

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IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PARTY A

NextEra Energy Marketing, LLC

By: _____
 Name: _____
Jeffrey T. Palumbo
Vice President
Nextera Energy
 Title: _____
Marketing, LLC

PARTY B

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By: _____
 Name: _____
 Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.



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IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PARTY A

NextEra Energy Marketing, LLC

By: _____

Name: _____

Title: _____

PARTY B

**Silicon Valley Clean Energy Authority, a
California joint powers authority**

By:  _____

Name: GHIRISH BALACHANDRAN

Title: CHIEF EXECUTIVE OFFICER

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

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EXHIBIT B

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We (the “Issuing Bank”) hereby establish our Irrevocable Non-Transferable Standby Letter of Credit in your favor for the account of _____ (“Account Party”), for the aggregate amount not exceeding _____ United States Dollars (\$ _____) (the “Initial Available Amount”), available to you (“Beneficiary”) at sight upon demand at our counters at [specify location] on or before the expiration hereof against presentation to us of the Beneficiary’s signed and dated statement referencing our Letter of Credit No. _____, stating the amount of the demand and reading as follows:

“An Event of Default (as defined in the Master Agreement dated as of _____ between Beneficiary and Account Party, as the same may have been amended (the “Master Agreement”)) has occurred and is continuing with respect to Account Party under the Master Agreement and Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Master Agreement.”

[OR]

“An Early Termination Date (as defined in the Master Agreement dated as of _____ between Beneficiary and Account Party, as the same may have been amended (the “Master Agreement”)) has occurred as a result of a Termination Event (as defined in the Master Agreement) and Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Master Agreement.”

The Initial Available Amount shall automatically be reduced by the amount of any and all drawings paid from time-to-time through the Issuing Bank referencing this Letter of Credit No. _____ (as so reduced, the “Available Amount”). Partial drawings and multiple presentations are permitted from time-to-time hereunder up to the then-outstanding Available Amount.

This Letter of Credit shall expire _____ (____) days from the date of issuance, but shall automatically extend without amendment for additional _____ (____)-day periods from such original or any subsequent expiration dates, if Beneficiary and Account Party have not received, at least ninety (90) days prior to any such expiration date, notice of our intention not to renew.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

The Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary thereof accordingly.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices, I.C.C. Publication No. 590 (“ISP98”). As to matters not covered by ISP98, the laws of the State of New

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York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Account Party

[BANK SIGNATURE]

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Exhibit C

GUARANTY

THIS GUARANTY (this “Guaranty”), dated as of _____, _____ (the “Effective Date”), is made by NEXTERA ENERGY CAPITAL HOLDINGS, INC. (“Guarantor”), in favor of _____] (“Counterparty”).

RECITALS:

- A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary NEXTERA ENERGY MARKETING, LLC (“Obligor”) have entered into, or concurrently herewith are entering into, that certain [Specify Name of Agreement] [dated/entered into/effective as of] _____, 20__ (the “Underlying Agreement”); and
- B. WHEREAS, Counterparty and Obligor may from time to time enter into one or more transactions pursuant and subject to the terms of the Underlying Agreement (the “Transactions”), which Transactions would be evidenced by one or more confirmations entered into by Obligor and Counterparty in accordance with the Underlying Agreement (which documentation shall, together with the Underlying Agreement, collectively be referred to hereinafter as the “Agreement”); and
- C. WHEREAS, Guarantor will directly or indirectly benefit from the Transactions to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “Obligations”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [spell out the dollar amount] U.S. Dollars (U.S. \$_____) (the “Maximum Recovery Amount”).

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

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(a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “Overdue Obligation”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “Payment Demand”).

(b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “Business Day” shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty

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seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. REINSTATEMENT. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. TERMINATION. Guarantor may terminate this Guaranty by providing a written termination notice to Counterparty specifying the date upon which such termination will take effect (provided that no such termination shall take effect prior to 5:00 p.m. (Eastern Prevailing Time) on the fifth (5th) Business Day after the termination notice has been delivered to Counterparty in accordance with Section 9 hereof). Upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as may pertain pursuant to the last sentence of this paragraph. No such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 p.m. Eastern Prevailing Time [_____, 20__]; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

TO GUARANTOR: *

NextEra Energy Capital Holdings, Inc.

700 Universe Blvd.

Juno Beach, Florida 33408

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Attn: Treasurer

TO COUNTERPARTY:

Attn: _____

[Tel: (561) 694-6204 -- for use in connection with courier deliveries]

*(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or

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unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY.

(h) Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile transmission or other electronic transmission (e.g. “pdf” or “tif”) shall be effective as delivery of a manually executed signature page hereof.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By: _____

Name: _____

Title: _____

Date: _____



Staff Report – Item 1k

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 1k: Authorize the Chief Executive Officer to Execute Agreement with Pacific Energy Advisors for Technical Consulting Services

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board authorize the CEO to execute an agreement with Pacific Energy Advisors, Inc. (PEA) for technical consulting services from October 1, 2019 through September 30, 2020 for an amount not to exceed \$192,000.

BACKGROUND

Silicon Valley Clean Energy (SVCE) has been utilizing the services of PEA since the Agency's formation with the current agreement expiring on September 30, 2019. The recommended agreement is \$108,000 less than the current agreement as the scope of work has been reduced to reflect the maturing of the agency, increased internal staffing and industry expertise and joint-agency efforts in power procurement efforts.

The current agreement includes a monthly retainer fee of \$25,000 per month for a total value of \$300,000. The recommended agreement reduces the monthly retainer to \$13,500 per month for Task 1 (see Exhibit A of Attachment 1) and a time and materials based compensation structure not to exceed \$30,000 for services beyond Task 1 resulting in a total value of \$192,000.

ANALYSIS & DISCUSSION

The scope of work included in Task 1 focuses on risk management and forecasting services including:

- Maintenance of annual and long-term sales forecast
- Risk Management of power supply
 - Provide independent oversight to ensure Risk Management Policy compliance
 - Assist staff with the Middle-Office role in the power procurement function.
- Financial Modelling and Rate Setting

Task 1 functions are funded by the monthly retainer.

Task 2 would include any request for services not included in Task 1 and is funded with the time-and-materials compensation structure. Examples of services in Task 2 would include regulatory support and management of the renewable energy credit process.

STRATEGIC PLAN

The recommendation supports the power procurement, regulatory and financial goals of the strategic plan.

FISCAL IMPACT

The fiscal impact for work described in Task 1 shall be based on a monthly retainer of \$13,500 and a time and materials based not to exceed \$30,000 for work outside of Task 1; for a total not to exceed amount of \$192,000.

ATTACHMENTS

1. Agreement with Pacific Energy Advisors, Inc. for Technical Consulting Services.

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
PACIFIC ENERGY ADVISORS
FOR
TECHNICAL CONSULTING SERVICES**

THIS AGREEMENT, is entered into this 1ST day of October 2018, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent joint powers authority, ("Authority"), and PACIFIC ENERGY ADVISORS, INC, a California corporation whose address is 1839 Iron Point Road, Suite 120, Folsom, CA 95630 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties").

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 technical consulting services to support the implementation of a community choice energy program 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, 2019, and shall terminate on September 30, 2020, 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**

Compensation will be based on a monthly fixed fee of \$13,500 and a time and materials task of \$30,000 for a not to exceed amount of \$192,000 (one hundred ninety two thousand and no/100) as outlined in Exhibit C.

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 and agrees that all services shall be performed by qualified and experienced personnel.

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.

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. Contractor 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**

Consultant agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liabilities, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of or related to the negligence or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors in the performance of this Agreement, except where caused by the sole or active negligence or willful misconduct of Authority or its members, officers, officials, agents, employees and volunteers. 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. The acceptance of the services provided by this Agreement

by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the services 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 presently has 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 will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and 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.

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 shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. John Dalessi or Kirby Dusel shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

Consultant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by Authority.

18. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second

business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
333 W. El Camino Real
Suite 290
Sunnyvale CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
Pacific Energy Advisors, Inc.
1839 Iron Point Road, Suite 120
Folsom, CA 95630
Attn: John Dalessi, President

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 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 Chief Executive Officer may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Chief Executive Officer 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.

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.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws.

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.

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

RECOMMENDED FOR APPROVAL

Monica Padilla
Director Of Power Resources

CONSULTANT NAME
PACIFIC ENERGY ADVISORS

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

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

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

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Clerk

Exhibit A
Scope of Services

Task 1. Risk Management and Forecasting Services

(a) Maintain Annual and Long-Term Sales Forecast:

- Prepare and maintain SVCE customer and electric sales forecasts including forecast of: 1) monthly enrolled accounts, megawatt hours (“MWh”) and megawatts (“MW”) by load profile group; and 2) monthly coincident peak MW and hourly MW for the SVCE system.
- Update long term sales forecasts biannually and more frequently as necessary; monitor accuracy of load forecast on monthly basis; consider adjustment if variance exceeds threshold of 5% forecast error.
- Communicate all forecasting changes to appropriate SVCE staff.

(b) Electric Supply Risk Management and Middle Office Support:

- Monitor net open positions and provide monthly reporting of net open positions pursuant to SVCE risk management policies. Produce Monthly Middle Office ROC Report and participate in ROC meetings as requested.
- Provide support in development and review of SVCE Risk Management Policy and Credit Risk Management Guidelines.
- Monitor Credit Risk and Produce Headroom reports.

(c) Financial Modeling and Rate setting

- Maintain pro forma financial model and support SVCE staff in preparing annual budgets and conducting scenario analyses.
- As necessary, coordinate with SVCE and its financial advisors with regard to matters that may impact SVCE’s financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.
- Assist with the development of proposed SVCE rate schedules and PG&E rates benchmarking.

Task 2. Other-As-Requested Operational Support

This task includes as needed consulting services not otherwise included in Task 1.

Exhibit B
Schedule of Performance

The work performed under Task 1 will be completed on an ongoing basis throughout the term of this Agreement. Work performed under Task 2 will be completed upon request and subject to mutually agreeable timelines for completion.

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 Schedule

Task 1: \$13,500/month.

Task 2. Regulatory Support & Other Services; billed on a time and materials basis at the hourly rate schedule set forth below, subject to a total not to exceed cost of \$30,000 for the term of the agreement.

Rates

Staff	Hourly Rate
John Dalessi	\$305
Kirby Dusel	\$285
Sam Kang	\$285
Brian Goldstein	\$235
Alden Walden	\$125

Invoices and Payment

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 2 only), task(s) for which work was performed). Payment shall be made by the Authority to Consultant within thirty (30) days after receipt of a proper invoice.

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.

Exhibit D
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

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.



Staff Report – Item 11

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 11: Audit Committee Report

Date: 9/11/2019

No report as the Audit Committee has not met since June 5th, 2019. The next meeting of the group is scheduled for December 4th, 2019, 11:30 a.m., at the SVCE Office.



Staff Report – Item 2

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 2: CEO Report

Date: 9/11/2019

REPORT

SVCE Staff Update

Jessica Cornejo joined the SVCE Account Services team on September 4th, 2019 as an Associate Energy Consultant. She brings a tremendous background in energy, sustainability, and community needs from both her work experience and education. Several highlights include supporting data collection and analysis regarding the homeless, assisting with a study on the connection between urban landscapes and felt temperature, benchmarking municipal buildings, and contributing to the Climate Action Plan (CAP) for the City of Woodland. She comes to us after finishing an Americorps CivicSpark Fellowship, following her degree in Geography, minoring in Environmental Science and Policy, from California State University, Long Beach.

Lauren Goldfarb joins SVCE as our new Climate Corps Fellow for the 2019 – 2020 cycle. Lauren graduated from the University of Colorado, Boulder with a bachelor's degree in environmental studies. Lauren most recently worked as an environmental educator, which is experience she will leverage as she assumes the duties of coordinating and executing Bike to the Future 2020, in addition to various other SVCE outreach activities.

Power Resources - Master Consultant Agreement Update

As approved at the November 14, 2018 Board of Directors Meeting, Resolution 2018-15 granted authority to the CEO to execute a Master Consultant Agreement between Ascend Analytics, Flynn Resources Consulting, Inc., and Hanover Strategy Advisors, LLC to provide various strategic consulting, support, and risk management services to SVCE. SVCE has a target budget of \$300,000 for FY 2019, and a total budget of \$1,000,000 for FY 2019-2021 between the three vendors. Following outlines the remaining balance of the master agreement:

Power Resources - Master Consultant Agreement - September 11, 2019 Update			
VENDOR	Expenses 2019 YTD	Balance	
		2019	2019-2021
		\$300,000.00	\$1,000,000.00
Ascend Analytics	\$146,723.42		
Flynn Resources Consulting, Inc.	\$ 24,990.00		
Hanover Strategy Advisors, LLC	\$ 24,700.00	Remaining Balance	
TOTAL	\$196,413.42	\$103,586.58	\$ 803,586.58

An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

Agenda Item: 2**Agenda Date: 9/11/2019****Programs - Master Consultant Agreement Update**

As approved at the June 12, 2019 Board of Directors Meeting, Resolution 2019-10 granted authority to the CEO to execute a Master Consultant Agreement between Sacramento Municipal Utility District (SMUD), Center for Sustainable Energy (CSE), and ADM, Associates, Inc. (ADM) to provide consulting and support to SVCE related to decarbonization and innovation program design, implementation, management, and evaluation. The Board of Directors approved a total budget of \$1,000,000 for all three consultants over the full contract term, which runs through the end of FY 2021. Following outlines the remaining balance of the master agreement:

Programs Master Consultant Agreement - September 11, 2019 Update			
VENDOR	Expenses 2019 YTD	Balance	
		2019	2019-2021
		\$480,000.00	\$1,000,000.00
Sacramento Municipal Utility District	\$ 18,825.00		
Center for Sustainable Energy	\$ -		
ADM Associates, Inc.	\$ -	Remaining Balance	
TOTAL	\$ 18,825.00	\$461,175.00	\$ 981,175.00

An update of agreement expenses and balances will be reported on a biannual basis as part of the CEO Report to the Board.

CEO Agreements Executed

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

- 1) SMUD: Online Customer Resource Center, not to exceed \$92,400
- 2) SMUD: Distributed Energy Resource Strategy, not to exceed \$48,000
- 3) Ion Translations, LLC: Translation Services, not to exceed \$25,000
- 4) Ascend Analytics: General Consulting, Software Tools and Support Services, not to exceed \$50,000
- 5) PFM: Financial Advisor Services, not to exceed \$30,000
- 6) Barclays: Credit Rating Advisory Services, \$10,000 plus expenses
- 7) Jim Baak: DER Consulting Services, not to exceed \$15,000

CEO Power Supply Agreements Executed

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

Counter Party Name	Execution Date	Transaction Type	Product	Start Date	End Date	Notional Value
Shell Energy North America	8/8/2019	Purchase	Physical Hedge Energy	7/1/2022	12/31/2022	\$19,951,812.00
Morgan Stanley Capital Group	8/23/2019	Purchase	Physical Hedge Energy	10/1/2020	12/31/2020	\$10,363,522.00
MarinCE	8/13/2019	Purchase	Resource Adequacy	1/1/2020	12/31/2020	\$452,500.00
Shell Energy North America	7/3/2019	Purchase	Resource Adequacy	1/1/2020	12/31/2022	\$1,782,000.00
Shell Energy North America	8/16/2019	Purchase	Resource Adequacy	1/1/2020	12/31/2020	\$567,000.00
Wellhead Power	8/22/2019	Purchase	Resource Adequacy	1/1/2020	12/31/2022	\$3,762,000.00

These agreements are included in the Board packet as Appendix A.

ATTACHMENTS

1. Decarb & Grid Innovation Programs Update, September 2019
2. Account Services & Community Relations Update, September 2019
3. Regulatory and Legislative Update, September 2019
4. Agenda Planning Document, September 2019 – December 2019



Decarb & Grid Innovation Programs Update

September 2019

1. Reach Code Initiative

- 11 Letters of Intent + 1 more pending signature
- First external stakeholder meetings scheduled
- SVCE + Consultants invited to six council readings so far. More to come.

Local Engagement To Date

City	Letter of Intent	June All-Hands Meeting	City Staff Meeting(s)	Commission Meeting	Council Briefing	Council Reading	Council Vote
Milpitas	X	X	X	X		Oct 15	
Mountain View	X	X	X	Pending		Oct 22	Nov 12
Los Altos	X	X	X	X		Oct 22	Nov 12
Morgan Hill	X	X	X		X	Oct 23	Nov 6
Cupertino	X	X		X		TBD	TBD
Los Altos Hills	X		X		X	Nov	
Sunnyvale	X	X	X	X		Pending	
Monte Sereno	X			X	X	Pending	
Gilroy	X	X	X	X		Pending	
Saratoga	X		X	Pending			
County of Santa Clara	Pending	X	Pending				
Campbell	X						
Los Gatos						Oct 15	

6

2. CALeVIP Update

Implemented by CSE for the California Energy Commission

Get Started Resources Available Funding Help

English Log In

Building EV Infrastructure

The California Electric Vehicle Infrastructure Project (CALeVIP) offers incentives for the purchase and installation of electric vehicle charging infrastructure at publicly accessible sites throughout California.

Find a Project About CALeVIP

- SVCE formed regional coalition to pursue state block grant funding from CEC
- CEC announced \$33M for Peninsula-Silicon Valley Project through CALeVIP*
- Additional \$27M in co-funding from SVCE and other coalition members
- Project launch est. May 2020

Property Owners

Start planning your project now!

START YOUR PROJECT >
FIND A SERVICE PROVIDER >

EV Charging Manufacturers & Service Providers

Provide equipment – Apply for incentives!

LEARN MORE ABOUT ELIGIBILITY >

*Joint press release: <https://tinyurl.com/SVCE-CALeVIP>

3. All-Electric Showcase Awards

- Selected 19 awardees, including affordable housing multifamily, offices and residences
- First two Customer Profiles complete, online at: <https://www.svcleanenergy.org/all-electric-award/>
- Developing full booklet and online web gallery



PROFILE

Location: Sunnyvale, CA
Features: 3 beds, 2 baths
1470 sq. ft.
Year Built: 1949
Year Renovated: 2016
Architect: Bronwyn Barry / Passive House BB
Contractors: One Sky Home
Home Owners: Michelle & Michael Cudzinovic

All-Electric Living

Building now for a healthier, safer, affordable energy future

Kitchen featuring induction cooktop

"Michelle and Michael, who are supporters of clean energy, hired us to repair and expand their Sunnyvale bungalow. We knew this house could be powered entirely by their rooftop solar panels if we converted to all-electric appliances, including a **heat pump water heater, heat pump cooling system and an induction cooktop.** And the homeowners were happy to seal off their gas connections for good. Their house is an example of a 'positive energy' building that is able to enhance and offset carbon emissions from other sources and it's great that SVCE offers the option of carbon-free electricity for homes using electricity from their power lines." **Bronwyn Barry**

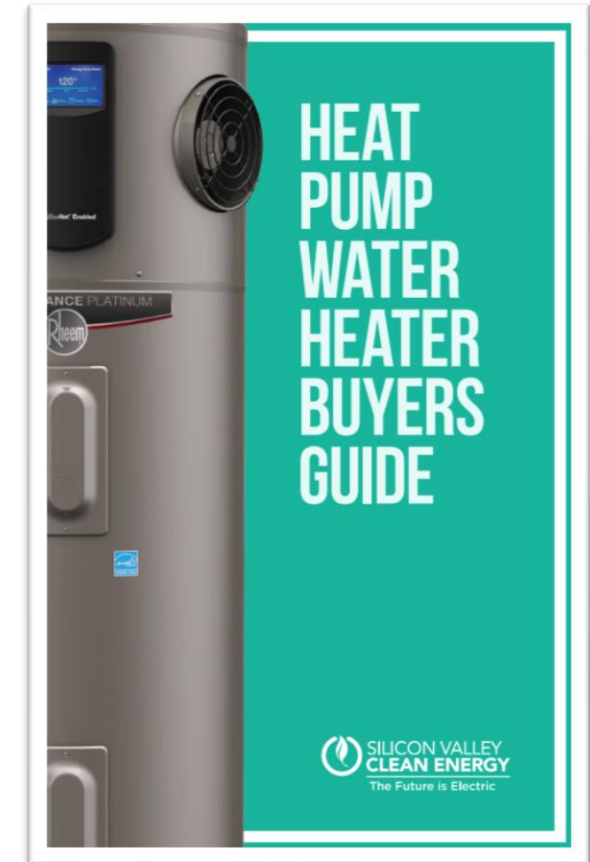
this home includes | heat pump water heater | heat pump HVAC | heat recovery ventilation system | smart thermostat | induction cook top | electric dryer | EV charger | all LED lighting | rooftop solar array

Learn about the benefits of going all-electric:
[SVCleanEnergy.org/all-electric-award](https://www.svcleanenergy.org/all-electric-award)

SILICON VALLEY CLEAN ENERGY
The Future is Electric

4. FutureFit Home Program

- Program launched in June, to provide rebates to replace natural gas with heat pump water heaters (rebate table below)
- Received 85 applications to date (total program capacity of 100). Seven installed.
- Released buyer's guide (right)
- Co-funded by BAAQMD



Program Rebates	
Heat Pump Water Heater Only	\$2,000
Data Monitor	\$300
Optional Additional Rebates	
Smart Performance Package	\$1,500
Service Panel, upgrade to 200A	\$2,500
CARE/FERA eligible customer	\$1,500

5. Other Updates

- **EV Infrastructure Joint Action Plan** agendized as action item
- **Virtual Power Plant Initiative:** released final discussion paper in August; program design, RFP and update to BOD on track for fall/winter 2019
- SVCE supported two concept proposals by multi-disciplinary teams for funding from the **Dept. of Energy's Solar Energy Innovation Network (SEIN)** to address market barriers to maximize grid and customer benefits for commercial-scale solar. Response expected in 6-8 weeks.

1. Outreach Events & Sponsorships

- SVCE tabled at energy fairs and community summer events and continued to gain interest for the heat pump water heater program and excitement for home electrification.

Past and upcoming events:

Date	Time	Description	Location
Aug. 18	12 – 4 PM	Greentown Los Altos Energy Day - <i>tabling</i>	Los Altos
Aug. 24	11:30 AM – 2 PM	Monte Sereno Picnic - <i>tabling</i>	Vasona Park
Aug. 25	2 – 4 PM	Sound of Hope Energy Workshop - <i>presentation</i>	Sunnyvale Community Center
Aug. 28	12 – 5 PM	Campbell Chamber of Commerce Golf Tournament – <i>sponsor & tabling</i>	Cinnabar Hills Golf Course
Sept. 5	5 – 6 PM	Sunnyvale Community Services Energy Workshop – <i>presentation</i>	Sunnyvale Community Services
Sept. 7 -8	11 AM-7PM	Mountain View Art and Wine Festival - <i>sponsorship</i>	Castro St, Mountain View
Sept. 14	10 AM – 4:30 PM	Family Fall Festival – <i>sponsor & tabling</i>	Memorial Park, Cupertino
Sept. 14	10 AM – 3 PM	Sunnyvale State of the City - <i>tabling</i>	Murphy Ave, Sunnyvale
Sept. 22	11 AM – 3 PM	Climate Fair – <i>tabling</i>	Addison-Penzak Jewish Community Center of Silicon Valley, Los Gatos
Sept. 28 - 29	10 AM – 7 PM & 10 AM – 6 PM	Taste of Morgan Hill – <i>sponsor & tabling</i>	Downtown Morgan Hill



Los Altos Energy Day with SVCE's interactive energy activity

2. Customer Participation

	Upgrade	Opt Out	Opt Outs by Account Type	Total Opt Out, All Accounts
Residential	1,197	9,187	3.78%	3.71%
Commercial	1,994	878	3.13%	

3. Power Content Label

- The annual Power Content Label (CEC requirement) is being mailed to all SVCE customers in mid-Sept.
- Contents share SVCE 2018 power mix and cumulative community results from April 2017 – December 2018.
- The regulation requires the mailer goes to all customers that took service from SVCE in 2018



Reducing pollution and saving you money.

Open to see your community's results



Version: July 2019

2018 POWER CONTENT LABEL			
Silicon Valley Clean Energy			
www.svcleanenergy.org			
ENERGY RESOURCES	GreenPrime	GreenStart	2018 CA Power Mix**
Eligible Renewable	100%	55%	31%
Biomass & Biowaste	0%	1%	2%
Geothermal	0%	8%	5%
Eligible Hydroelectric	0%	3%	2%
Solar	23%	12%	11%
Wind	77%	31%	11%
Coal	0%	0%	3%
Large Hydroelectric	0%	46%	11%
Natural Gas	0%	0%	35%
Nuclear	0%	0%	9%
Other	0%	0%	<1%
Unspecified sources of power*	0%	0%	11%
TOTAL	100%	100%	100%

* "Unspecified sources of power" means electricity from transactions that are not traceable to specific generation sources.
 ** Percentages are estimated annually by the California Energy Commission based on the electricity generated in California and net imports as reported to the Quarterly Fuel and Energy Report database and the Power Source Disclosure program.

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

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

For additional questions, please contact the California Energy Commission at: Toll-free in California: 844-454-2906
Outside California: 916-653-0237

Cleaner Energy and Lower Rates

Community Benefits April 2017 - December 2018



\$24 Million

On-bill dollar savings for SVCE customers



2.3 Billion Pounds

Carbon emissions avoided by providing clean energy*



19.8%

Community-wide emissions reduction since 2015



\$775,000

Cash payments to customers for generating extra solar energy**



270,000

Residential and business customers, a 96.5% participation rate



310 Megawatts

Contracted for new renewable energy projects

*Emissions savings estimated using the PG&E published emission factor for 2016
 **Solar payment results through April 2019

4. Community Outreach Grants

- In-Language Energy Workshops
 - Sound of Hope Radio (Chinese radio)
 - August 25 at 2:30 p.m.; Sunnyvale Community Center
 - Sunnyvale Community Services
 - September 5 at 5:00 p.m.
 - Spanish & Mandarin in-language presentations
- Featured on Sound of Hope Radio show
 - Interview with SVCE staff aired on KSQQ 96.1FM at 6-7 PM on Tuesday August, 20
 - Aired radio ads about SVCE's energy workshop



Sound of Hope
Energy Workshop

5. Member Agency Working Group Update

The following items were presented and discussed at the August meeting

- SVCE Updates
 - Financials with Don Eckert
 - Public Safety Power Shutoff

- Program Status
 - All-Electric Showcase Awards
 - CALeVIP Update
 - Heat Pumps
 - Reach Codes

6. Media

Latest SVCE News

- [State Proposes \\$33M in New Funding for Electric Vehicle Charging in Santa Clara and San Mateo Counties](#), *Joint Press Release, 08-14-19*

News Mentions

- [Peninsula Clean Energy and California Energy Commission Propose \\$24 Million Partnership to Install Electric Vehicle \(EV\) Chargers in San Mateo County](#), *Global Newswire, 08-13-2019*
- [California's Community Choice Aggregators are Filling the Gaps in EV Charger Investment](#), *Greentech Media, 08-14-2019*
- [California partners with public power to expand charging infrastructure](#), *American Public Power Association, 08-15-2019*
- [California Energy Commission Proposes \\$33M For Electric Vehicle Charging In Santa Clara, San Mateo Counties](#), *The Silicon Valley Voice, 08-15-2019*
- [Addressing the climate crisis](#), *The Daily Journal, 08-21-2019*
- [Mountain View City Manager Dan Rich To Retire In December](#), *Mountain View Patch, 08-29-2019*



SVCE Regulatory and Legislative Update

September, 2019

Hilary Staver, Manager of Regulatory and Legislative Affairs

This month the big news is in Resource Adequacy! We're closing in on a full year since the Commission abruptly issued a Proposed Decision creating a full central procurement model for local RA with the IOUs as the central buyers. The backlash against that PD was so widespread that the CPUC backpedaled and opened a new track of the proceeding for further deliberation. This year has seen a series of public stakeholder workshops on the topic at the CPUC, but alongside those CalCCA has been working with a broad group of stakeholders on a settlement proposal. The ball is in the CPUC's court now following public announcement of the proposal at the end of August, but this is a huge step in the right direction.

On the legislative side, we're down to the last couple weeks. We have no urgent action items at this time, but stay tuned.

Regulatory

Integrated Resource Planning (R.16-02-007)

We spoke last month about the [Ruling](#) the CPUC released on 6/20 identifying a potential capacity shortage (and thus reliability threat) in 2021 and contemplating several prevention measures. CalCCA filed [Reply Comments](#) on the Ruling on 8/22, and we remain in agreement that the CPUC's concerns are valid and that some action will need to be taken in order to better prepare the system for the combination of coming fossil fuel plant retirements as well as changing regional weather, economic, and policy conditions (which can impact the availability of imported energy and capacity). The Commission has taken no further action since releasing the Ruling, but the Ruling indicates that their next step will be to announce a series of stakeholder workshops for further discussion this fall. Ultimately, any new procurement requirements emerging from this track of the IRP proceeding will need to be written into a Proposed Decision and voted on by the full Commission.

Internally, early work continues on SVCE's 2020 Integrated Resource Plan. The workshop scheduled for the hour before this month's SVCE Board meeting is an initial opportunity for staff to gather Board feedback and guidance on procurement approaches that will directly inform our IRP. Thank you in advance for your participation.

Resource Adequacy (RA; R.17-09-020)

This month we saw a major shift in the conversation regarding the formation of a central buyer for local RA. For several months now the CPUC has been quiet on this topic, and the next step in the formal proceeding would be for them to release a Proposed Decision determining the structure of the central buyer. However, in the meantime, CalCCA has been leading settlement talks with a number of other parties in an effort to reach a consensus proposal that could be submitted to the CPUC with a strong coalition of support behind it. CalCCA and seven other parties filed a [Motion](#) informing the CPUC of the settlement proposal on 8/30, making the settlement public knowledge for the first time. You can read CalCCA's press release [here](#).

The settlement proposal is in line with the ideas CCAs have been espousing throughout this proceeding: a flexible central buyer that gives Load Serving Entities (LSEs) an opportunity to procure their own capacity if they wish before stepping in to fill any gaps with central procurement. A structure like this



could cover all three types of RA (system, local, and flexible), and should be capable of improving the efficiency and effectiveness of the RA program without destroying the economic logic for individual LSEs to build new capacity. One major detail not included in the proposal is the identity of the central buyer. The proposal delineates this role carefully but does not identify a specific entity to fulfill it. This aspect has been controversial throughout the RA proceeding and will require further discussion at the Commission.

Now that the proposal is in front of the CPUC, typical decision-making rules apply. Stakeholders always have the option of entering settlement talks in parallel to a proceeding if they want their own forum for discussion, and a settlement proposal before the Commission represents a consensus suggestion from a significant group of stakeholders. However, as with suggestions made within a proceeding, the CPUC has final determination over the outcome. Whether the CPUC accepts the settlement proposal, modifies it, or declines it altogether, they will need to do so in a Proposed Decision. We have not yet received any reaction to the settlement proposal from the CPUC, so stay tuned. This is a very significant outcome after a great deal of hard work by CalCCA and the other parties!

Power Charge Indifference Adjustment (PCIA; R.17-06-026)

Implementation of last October's PCIA Decision through three Commission-mandated stakeholder working groups continues, but there is little major change to report this month. Working Group 1, which dealt with updates to how the Market Price Benchmark (and thus the PCIA) is calculated, has concluded and made its final recommendations to the Commission. In order for the Commission to make a decision on at least the most time-sensitive of these issues in time for implementation in the November update of the PG&E 2020 ERRA forecast proceeding (see below), they will need to release a Proposed Decision by 9/14 and vote on it at the 10/24 CPUC Voting Meeting. If this does not happen, it will likely cause delays in the 2020 ratesetting process. Working Group 2 is developing a prepayment option for the PCIA, and is awaiting scheduling of the next workshop.

Working Group 3 is looking at the longer-term issues of valuation, transfer, and allocation of IOU excess resources in all categories: Brown Power, Renewables and RA. The WG has so far proposed a framework for allocation of excess Local RA, sales of excess system/Flex RA, and GHG-free resource voluntary allocation and auction clearinghouse (VAAC). The WG will also focus on determining an appropriate mechanism for transfer of RPS attributes via excess RPS sales structures and allocations. The Working Group is scheduled to produce its next progress report on 9/26, followed by a workshop on 10/17.

Ratesetting

PG&E's 2020 ERRA Forecast proceeding ([A.19-06-001](#)), where the 2020 PCIA and PG&E generation rates will be calculated, continues to move forward. Recall that this round will have to incorporate the updates to the RPS and Resource Adequacy portions of the Market Price Benchmark (MPB) currently being developed in Working Group 1 of the PCIA proceeding. Given that incorporation of just the update to the Brown Power portion of the MPB delayed calculation of 2019 rates by half a year, we were already expecting similar delays to develop in the 2020 ratesetting process as the year progressed. This has now begun to happen. PG&E has requested and been granted a 45-day extension on a filing in the Annual Electric True-Up process (not part of the ERRA proceeding but necessary for its final implementation) that was originally due September 1st. We will be keeping tabs on this and other extensions and inform the Board as needed of changes in the final 2020 rate implementation date.



Elsewhere in ratesetting, our work in PG&E's 2018 ERRRA compliance proceeding ([A.19-02-018](#)) to address a misallocation of \$141 million between 2012 and 2018 is coming to a close favorably through a settlement. Our involvement in PG&E's 2020-2022 General Rate Case ([A.18-12-009](#)) continues, with evidentiary hearings scheduled for September and October.

Direct Access (DA; [R.19-03-009](#))

Nothing to report this month. However, later in September SVCE will receive the first batch of lottery results determining how much SVCE load will depart for direct access in 2021 as a result of SB 237. We are also waiting for the CPUC to open Phase 2 of this proceeding, which will develop a study on the statewide impacts of full direct access reopening for nonresidential customers. As per the requirements of SB 237, this report must be delivered to the legislature in June 2020.

Legislative

The legislative session ends Friday 9/13, so we're in the home stretch. As of writing, no major new threats have emerged since the legislature reconvened from summer recess on 8/12. However, this could change at any hour, so please stay tuned for real-time updates and action alerts as necessary. Thank you again to the Board for your very effective advocacy on AB 56 back in July. Stopping that bill before recess has likely been a strong contributor to a relatively quiet August for us.

SEPTEMBER 2019

OCTOBER 2019

NOVEMBER 2019

DECEMBER 2019

MILESTONES

Board of Directors, Sept 11:

Board of Directors, Oct 9:

Board of Directors, Nov 13:

Board of Directors, Dec 11:

Consent:
Minutes (Special Meeting and Regular Meeting)
August 2019 Treasurer Report
Cybersecurity contract *tentative*
Benefits Package Update
Legislative Platform Update
Notification of Proposed Amendments to Operating Rules and Regulations
Approval of Bike to the Future Scholarship
Approve Workforce Development Program
2018 Greenhouse Gas Emissions Inventory Update

Consent:
Minutes
September 2019 Treasurer Report
Approval of Amendments to Operating Rules and Regulations
Innovation Programs Update and Roadmap

Regular Calendar
Power Prepay discussion
VPP Program Update

Consent:
Minutes
October 2019 Treasurer Report

Regular Calendar
Non Standard Pricing Policy Performance
Annual Roadmap Update
Long-term Renewables PPA
SVCE 19/20 Review

Regular Calendar
Member Agency Results Communication
Approve New Commercial TOU Rates
Customer Resource Center Update

Executive Committee, TBD:
Special Presentation on Specific Decarbonization Programs
Operating Rules and Regulations Update

Executive Committee, TBD:
Special Presentation on Specific Decarbonization Programs

Executive Committee, TBD:
Special Presentation on Specific Decarbonization Programs

Executive Committee, Dec. 27: CANCELLED

Finance and Administration Committee, Sept. 3:
Power Prepay Discussion

Finance and Administration Committee, Oct. 1:
Power Prepay Discussion
Credit Rating Update

Audit Committee Meeting, Dec. 4:
Audit Kick-off



Staff Report – Item 3

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 3: Finance and Administration Committee Membership

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board do one of the following in response to the vacant seat on the Finance and Administration Committee left by former Director Bob Nuñez:

- 1) Appoint a new member to fill the vacant seat; or,
- 2) Not appoint a new member until February 2020, therefor reducing the 2019 committee to five members.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration Committee met September 3, 2019 and directed staff to agendize this item for discussion at the board level.

BACKGROUND

The Finance and Administration Committee was formed by the Board in February 2018 to provide financial and administrative oversight of SVCE. Tasks include budgeting, financial reporting, monitoring of internal controls, review financial and administrative policies and oversee investment strategies. The Finance and Administration Committee meets quarterly and as needed, and was appointed at the February 13, 2019 Board of Directors meeting to include the following members: Vice Chair Howard Miller, Director Javed Ellahie, Director Liz Gibbons, Director Bob Nuñez, Alternate Director Rob Rennie, and County Treasury Administrator Maria Oberg (six members total).

ANALYSIS & DISCUSSION

With Director Bob Nuñez no longer serving as SVCE's representative from Milpitas, there is a vacancy on the Finance and Administration Committee. There are two options to move forward:

- 1) Appoint a new member to fill the vacant seat and keep the membership total at six; or,
- 2) Not appoint a new member until February 2020, therefor reducing the 2019 committee to five members.

Eligible members to serve on the committee can be Board Directors, Alternate Board Directors, and member agency staff. This commitment would be through February 12, 2020 when 2020 committee appointments are made; the next Finance and Administration Committee meeting is scheduled for Tuesday, October 1, 2019, at noon. SVCE's 2019 Committee Matrix is attached for reference to show current committee assignments for 2019.

ALTERNATIVE

There is no alternative to the recommendation.

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FISCAL IMPACT

No fiscal impact as a result of either filling the vacant seat or waiting until February 2020 committee appointments.

ATTACHMENTS

1. 2019 SVCE Committee Matrix

2019 SVCE Committee Assignments

Director	Agency	Executive Committee	Finance & Admin Comm. Quarterly & as needed	2019 Legislative Ad Hoc Comm. Based on member availability	Audit Committee Twice yearly and as needed
Margaret Abe-Koga, Chair	Mountain View	●		●	
Howard Miller, Vice Chair	Saratoga	●	●		
Liz Gibbons	City of Campbell	●	●		
Rod Sinks	City of Cupertino	●		●	
Fred Tovar	City of Gilroy				
Jeannie Bruins	City of Los Altos				●
Courtenay Corrigan	Town of Los Altos Hills				●
Marico Sayoc	Town of Los Gatos			●	
Rob Rennie (Alternate Director)	Town of Los Gatos		●		
Carmen Montano	City of Milpitas				
Javed Ellahie	City of Monte Sereno		●	●	
Yvonne Martinez Beltran	City of Morgan Hill				
Tony Eulo (Alternate Director)	City of Morgan Hill				
Susan Ellenberg	County of Santa Clara				
Maria Öberg	County of Santa Clara (staff)		●		
Nancy Smith	City of Sunnyvale	●		●	●



Staff Report – Item 4

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 4: Adopt Fiscal Year 2019-20 Operating Budget and Resolution Amending the Positions Chart, Job Classifications, and Salary Schedule

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board approve the recommended Fiscal Year 2019-20 Operating Budget and Resolution 2019-15 amending the positions chart, job classifications, and salary schedule.

FINANCE AND ADMINISTRATION COMMITTEE RECOMMENDATION

The Finance and Administration committee, with two members absent, met September 3, 2019 and were unanimous in recommending the Board approve the recommended Fiscal Year 2019-20 Operating Budget.

BACKGROUND

The recommended Operating Budget includes updated information that results in a \$50.6 million or \$1.5 million decrease to the balance available for reserves compared to the Proposed Budget presented at the August 14, 2019 Board meeting. Updates to the budget include marking open power supply positions with the most recent market prices, increasing operating expenses based on departmental request and decreasing non-operating income to account for interest rate volatility. The table below shows the comparison between the Proposed Budget and Recommended Budget.

\$ in Thousands

	<u>Proposed Budget</u>	<u>Recommended Budget</u>	<u>Variance</u>
Energy Revenues	318,220	318,220	0
Power Supply	244,640	245,340	700
Operating Margin	<u>\$73,580</u>	<u>\$72,880</u>	<u>\$700</u>
Operating Expenses	16,670	16,950	280
Non-Operating Income/(Expense)	1,940	1,450	490
Transfers, Debt Service and Other Expenses	6,807	6,807	0
Balance Available For Reserves	<u>\$52,043</u>	<u>\$50,573</u>	<u>\$1,470</u>

ANALYSIS & DISCUSSION

Follow-Up to Questions and Comments from Board Directors

The Board provided feedback to staff at the August 14th meeting when presented with the FY 2019-20

Proposed Operating Budget including:

- The Board requested clarity on funding for strategic marketing: The Recommended Budget includes funding in various accounts to support this function including:
 - Outreach – Events, sponsorships, and Commercial & Industrial workshops
 - Awareness – Newsletter, market surveys, and advertising
 - Program Support – Commercial and Industrial price offerings, Electric Vehicle Infrastructure, Building Electrification Pilots, Data Management and Ongoing Customer Support
 - Customer Notifications
- The Board recommended staff consider the purchase of a facility – The Recommended Budget does not include additional capital investment but this option will be considered with other leasing options as a recommendation on a facility change will be presented to the Board later in the year.
- The Board inquired on funding for staffing with a focus on human relations: The Recommended Budget includes funding for enhanced human resource support including having access to an on-site human resource professional. In response, additional funding has been allocated to the professional services line item to support the creating and sustaining of a strong organizational culture. Additionally, the approved Administrative Services Manager position will also have certain HR responsibilities. Staff will evaluate the need for additional HR functions after further discussions with the Board and develop follow-up recommendations as part of a budget adjustment, if necessary.
- The Board commented that a response should be formulated regarding cash reserves above target as staff expects cash reserves to be at or slightly above target by end of the fiscal year – Staff will be approaching this topic with the Board in 2020.
- The Board inquired on operating margins by customer class – The Board approved a pricing policy in response to Direct Access. To maintain competitiveness, it is staff's recommendation to not provide this information in a public meeting.

The Recommended FY 2019-20 Operating Budget is balanced and presents SVCE in stable financial condition. The projected balance available for reserves of \$50.6 million is \$21.1 million or 71.4% increase compared to the FY 2018-19 Mid-Year Budget (see Attachment 1).

Energy revenues are projected at \$318.2 million which is \$35.6 million or 12.6% increase. The primary driver is a full year impact of the rate changes that became effective August 1, 2019.

Energy and operating expenses are projected at \$262.3 million which is \$14.4 million or 5.8% increase. The primary drivers include increases to power supply based on current market prices, professional services to fund various agency initiatives in response to the business climate and employment expenses with the addition of two (2) new positions.

Energy Revenues

The recommended operating budget shows an increase of \$35.6 million or 12.6% compared to the FY 2018-19 Mid-Year Budget.

- Energy sales projects to increase by \$35.3 million or 12.5%. The Mid-Year Budget did not include rate increases to Pacific Gas & Electric (PG&E) customer generation rates that occurred in 2019. The Power Charge Indifference Adjustment (PCIA) increased in 2019 but better than expected. SVCE adjusted rates to achieve a 4% discount to PG&E customer generation rates in August 2019 which resulted in an increase to SVCE's customer generation rates. The impacts of those rate changes are budgeted for a full fiscal year. Future rate changes are not expected until Spring 2020 with the financial impact of those rate changes reviewed through the Mid-Year Budget process.
 - The revenue budget assumes no changes to load or customer participation. Any impact to revenue from Direct Access will not be realized until 2021.

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- GreenPrime revenues are projected to increase by \$0.3 million based on the current customer participation rate of 3%.
- Other income includes wholesale activity such as the sale of excess capacity.

Operating Expenses

The recommended operating budget shows an increase of \$14.4 million or 5.8% compared to the FY 2018-19 Mid-Year Budget.

- Power supply expenses projected to increase by \$11.0 million or 4.7%. The primary drivers include:
 - Higher market prices when filling open positions for the fiscal year including energy, environmental products and resource adequacy. Partially mitigating those increases includes procuring approximately 10% of SVCE's renewable energy needs with less expensive Portfolio Content Category 2 (PCC2) with an expected savings of \$5 million per year. The Board of Directors approved the strategy at the June 2019 meeting.
 - Power supply is 91% hedged for the fiscal year.
 - The proposed budget includes 3% contingency.
- Data Management expenses projects minimal change.
- PG&E Billing Services expenses projected to increase by \$0.2 million due to current costs per meter.
- Employment expenses projected to increase by \$1.2 million. The primary drivers include:
 - The addition of 2 new positions to the Organizational Chart resulting in a total Full-Time Equivalent (FTE) count of 27 positions (see Attachment 1).
 - One additional Analyst position in the Decarbonization and Grid Innovations Programs Department to support the implementation of the Programs Roadmap.
 - One Rates Manager position in the Finance and Administration Department to support the monitoring and forecasting of rates, propose strategic action on rate issues and develop innovative rates for demand response, behind-the-meter resource adequacy and for customer-specific needs in response to Direct Access.
 - A conservative approach was used in developing the budget including funding all positions based on a full year.
 - Salary tables including the minimum and maximum pay ranges per job title was adjusted upward by 4% based on the latest Consumer Price Index (CPI) for the San Francisco Bay Area comparing the year-to-date 2019 prices to the same period in 2018 (See Attachment 2)
- Professional Services expenses projects to increase by \$1.4 million. Drivers include:
 - Increased investment in cybersecurity to protect customer data.
 - Funding the process of obtaining a credit rating.
 - Increased support for California Independent System Operator (CAISO) monitoring.
 - Increased funding of \$0.1 million to focus to attract and retain personnel by providing staff access to an on-site human resource professional, create and sustain a strong organizational culture, improved payroll system and conduct a compensation and benefits study.
 - Funding to support negotiations of upcoming long-term power purchase agreements (PPAs) and the monitoring the PPAs that were executed November 2018.
 - Support of the Integrated Resource Plan (IRP) process with eventual submittal to the California Public Utilities Commission (CPUC) in the summer of 2020.
 - Support of a pro-active approach to legislative and regulatory issues including the funding of lobbyists and representation in the PG&E general rate case.
 - Funding to continue to monitor the PG&E bankruptcy proceeding and expertise to recommend action when necessary.
 - Support for Programs initiatives through data analytics platforms.
- Marketing & Promotions expenses projects to increase by \$0.1 million to fund increased customer awareness and to explore long-term strategies for data management.
- Notifications expenses projects to remain flat.
- Building Lease expenses projects a \$0.3 million increase to fund facility improvements including a larger work area through a new lease agreement.

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- General & Administrative expenses projects to increase by \$0.3 million primarily to fund software enhancements for Programs.

Non-Operating Revenues and Expenses

The recommended operating budget shows an increase of \$0.8 million compared to the FY 2018-19 Mid-Year Budget.

- Interest income projects to increase by \$0.6 million due to larger reserves and higher expected yields.
- Grant income includes projected receipts from the Bay Area Air Quality Management District (BAAQMD) related to the Heat Pump Water Heater Program.
- Financing expenses include the funding for the renewal of the line of credit and includes letters of credit outstanding with PG&E and the California Independent System Operator (CAISO).

Capital Expenditures, Interfund Transfers and Other

The recommended operating budget shows an increase of \$0.9 million or 15.6% compared to the FY 2018-19 Mid-Year Budget.

- Capital expenses projected to increase by \$0.2 million primarily due to investment in improvements to SVCE's facility, including consideration of a new location.
- Other Cash Inflows/Outflows projected to remain flat. The CPUC issued a decision in 2018 to establish reentry fees and financial security requirements for Community Choice Aggregators (CCAs). No action was directed by the CPUC during FY 2018-19.
- Transfer to the Programs Fund projected to increase by \$0.7 million due to higher energy revenues. The transfer to the Programs Fund is formula based on 2% of annual energy revenues.

Table of Organization

The recommended table of organization includes broadbanding. More positions are presented than are funded to allow flexibility of movement of staff both vertically within a department and horizontally across the agency. The recommended budget funds twenty-seven (27) full-time equivalent positions and five (5) part-time positions. The positions chart (see Attachment 1) presents new positions in yellow.

Uncertainty

The recommended FY 2019-20 Operating Budget includes risk to projections including:

- Changes to rates are expected in the Spring of 2020 but it is unclear what the impact will be to projected revenues.
- Impact to revenues from unfavorable changes to the PCIA.
- Although the power supply budget is highly hedged, there is uncertainty in load forecast and in prices for unhedged power.
- Legislative and Regulatory issues.

STRATEGIC PLAN

The mission and goals of the strategic plan are the primary drivers in the development of the recommended budget.

ALTERNATIVE

This report is being provided to inform the Board of the activities associated with the development of the FY 2019-20 Operating Budget. Consideration of alternatives are requested by staff, and the Board of Directors in developing a final budget recommendation.

FISCAL IMPACT

The recommended FY 2019-20 Operating Budget includes total revenues of \$319.7 million and total expenses of \$262.3 million projecting a surplus of \$50.6 million.

ATTACHMENTS

1. Recommended FY 2019-20 Operating Budget and Positions Chart – Funded Positions

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Agenda Date: 9/11/2019

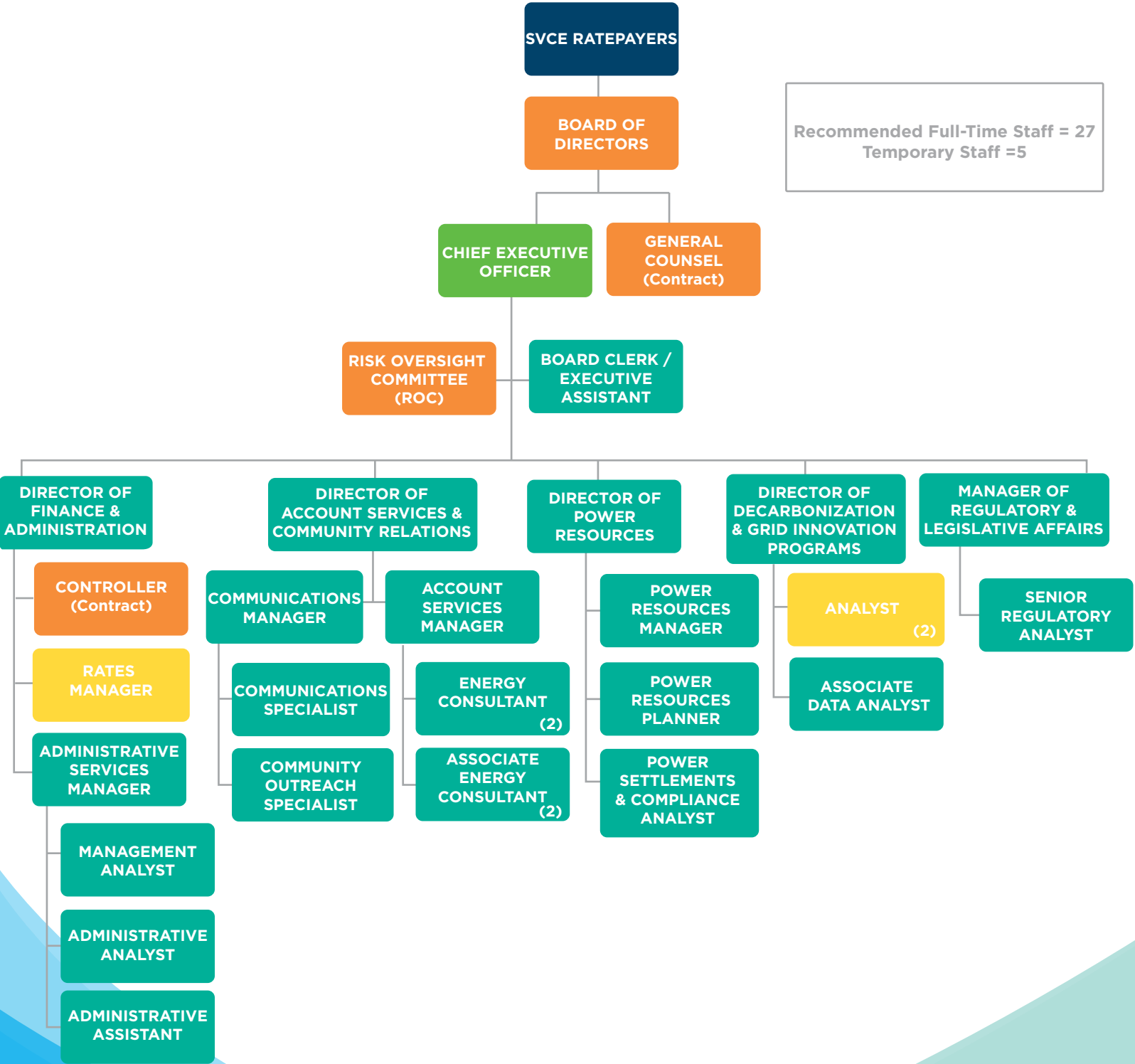
2. Resolution 2019-15 – Amendment of the Positions Chart, Job Classifications, and Salary Schedule
3. Job Descriptions for New Positions: Rates Manager, Senior Community Outreach Specialist, Senior Communications Specialist, and Senior Rates Analyst



SILICON VALLEY CLEAN ENERGY
FY 2019-20 RECOMMENDED OPERATING BUDGET
(\$ in thousands)

Line	DESCRIPTION	FY 2017-18	FY 2018-19	FY 2019-20	VARIANCE	
		ACTUALS	BUDGET AS ADOPTED MIDYEAR	RECOMMENDED BUDGET	\$	%
	ENERGY REVENUES					
1	Energy Sales	249,204	281,890	317,230	35,340	12.5%
2	Green Prime Premium	730	630	940	310	49.2%
3	Other Income	14	100	50	(50)	-50.0%
4	TOTAL ENERGY REVENUES	<u>\$249,948</u>	<u>\$282,620</u>	<u>\$318,220</u>	<u>\$35,600</u>	<u>12.6%</u>
	ENERGY EXPENSES					
5	Power Supply	189,906	234,332	245,340	11,008	4.7%
6	OPERATING MARGIN	<u>\$60,042</u>	<u>\$48,288</u>	<u>\$72,880</u>	<u>\$24,592</u>	<u>50.9%</u>
	OPERATING EXPENSES					
7	Data Management	3,431	3,560	3,530	30	-0.8%
8	PG&E Fees	1,161	1,120	1,350	230	20.5%
9	Employment Expenses	2,627	4,330	5,490	1,160	26.8%
10	Professional Services	1,143	2,290	3,710	1,420	62.0%
11	Marketing & Promotions	385	908	960	53	5.8%
12	Notifications	236	160	160	0	0.0%
13	Lease	320	330	600	270	81.8%
14	General & Administrative	615	836	1,150	314	37.5%
15	TOTAL OPERATING EXPENSES	<u>\$9,918</u>	<u>\$13,533</u>	<u>\$16,950</u>	<u>\$3,417</u>	<u>25.2%</u>
16	OPERATING INCOME (LOSS)	<u>\$50,124</u>	<u>\$34,755</u>	<u>\$55,930</u>	<u>\$21,175</u>	<u>60.9%</u>
	NON-OPERATING REVENUES					
17	Interest Income	154	850	1,470	620	72.9%
18	Grant Income	0	0	160	160	
19	TOTAL NON-OPERATING REVENUES	<u>\$154</u>	<u>\$850</u>	<u>\$1,630</u>	<u>\$780</u>	<u>91.8%</u>
	NON-OPERATING EXPENSES					
20	Financing	0	210	180	30	-14.3%
21	Interest	16	0	0	0	
22	TOTAL NON-OPERATING EXPENSES	<u>\$16</u>	<u>\$210</u>	<u>\$180</u>	<u>\$30</u>	<u>-14.3%</u>
23	TOTAL NON-OPERATING INCOME (EXPENSES)	<u>\$138</u>	<u>\$640</u>	<u>\$1,450</u>	<u>\$810</u>	<u>126.6%</u>
24	CHANGE IN NET POSITION	<u>\$50,262</u>	<u>\$35,395</u>	<u>\$57,380</u>	<u>\$21,985</u>	<u>62.1%</u>
	CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER					
25	Capital Outlay	50	200	400	200	100.0%
26	Refund of Bond (Cash Inflow)	0	100	100	0	0.0%
27	Financial Services Requirement	0	147	147	0	0.0%
28	Transfer to Programs Fund	104	5,640	6,360	720	12.8%
29	TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	<u>\$154</u>	<u>\$5,887</u>	<u>\$6,807</u>	<u>\$920</u>	<u>15.6%</u>
30	BALANCE AVAILABLE FOR RESERVES	<u>\$50,108</u>	<u>\$29,508</u>	<u>\$50,573</u>	<u>\$21,065</u>	<u>71.4%</u>

POSITIONS CHART



Highlighted squares in yellow are added positions

RESOLUTION NO. 2019-15

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE APPROVED POSITIONS CHART, JOB CLASSIFICATIONS AND SALARY SCHEDULE

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, under Section 2.5.2 of the Joint Powers Agreement creating the Authority, the Authority has the power to employ agents and employees; and

WHEREAS, the Board of Directors adopted Resolution No. 2016-06 on August 10, 2016 establishing an Organization Chart for the Authority and salary ranges for the established positions; and

WHEREAS, the Board of Directors adopted Resolution No. 2017-07 on June 14, 2017 amending the adopted Organization Chart to delete one Community Outreach Specialist and add one additional Account Services Representative; and

WHEREAS, the Board of Directors adopted Resolution No. 2017-10 on December 13, 2017 amending the adopted Organization Chart to add the position of Manager of Regulatory & Legislative Affairs, remove the position of Regulatory/Legislative Analyst, and modify the salary ranges for all positions; and

WHEREAS, the Board of Directors adopted Resolution No. 2018-06 on April 11, 2018 amending the adopted Organization Chart to add the positions and salary ranges of Associate Legislative Analyst, Director of Decarbonization and Grid Innovation Programs, and Senior Regulatory Analyst; to modify the position titles of the Director of Administration and Finance, Director of Marketing and Public Affairs, Manager of Regulatory and Legislative Affairs, one Power Resource Planning and Programs Analyst, and one Administrative Analyst; and to eliminate the positions of Finance Manager, General Counsel and Director of Government Affairs, and one Power Resource Planning and Programs Analyst; and to modify the salary ranges for all positions; and

WHEREAS, the Board of Directors adopted Resolution No. 2018-10 on September 12, 2018 amending the adopted Organization Chart to add the positions and salary ranges of Administrative Services Manager, Analyst, Associate Analyst, Associate Data Analyst, Communications Specialist, Data Analyst, Energy Associate, Energy Consultant, Management Analyst, Manager of Decarbonization and Grid Innovation Programs, Power Resources Planner, Senior Analyst, Senior Data Analyst, and Senior Energy Consultant; to modify the position titles of the Community Outreach Manager, Director of Customer Care, Manager of Regulatory and Legislative Effectiveness, and Power Contracts and Compliance Manager; and to eliminate the positions of Account Representative I/II, one Community Outreach Specialist, and IT Specialist; and to modify the salary ranges for all positions;

WHEREAS, the Board of Directors adopted Resolution No. 2019-04 on March 13, 2019 renaming the Organization Chart as the Positions Chart and amending the adopted Positions Chart to modify the position title of the Energy Associate; and to modify the salary ranges for the positions of Senior Analyst and Senior Energy Consultant.

WHEREAS, to meet the needs of the Authority and to better represent the work being performed, the Chief Executive Officer has recommended that the Board amend the existing schedule of job classification titles and salary ranges.

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

Section 1. The Authority's schedule of job classification titles and salary ranges is amended to add the positions of Rates Manager, Senior Rates Analyst, Senior Communications Specialist, and Senior Community Outreach Specialist, and to modify the salary ranges for all positions, as shown below. The following schedule of job classification titles and salary ranges shall replace and supersede the schedule shown in Resolution 2019-04:

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Account Services Manager	111,648	175,447
Administrative Services Manager	120,952	190,067
Administrative Analyst	83,737	143,428
Administrative Assistant	55,824	88,601
Analyst	83,737	131,585
Associate Analyst	69,780	109,654
Associate Data Analyst	82,684	122,559
Associate Energy Consultant	69,780	109,654
Associate Legislative Analyst	72,106	113,310
Board Clerk / Executive Assistant	102,344	165,651
Communications Manager	111,648	175,447
Communications Specialist	60,476	98,835
Community Outreach Specialist	60,476	98,835
Data Analyst	96,641	144,489
Director of Account Services and Community Relations	148,865	233,929
Director of Decarbonization and Grid Innovation Programs	132,056	203,831
Director of Finance & Administration	148,865	259,662
Director of Power Resources	176,776	277,791
Energy Consultant	83,737	131,585

Title	Minimum Salary (Annual \$)	Maximum Salary (Annual \$)
Management Analyst	102,344	160,827
Manager of Decarbonization and Grid Innovation Programs	120,952	190,067
Manager of Regulatory & Legislative Affairs	124,552	188,351
Power Resources Manager	139,561	219,309
Power Resources Planner	120,952	190,067
Power Settlements & Compliance Analyst	102,344	160,827
Rates Manager	120,952	190,067
Senior Analyst	97,692	145,542
Senior Communications Specialist	72,956	110,835
Senior Community Outreach Specialist	72,956	110,835
Senior Data Analyst	110,597	158,446
Senior Energy Consultant	97,692	145,542
Senior Rates Analyst	110,172	165,996
Senior Regulatory Analyst	97,692	153,516

Section 2. The organization of positions shall be as shown in Attachment 1: SVCE Approved Positions Chart. This new Approved Positions Chart shall replace and supersede the Approved Positions Chart adopted by Resolution 2019-04.

Section 3. The Chief Executive Officer shall create and maintain as needed job descriptions for each classification.

Section 4. The Chief Executive Officer is authorized to initiate recruitments and hire for all new positions.

ADOPTED AND APPROVED this 11th day of September, 2019 by the following vote:

JURISDICTION	NAME	AYE	NO	ABSTAIN	ABSENT
City of Campbell	Director Gibbons				
City of Cupertino	Director Sinks				
City of Gilroy	Director Tovar				
City of Los Altos	Director Bruins				
Town of Los Altos Hills	Director Corrigan				
Town of Los Gatos	Director Sayoc				
City of Milpitas	Director Montano				
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 Ellenberg				
City of Saratoga	Director Miller				
City of Sunnyvale	Director Smith				

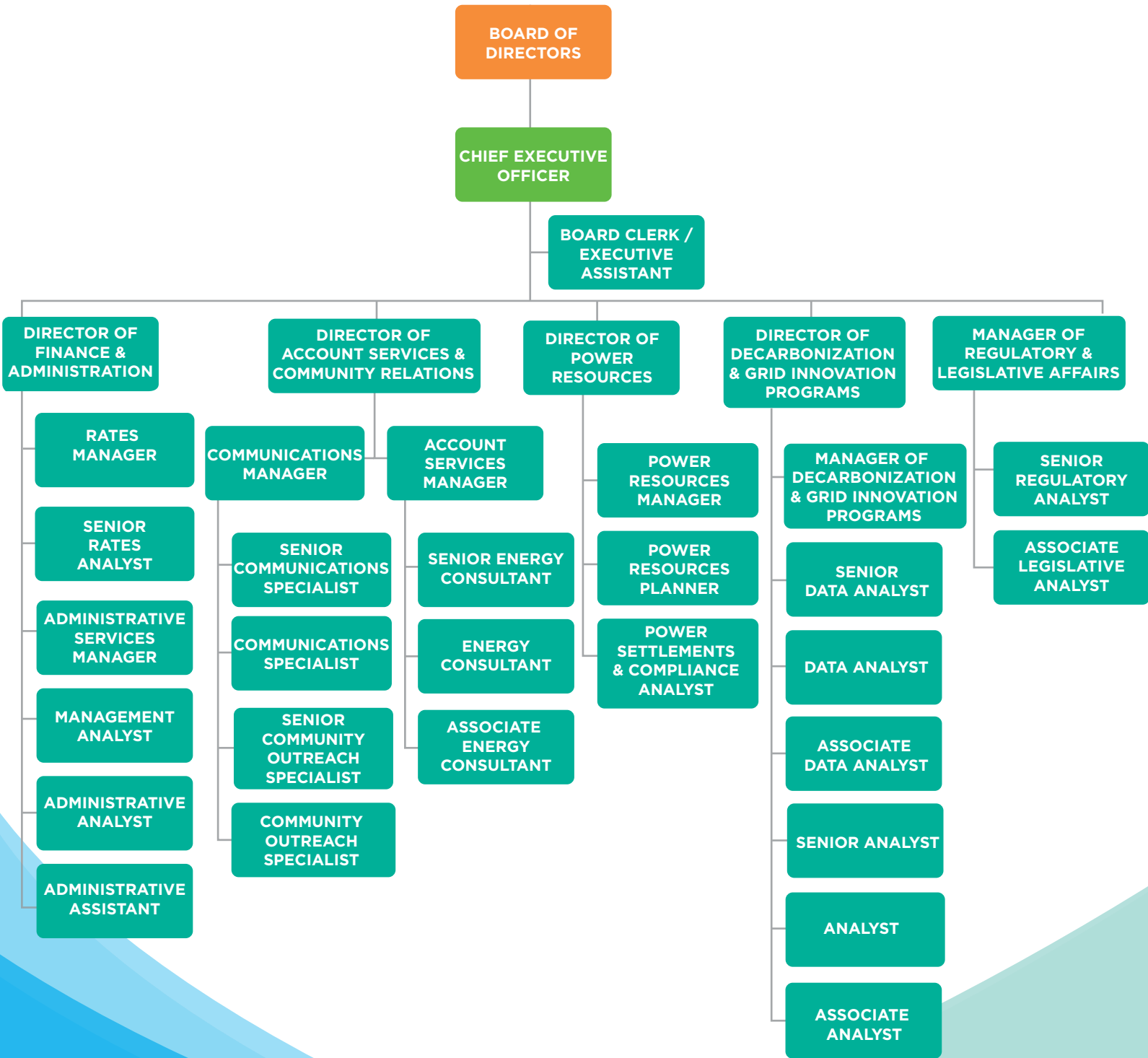
Chair

ATTEST:

Clerk

Attachment 1: SVCE Approved Positions Chart

POSITIONS CHART





RATES MANAGER

SALARY RANGE: \$120,952 - \$190,067

SUMMARY DESCRIPTION

The Rates Manager works under the direction of the Director of Finance and Administration and will be primarily responsible for designing electric rates for all customer classes, presenting and defending rate proposals before the Board of Directors, and ensuring rates are implemented once approved.

The Manager leads the development of financial and economic related analysis, including impact analysis of pending utility, regulatory, and/or legislative policies, technical analysis on rate-setting and structure, and will make informed, data-driven and strategic recommendations to the management team on the initiatives that have financial impacts to the organization.

The position requires knowledge of energy program design and ratemaking, strong technical analytical skills, deep understanding of energy products, familiarity with billing and rate structures associated with Net Energy Metering, Time-of-Use, AMI data driven cost analysis, an understanding of utility rules, familiarity with California Public Utilities Commission documents and procedures, strong written and oral communication skills, and experience working with a public not-for-profit energy provider in the utility industry.

SUPERVISION RECEIVED AND EXERCISED

The Rates Manager reports to the Director of Finance and Administration and the position does not include supervisory and/or team leader responsibilities.

ESSENTIAL FUNCTIONS

- Lead policy development of rate design for SVCE's 267,000 customer accounts
- Develop and update special rates (Commercial Pricing, TOU, PDP, etc.)
- Analyze the effects of modifying various residential and commercial rate designs
- Lead the Time-of-Use (TOU) rate reform process within SVCE; participate in regulatory meetings, collaborative processes, development of SVCE's position, analysis of customer and fiscal impacts, and provide actionable summary information to SVCE teams
- Lead and support SVCE's NEM program; provide summaries and fiscal forecasts;

recommend tailored rate structure and/or rate level adjustments; lead the execution of the annual NEM cash-outs; coordinate efforts with accounting and account services teams

- Provide technical expertise and recommendations on key SVCE program initiatives related to rate design, PG&E billing operations, and PG&E billing rules
- Provide analysis for and participate in meetings with key customers, handling complex inquiries related to rates and tariffs
- Create and maintain modeling to support rate design scenarios, customer impact analysis, and programmatic initiatives
- Create and maintain financial models to evaluate recourse and non-recourse financing structures, project financings, and generation project ownership cost/benefit analysis
- Coordinate and interface with internal and external SVCE system operating models to ensure consistency and accuracy of budgeting and strategic planning initiatives across the organization
- As assigned, participate in regulatory proceedings on behalf of SVCE and evaluate proposed regulatory policies at the California Public Utilities Commission (CPUC) and other state agencies to assess the impact to SVCE; develop technical analysis, written reports, and presentation materials to support SVCE's positions
- As assigned, review and draft comments, proposals, and testimony as needed; provide technical and/or analytic input on regulatory matters; provide input into regulatory and legislative policy at the state and local levels
- As assigned, represent SVCE before the CPUC and other regulatory agencies in ratemaking or rulemaking proceedings, including as a witness and/or key technical advisor
- Write and present staff reports and presentations for Board and Committee meetings
- Perform related duties and responsibilities as required

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of:

- Public agency processes both for internal and external engagement purposes
- Subject matter expertise in wholesale electricity markets, retail electricity markets, retail rate design, energy resources and procurement.
- Principles, methods and practices of municipal finance and budgeting, including long-range financial forecasting.
- Statistical and analytical methods, techniques and procedures.
- Computer applications, including advanced proficiency with spreadsheet, database, word processing and presentation software.
- Utility billing structures, bill presentment, and program operations.
- Community Choice Aggregation (CCA) programs and the services SVCE offers.
- The interaction between CCAs and investor-owned utilities.
- Diverse communities and customer types in the SVCE service area.

Ability to:

- Develop complex rate structures with multiple rate classes, tiers and billing components.
- Develop data models related to rate structures, rate design scenarios, and fiscal impact modeling
- Take initiative in identifying opportunities to improve existing policies and create new ones
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment.
- Take responsibility and work independently, as well as coordinate or participate in team efforts.
- Establish and maintain effective working relationships with supervisors, co-workers, customers, local community groups and organizations and SVCE Board members.
- Exercise sound judgment in applying appropriate policies and procedures.
- Demonstrate creative problem solving and commercial awareness.
- Communicate effectively both verbally (by phone and in-person) and in written form.
- Represent SVCE in an effective, strategic, and beneficial way to internal and external stakeholders
- Be self-motivated with a strong drive to resolve issues quickly and effectively.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact and courtesy.

REQUIRED QUALIFICATIONS

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

EDUCATION: Preferred accounting designation (CPA), Masters in Finance, MBA or relevant quantitative field; or Bachelor's Degree in Finance and Accounting and seven years experience; or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the position.

EXPERIENCE: A minimum of seven (7) years performing utility rate design and analysis required at an electric utility, public agency/municipality or in a closely related field.

LICENSE: Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

ENVIRONMENT: Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

PHYSICAL: While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

VISION: See in the normal visual range with or without correction; vision sufficient to read computer screens and printed documents; and, operate assigned equipment.

HEARING: Hear in the normal audio range with or without correction.

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----



SENIOR COMMUNITY OUTREACH SPECIALIST

SALARY RANGE: \$72,956 - \$110,835

SUMMARY DESCRIPTION

The Senior Community Outreach Specialist works under the direction of the Communications Manager on a wide range of marketing and communications activities that support the ongoing development and execution of the Silicon Valley Clean Energy (SVCE) communications plan. The Senior Community Outreach Specialist will interface with a wide range of community, stakeholder, and customer groups to advance SVCE programs and goals.

The Senior Community Outreach Specialist will work closely with multiple departments to assess the ongoing stakeholder engagement needs that will advance the agency's goals and increase public awareness of the agency and our mission.

The Senior Community Outreach Specialist is responsible for cultivating and developing relationships with key stakeholder groups, and for communicating SVCE's central messages consistently to target audiences via professional networking, printed literature, web-based material, electronic correspondence, public presentations and verbal interactions. The Senior Community Outreach Specialist also participates in community events, conducts outreach to local government representatives, and responds to inquiries from potential customers via email, telephone and in-person dialogue.

The Senior Community Outreach Specialist position is differentiated from the Community Outreach Specialist position based upon the degree of responsibility for handling more complex tasks, depth of industry and energy or sustainability-related expertise, customer service experience, program management and supervisory experience.

SUPERVISION RECEIVED AND EXERCISED

This position reports directly to the Communications Manager. The role will require some management of fellows, interns, consultants and contractors.

ESSENTIAL FUNCTIONS

- Plans, organizes and implements community outreach efforts to enhance marketing of SVCE services to customers and all stakeholders.
- Initiates and develops collaborative relationships with community members, local business owners, municipal staff, public officials, and other key stakeholders.
- Cultivates partnerships and mobilizes public support to expand public awareness of and increase enrollments in SVCE programs via attending or sponsoring public events, advertising, e-mailing, and cold calling.
- Emphasizes product and service features and benefits.
- Delivers presentations to various community groups and local representatives.
- Participates in events to distribute information about SVCE and interact with members

of the public.

- Acts as a liaison to local groups, civic institutions, and community-based organizations and continuously builds new community relationships.
- Manages SVCE's annual sponsorship budget allocations and other community funding opportunities.
- Coordinates events and finds new opportunities to leverage partnerships with community and industry stakeholders to advance SVCE's mission and programs.

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of:

- SVCE electric service options and customer programs.
- The SVCE service territory.
- The mission and goals of SVCE.
- Environmental policy, public administration, and energy regulation.
- Microsoft Office Suite including Excel, Word and PowerPoint.
- Adobe Illustrator, Adobe InDesign, Adobe Photoshop, and Adobe Acrobat as well as web development tools such as WordPress and/or HTML.
- Diverse communities and cultures.

Ability to:

- Take responsibility and work independently, as well as participate in team efforts.
- Utilize strong interpersonal and phone etiquette skills, verbal communications, grammatical and professional business skill sets to promote and explain SVCE programs.
- Establish and maintain effective working relationships with persons encountered in the performance of duties.
- Enhance own development by taking responsibility for staying informed and up to date with industry knowledge.
- Exercise sound judgment in applying appropriate policies and procedures.
- Demonstrate creative problem solving and commercial awareness.
- Communicate effectively both verbally (by phone and in-person) and in written form.
- Manage projects and time efficiently.
- Effectively track customer interactions using customer relations management or similar system.
- Represent SVCE and promote its services with confidence and enthusiasm.
- Coordinate work with community groups.
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment.
- Develop or contribute to high-quality writing, research and communication work products.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact, and courtesy at all times.
- Read, write and speak Spanish or Mandarin is desirable

Willingness to:

- Work occasional overtime or on weekends and evenings

REQUIRED QUALIFICATIONS

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

EDUCATION. A Bachelor's Degree from an accredited university or college in communications, public relations, environmental science/studies, political science, public policy or a related field.

EXPERIENCE. Four (4) years of progressively responsible experience in marketing, communications, public relations or community outreach at a public agency, private marketing firm, electric utility, regulatory agency, or legislative office with emphasis on environmental issues and sustainability.

LICENSE. Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

ENVIRONMENT. Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

PHYSICAL. While performing the duties of this class, employees are regularly required to sit, walk, and stand; talk or hear, in person and by telephone; reach with hands and arms. Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

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HEARING. Hear in the normal audio range with or without correction.

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----



SENIOR COMMUNICATIONS SPECIALIST

SALARY RANGE: \$72,956 - \$110,835

SUMMARY DESCRIPTION

The Senior Communications Specialist will work under the direction of the Communications Manager on a wide range of marketing and communications activities that support the ongoing development and execution of the Silicon Valley Clean Energy (SVCE) communications plan. The position is focused on strategic messaging and content development to tell stories that will help all stakeholders understand and embrace the values that SVCE brings to our community.

The Senior Communications Specialist will work closely with multiple departments and stakeholders to assess the ongoing marketing and communications needs that will advance the agency's goals and increase public awareness of the agency and our mission.

The Senior Communications Specialist will also lead campaign development for general awareness and SVCE programs, to both educate and drive interest in SVCE offerings. A Senior Communications Specialist will self-identify and/or be assigned with tasks related to the development, implementation, and/or maintenance of various SVCE customer programs and public relations campaigns.

The Senior Communications Specialist position is differentiated from the Communications Specialist position based upon the degree of responsibility for handling more complex tasks, depth of industry and energy or sustainability-related expertise, customer service experience, program management and supervisory experience.

SUPERVISION RECEIVED AND EXERCISED

This position reports directly to the Communications Manager. The role will require some management of fellows, interns, consultants and contractors.

ESSENTIAL FUNCTIONS

- Creates original content that engages all customer segments about SVCE
- Grows our online audience and subscribers with email newsletters
- Contributes to a robust and strategic social media plan
- Develops messaging targeted to customer personas
- Conducts or manages market research such as customer surveys and focus groups
- Develop and execute advertising campaigns
- Assists with developing resources for customers such as online and printed guides, videos and other materials
- Writes and leads award entries
- Assists with developing marketing materials and communications strategies for programs
- Writes press releases and supports media relations functions

- Updates website as needed

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of:

- The mission and goals of SVCE
- Marketing campaign development, execution and measurement
- Use of Google Analytics and other measurement tools to evaluate campaign effectiveness and reach
- Microsoft Office Suite including Excel, Word, and PowerPoint
- E-mail marketing tools such as MailChimp and social media platforms
- Adobe Illustrator, Adobe InDesign, Adobe Photoshop, and Adobe Acrobat as well as web development tools such as WordPress and/or HTML

Ability to:

- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced dynamic environment
- Take responsibility and work independently, as well as coordinate team efforts within SVCE and the greater CCA community
- Utilize strong interpersonal and phone etiquette skills, verbal communications, grammatical and professional business skill sets to promote and explain SVCE programs
- Establish and maintain effective working relationships with persons encountered in the performance of duties
- Superior writing skills, especially related to marketing materials (e.g. newsletters, social media, collateral, press releases)
- Enhance own development by taking responsibility for staying informed and up to date with industry knowledge
- Demonstrate creative problem solving and commercial awareness
- Orally communicate complex topics in easy-to-understand presentations before the Board, staff, stakeholders and other audiences
- Exercise sound judgment in applying appropriate policies and procedures
- Manage projects and time efficiently
- Be thorough and detail-oriented
- Work accurately and swiftly under pressure
- Demonstrate patience, tact, and courtesy at all times
- Read, write and speak Spanish or Mandarin is desirable

Willingness to:

- Work occasional overtime or on weekends and evenings

REQUIRED QUALIFICATIONS

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

EDUCATION. A Bachelor's Degree from an accredited university or college in communications, public relations, environmental science/studies, political science, public policy or a related field.

EXPERIENCE. Four (4) years of progressively responsible experience in marketing, communications, public relations or community outreach at a public agency, private marketing firm, electric utility, regulatory agency, or legislative office with emphasis on environmental issues and sustainability.

LICENSE. Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

ENVIRONMENT. Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

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-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----



SENIOR RATES ANALYST

SALARY RANGE: \$110,172 - \$165,996

SUMMARY DESCRIPTION

The Senior Rates Analyst works under the direction of the Director of Finance and Administration and will be primarily responsible for supporting the electric rate design process for all customer classes and providing technical expertise to both internal and external stakeholders.

The Analyst supports the development of financial and economic related analysis, including impact analysis of pending utility, regulatory, and/or legislative policies, technical analysis on rate-setting and structure, and will make informed, data-driven and strategic recommendations to the management team on the initiatives that have financial impacts to the organization.

The position requires knowledge of utility ratemaking, strong technical analytical skills, familiarity with billing and rate structures associated with Net Energy Metering, Time-of-Use, AMI data driven cost analysis, an understanding of utility rules, familiarity with California Public Utilities Commission documents and procedures, strong written and oral communication skills, and experience working with a public not-for-profit energy provider in the utility industry.

SUPERVISION RECEIVED AND EXERCISED

The Senior Rates Analyst reports to the Director of Finance and Administration and the position does not include supervisory and/or team leader responsibilities.

ESSENTIAL FUNCTIONS

- Support policy development of rate design for SVCE's 267,000 customer accounts
- Assist in the development of special rates (Commercial Pricing, TOU, PDP, etc.)
- Analyze the effects of modifying various residential and commercial rate designs
- Support the Time-of-Use (TOU) rate reform process within SVCE
- Support the execution of the annual NEM cash-outs; coordinate efforts with accounting and account services teams
- Provide technical expertise and recommendations on key SVCE program initiatives related to rate design, PG&E billing operations, and PG&E billing rules

- Provide analysis for and participate in meetings with key customers, handling complex inquiries related to rates and tariffs
- Create and maintain modeling to support rate design scenarios, customer impact analysis, and programmatic initiatives
- Create and maintain financial models to evaluate recourse and non-recourse financing structures, project financings, and generation project ownership cost/benefit analysis
- Coordinate and interface with internal and external SVCE system operating models to ensure consistency and accuracy of budgeting and strategic planning initiatives across the organization
- Write and present staff reports and presentations for Board and Committee meetings
- Perform related duties and responsibilities as required

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of:

- Public agency processes both for internal and external engagement purposes.
- Subject matter expertise in wholesale electricity markets, retail electricity markets, retail rate design, energy resources and procurement.
- Principles, methods and practices of municipal finance and budgeting, including long-range financial forecasting.
- Statistical and analytical methods, techniques and procedures.
- Computer applications, including advanced proficiency with spreadsheet, database, word processing and presentation software.
- Utility billing structures, bill presentment, and program operations.
- Community Choice Aggregation (CCA) programs and the services SVCE offers.
- The interaction between CCAs and investor-owned utilities.
- Diverse communities and customer types in the SVCE service area.

Ability to:

- Develop data models related to rate structures, rate design scenarios, and fiscal impact modeling
- Take initiative in identifying opportunities to improve existing policies and create new ones
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment.
- Take responsibility and work independently, as well as coordinate or participate in team efforts.
- Establish and maintain effective working relationships with supervisors, co-workers, customers, local community groups and organizations and SVCE Board

members.

- Exercise sound judgment in applying appropriate policies and procedures.
- Demonstrate creative problem solving and commercial awareness.
- Communicate effectively both verbally (by phone and in-person) and in written form.
- Represent SVCE in an effective, strategic, and beneficial way to internal and external stakeholders
- Be self-motivated with a strong drive to resolve issues quickly and effectively.
- Work accurately and swiftly under pressure.
- Demonstrate patience, tact and courtesy.

REQUIRED QUALIFICATIONS

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

EDUCATION: A Bachelor's Degree from an accredited university or college in business, accounting, finance, economics or a related field or equivalent work experience.

EXPERIENCE: A minimum of three (3) years performing utility rate design and analysis required at an electric utility, public agency/municipality or in a closely related field.

LICENSE: Possession of a valid Class C California driver's license and a satisfactory driving record at the time of hire.

PHYSICAL AND WORKING CONDITIONS

The physical and mental demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

ENVIRONMENT: Work is performed in a typical office setting with exposure to computer screens and at public events (fairs, meeting rooms, farmers' markets, etc.) with moderate noise and will require some evening and weekend work. The noise level in the work environment is usually typical of an office environment and public events.

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Employees are occasionally required to walk, and stand for prolonged periods; stoop, bend, kneel and twist; and may lift up to 20 pounds. Employees must be able to communicate in person, in writing, and by telephone with Board members, management, co-workers, vendors, consultants, and with the public in face-to-face, one-on-one, and group settings.

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HEARING: Hear in the normal audio range with or without correction.

-----SVCE IS AN EQUAL OPPORTUNITY EMPLOYER-----



Staff Report – Item 5

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 5: Approve the Electric Vehicle Infrastructure Joint Action Plan

Date: 9/11/2019

RECOMMENDATION

Staff recommends the Board approve the Electric Vehicle Infrastructure Joint Action Plan. The Plan defines six new EV infrastructure programs, addressing specific transportation electrification needs and opportunities in our local communities. Approval will direct Staff to move forward with detailed development and launch of these programs over the coming two years.

EXECUTIVE COMMITTEE RECOMMENDATION

The Executive committee met August 23, 2019 and supported the Electric Vehicle Infrastructure Joint Action Plan.

BACKGROUND

The first mobility initiative identified in the SVCE Decarbonization Strategy & Programs Roadmap (Decarb Roadmap) is the creation of an electric vehicle (EV) charging infrastructure strategy and plan. The attached Electric Vehicle Infrastructure Joint Action Plan (EVI Plan) is the result of that initiative, and outlines six programs that will allow Staff to rapidly complete the final design work for each program based on market conditions and supplemental input from stakeholders

Staff engaged with a consultant, E-Mobility Group (EMG), to assist in the development of the EVI Plan. Extensive community input was gathered from a survey sent to randomly selected members of the public and two half-day stakeholder workshops with attendance by member agencies, EV service providers, community organizations and local employers. This input was used to shape the program designs and select the use cases and enabling practices for SVCE to prioritize.

ANALYSIS & DISCUSSION

Prioritization

Due to the importance of transportation electrification, as emissions from transportation comprise the largest source of greenhouse gases (GHGs) within the SVCE service area, the programs in the EVI Plan were designed to help sustain and accelerate local EV adoption rates through EVI deployment support. To achieve SVCE's GHG goals set in the Decarb Roadmap, EV adoption rates must increase across all vehicle and customer types.

With input from the community, Staff identified the EV charging use cases that needed the most support due to significant unresolved barriers to adoption and opportunities for impact. These use cases were residential charging at multi-unit developments (MUDs), workplace charging at small/medium businesses, fleet charging, and public fast charging on transit corridors and at retail/destinations. Targeting these use cases will unlock EV adoption in segments of the market that have been limited to date, which is essential to enacting large-scale transportation electrification.

Based on SVCE's ongoing and planned efforts that will support EVI deployment, along with community input, Staff determined that the key enabling practices to utilize in the EVI Plan were regional coordination, funding support and incentives, and education and outreach. This selection avoids any duplicative effort with ongoing initiatives and aligns the programs well with the upcoming California Electric Vehicle Infrastructure Project.

New EVI Programs

The EVI Plan describes six new EVI program designs – two focused on building a supportive ecosystem and four focused on directly deploying infrastructure.

A. Silicon Valley Transportation Electrification Clearinghouse (SVTEC)

- Regional group of key stakeholders focused on information sharing and attracting external funding to the SVCE community

B. Regional EV Leadership Recognition

- Recurring recognition for best practices in EV infrastructure deployment

C. Priority Zone DC Fast Charging

- Competitive solicitation to fund DC Fast Charging in SVCE-designated "priority zones" to primarily support nearby MUDs

D. Multi-Unit Residential Charging Technical Assistance

- Technical assistance and rebates for shared Level 2 charging onsite at MUDs

E. Workplace Charging Rebates

- Level 2 charging rebates for small/medium businesses

F. Fleet Electrification Grants

- Competitive solicitation for fleet electrification planning support and funding for site upgrades

An important consideration in the design of these programs was how they will integrate with the California Electric Vehicle Infrastructure Project (CALeVIP) and access the \$12 million pool of funding. Final CALeVIP requirements for EVI eligibility, incentive levels, site locations and other program components are currently being workshopped, but Staff aligned SVCE's new EVI programs with expected outcomes. SVCE's programs should be able to run in parallel to CALeVIP, by providing the targeted technical assistance and support but referring applicants to CALeVIP for the incentive payments.

STRATEGIC PLAN

The programs in the EVI Plan support SVCE's Strategic Plan, Goal 5, which is to work with the community to achieve energy and transportation GHG emissions reductions of 30% emissions reduction from the 2015 baseline by 2021, 40% by 2025 and 50% by 2030. Specifically, Strategy 5.1.5 directs Staff to execute and maintain SVCE's Decarb Roadmap – the creation of this directional EVI Plan was identified in the Decarb Roadmap as the first step in launching several mobility-focused programs.

ALTERNATIVE

Staff is open to suggestions from the Board.

FISCAL IMPACT

Approval of the EVI Plan will have no additional fiscal impact, as the programs will be funded through the \$8 million that the Board approved in February to spend on EVI programs over the FY2020-FY2023 period. A total of \$6 million will be allocated towards CALeVIP to unlock the \$6 million contribution by the California Energy Commission – leading to a total of \$12 million in total funding for SVCE territory in CALeVIP.

SVCE will run the programs described in the EVI Plan with the remainder of the Board-approved funds, while referring applicants to CALeVIP for nearly all of the incentive components. Final allocation by program will depend on each program's final design decisions and the final CALeVIP requirements determined through the public workshopping process that will continue into 2020.

ATTACHMENTS

1. Electric Vehicle Infrastructure Joint Action Plan

ELECTRIC VEHICLE INFRASTRUCTURE JOINT ACTION PLAN

September 2019



SILICON VALLEY
CLEAN ENERGY

The Future is Electric

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ACKNOWLEDGMENT

The EV Infrastructure Joint Action Plan was created by Silicon Valley Clean Energy with substantial support from E-Mobility Group. It is the result of significant research and input from many local organizations and agencies – a special thanks to those who provided their time and expertise.

ELECTRIC VEHICLE INFRASTRUCTURE GLOSSARY

Charger Levels¹

Level 1 (L1): (110 volts AC) Typically used for residential overnight charging or long-dwell charging at workplaces, L1 charging provides ~4.5 miles of additional range per hour of charging.

Level 2 (L2): (208-240 volts AC) Commonly found in workplace, public, and some home charging applications, L2 charging provides ~26 miles of additional range per hour at a 6.6kW charge rate. Level 2 charging is becoming quicker over time, with 20 kW charge rates possible on some vehicles and chargers (potentially providing over 50 miles of range per hour).

Level 3 or Direct Current Fast Charging (DCFC): High-powered DC Fast Charging (ranging from 24kW – 350 kW) is typically found in public commercial charging plazas and fleet charging applications. DCFC provides ~40 miles of range in ten minutes at a 50kW charge rate. DCFC is also becoming much quicker over time, with 150kW – 350kW chargers now being deployed. Fast Chargers typically require high-cost electric infrastructure upgrades.

Technical Note on EVSE Deployment Measures: Charging Stations vs. Charging Ports

Commercial EV Charging Stations – also known as Electric Vehicle Service Equipment (EVSE) – can be counted in two ways: 1) based on the number of charging stations – typically defined as a single charging pedestal with one or two charging ports, or 2) based on the number of charging ports (also known as “plugs,” “points,” or “connectors”). For Level 2 stations, a dual port station can typically be used concurrently by two vehicles.

For DC Fast Chargers, in cases where two ports are provided in the two primary connector formats (CCS and CHAdeMO), most often only one vehicle can charge at a time. Most public data sources do not distinguish between charging stations (typically referred to as EVSE) and charging ports. Where such data is available, it is reported here in terms of ports. Where port-level data is not available, and data sources report only the number of Level 2 EV charging stations (or EVSE), it can be assumed that an unknown but significant percentage of these Level 2 stations (likely more than 20%) include at least two ports each.

LIST OF KEY TERMS

BEV	Battery Electric Vehicle	MUD	Multi-Unit Development
CARB	California Air Resources Board	PHEV	Plug-In Hybrid Electric Vehicle
DCFC	Direct Current Fast Charger	SVCE	Silicon Valley Clean Energy
CALeVIP	California Electric Vehicle Infrastructure Project	SVTEC	Silicon Valley Transportation Electrification Clearinghouse
EV	Electric Vehicle	TNC	Transportation Network Company
EVI	Electric Vehicle Infrastructure	VPP	Virtual Power Plant
EVSE	Electric Vehicle Service Equipment	MTCO2e	Metric Ton of Carbon Dioxide Equipment
GHG	Greenhouse Gas		
kWh	Kilowatt Hour		

¹ Saxton, January 2011, Plug In America. *Understanding Electric Vehicle Charging*, <https://pluginamerica.org/understanding-electric-vehicle-charging/>

1 EV INFRASTRUCTURE JOINT ACTION PLAN OVERVIEW

Silicon Valley Clean Energy (SVCE) serves thirteen communities in Santa Clara County, providing carbon-free electricity and local programs for ongoing carbon emissions reduction. The Electric Vehicle Infrastructure Joint Action Plan assesses and prioritizes future electric vehicle (EV) charging needs across local communities. It then outlines new SVCE programs focused on deployment of charging infrastructure, also known as electric vehicle infrastructure (EVI), needed to sustain and accelerate rapid adoption of electric vehicles.



Purpose and Format of the EV Infrastructure Joint Action Plan

Emissions from transportation comprise the largest source of greenhouse gases (GHGs) within the SVCE service area. Accordingly, transportation electrification represents the region’s single largest decarbonization opportunity. New sales rates for electric vehicles are higher in Silicon Valley than anywhere else in the United States, and continue to grow rapidly. Nonetheless, EVs still represent less than 5% of all vehicles on local roads. Far greater rates of overall adoption will be required to achieve longer-term local and state climate action goals.

EV adoption is driven by a wide range of factors – including model diversity, all-electric range, performance, styling, pricing, incentives, and general economic conditions. Another critical factor is access to convenient and ubiquitous EV charging.² To date, access to charging has been particularly challenging for many low-income households, residents of multi-unit developments, small businesses, and fleet operators of all kinds. Planned SVCE investments in EVI will be focused on high-priority market segments such as these – where improving access to EV charging will help drive greater EV adoption rates.

To accelerate the electrification of transportation, in 2019 the SVCE Board of Directors authorized approximately \$8 million in SVCE EV infrastructure incentives and investments over the FY 2020 – FY 2023 period. SVCE expects these resources will leverage substantial additional public and private funding for EVs and EV charging over the coming four years.

To guide these new investments, SVCE has developed this Electric Vehicle Infrastructure Joint Action Plan as a high-level articulation of program strategy. SVCE also developed six specific EV infrastructure Program Implementation Plans with extensive stakeholder engagement, which will guide development of future solicitations and final program designs to be developed and launched in FY 2019-20 and beyond. The Joint Action Plan includes a summary of each Program Implementation Plan that highlights the key components of the rationale, design, strategy, and estimated costs and outcomes.

Coupled with EV infrastructure reach codes, development of online educational resources and other SVCE activities currently in process, these six new EVI programs will enable SVCE communities to reduce emissions via: 1) investment in charging infrastructure and 2) enhanced community awareness and engagement in EV ecosystem development.

The SVCE EV Infrastructure Action Plan describes strategies to achieve transportation emission reductions based on today’s technologies and mobility patterns. Future updates to EV infrastructure programs will be made as SVCE’s decarbonization goals evolve, and as new mobility trends emerge. New trends include what are known as the “three revolutions” of electrification, autonomy and ride hailing/ride sharing, as well as micro-mobility technologies and changes in land use policy.

Autonomy

Autonomous vehicle (AV) pilot projects are already operating in Los Altos, Los Altos Hills, Mountain View and Sunnyvale within the SVCE territory.³ The exact timeline on fully autonomous driving being commercially available, let alone commonplace, is unknown. Additionally, the impact that autonomous driving will have on transportation patterns and the number of miles traveled remains to be seen.

Sharing

Third-party ownership of vehicles, along with ride hailing, both fall under the umbrella of ride sharing. Transportation network companies such as Uber and Lyft are some of the more visible ride sharing organizations to date. A transition away from personal ownership and towards shared ownership and ride-hailing modalities may have a significant impact on Silicon Valley’s transportation patterns.

Micro-mobility

Micro-mobility refers to small-scale vehicles – such as electric bicycles, e-scooters, and even electric skateboards and hoverboards – that can reduce dependence on cars, especially for short-haul trips. They can complement bus and rail transit to close the “first mile” and “last mile” gaps and enable commuters to quickly reach widely dispersed workplaces. Widespread deployment will likely improve the utilization of public transit offerings and impact other modes of transportation.

Land Use Planning

Land use planning is a powerful tool that can influence overall transportation patterns. Key trends in Silicon Valley include an emphasis on higher-density and in-fill development, and the promotion of mixed-use areas including residential, retail, and office or live/work spaces. The goal of such policies is in part to reduce auto dependence, promote shorter commutes and drive a modal shift to more walking, biking and micro-mobility utilization.

² See the following studies: McKinsey & Company, August 2018, *Charging ahead: Electric-vehicle infrastructure demand*, <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/charging-ahead-electric-vehicle-infrastructure-demand>

Edison Electric Institute, February 2018, *Customer Solutions - Electric Transportation*, https://www.eei.org/issuesandpolicy/electrictransportation/Documents/Accelerating_EV_Adoption_final_Feb2018.pdf

Harris Poll, March 2018, *More Charging Stations Biggest factor to Increase EV Purchases: Volvo Car/USA The Harris Poll*, <https://evadoption.com/charging-infrastructure-is-it-critical-to-automaker-ev-sales-success%E2%82%AC%80%9C%20EV%20Purchases%20-%20The%20Harris%20Poll>

³ Hawkins J., July 2019, *The Verge. Waymo gets green light in California to pick up passengers in self-driving cars*, <https://www.theverge.com/2019/7/3/20680938/waymo-self-driving-cars-passengers-permit-california-pick-up>

EV Infrastructure Program Planning Process

The EVI program planning process was initiated with a current-state assessment of electric vehicle and EV infrastructure deployment trends. From March through July 2019, SVCE developed an overall EVI strategy and individual Program Implementation Plans, informed by market data, best practices in EVI program design and several rounds of local stakeholder input. The planning process included these steps:

- **Assessment of EV and EVI Deployment and Market Barriers:** including a summary of the current status and utilization of EVs and EV chargers across the 13 jurisdictions in the SVCE service territory.
- **Growth Forecasts in Vehicle Electrification and Infrastructure:** including projected growth in EV and EVI deployment and related contributions to GHG reduction goals through 2025.
- **EV-Related Surveys, Education and Stakeholder Engagement:** two workshops were convened with a broad array of stakeholders, including member agencies, EV service providers, community organizations and local employers; an online survey was also distributed to a randomized set of community members. More than 60 individuals and organizations provided expert input across nearly a full day of workshops - and more than 600 community members responded to the public survey.
- **Program Implementation Planning:** individual Program Implementation Plans were developed across four key areas of EV Infrastructure - including public DC Fast Charging, Workplaces, Multi-Unit Developments and Fleets. Two related support programs - a Regional Recognition Program for EV infrastructure, and the Silicon Valley Transportation Electrification Clearinghouse (SVTEC) - have also been identified to advance best practices and attract significant new funding to the region.



2 TRANSPORTATION EMISSIONS AND EV ADOPTION TRENDS

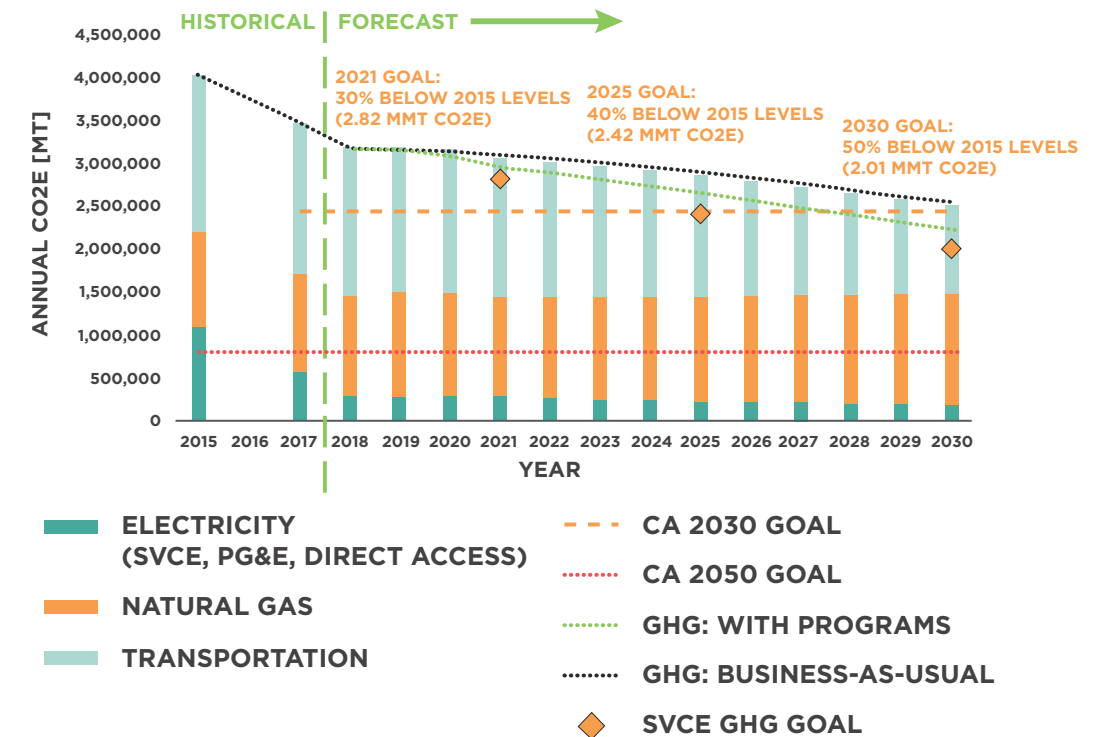
The Joint Action Plan relies on EV registration and charger installation data gathered by SVCE in support of its 2018 Decarbonization Roadmap. While data on EV adoption and publicly accessible EV charging infrastructure is relatively complete, comprehensive information on charging deployment in private settings (e.g. workplaces, multi-unit residential developments, private fleets) is difficult to compile. Additional research on privately accessible EV infrastructure will be important to refine future assessments and forecasts.

Greenhouse Gas Emissions Projections

SVCE recently set ambitious goals for GHG emissions reduction in its service territory. SVCE targets GHG reductions of 30% below the 2015 baseline by 2021, 40% by 2025 and 50% by 2030. The graph below shows how a business-as-usual case for emissions reductions compares to SVCE goals (and what staff estimated they can achieve through programs).

To meet the SVCE 2025 goal of cutting GHG emissions to 40% below the 2015 baseline, significant reductions must be achieved in the transportation sector. Some of this reduction is expected to be achieved from existing, ongoing transportation electrification and market trends, which is reflected in the business-as-usual (BAU) forecast.

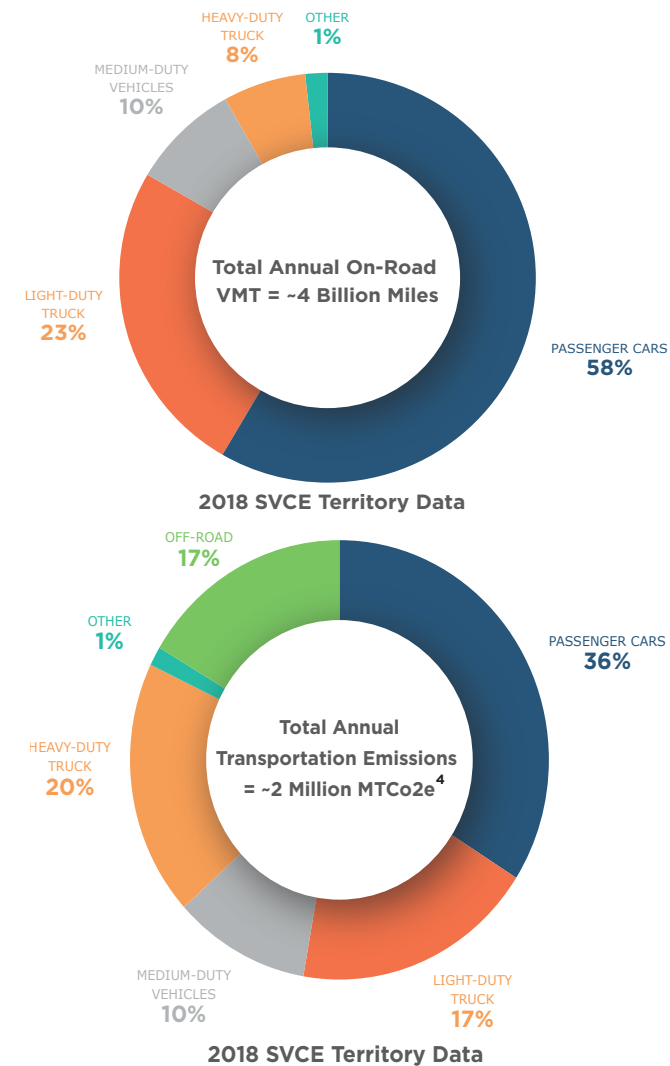
Bridging the gap between BAU and SVCE GHG reduction goals will, by definition, require accelerated rates of vehicle electrification and associated charging infrastructure deployment. The programs identified in this EVI Joint Action Plan represent an initial tranche of EVI programs necessary to help SVCE and its member communities sustain and accelerate emissions reductions in the transportation sector.



EV Adoption Needed to Meet GHG Reduction Targets

To meet SVCE’s 2025 and 2030 GHG reduction targets, the share of EVs on the road must increase substantially as replacements for existing internal combustion vehicles. This transition must occur across all vehicle segments. While more than 75% of all local vehicle miles travelled (VMT) are from passenger cars and light trucks, these vehicles produce only half of all transportation-related emissions. Most currently available EVs are in those two segments.

Medium- and heavy-duty vehicles, while fewer in number and driving fewer miles, make up nearly a third of local transportation-related emissions. Compared with light-duty vehicles, electrification of heavier-duty vehicles and fleets is nascent. Electrification in these segments represents an important need and opportunity going forward.



Vehicle segments are defined based on vehicle type and gross weight. Passenger cars are typically non-commercial, although they can be used for fleets and commercial purposes. Light-duty trucks (which include many SUVs) and medium-duty vehicles are also a mix of commercial and non-commercial. Heavy-duty trucks are almost solely commercial. Examples of the vehicles that belong in each segment can be found in the table below.

EXAMPLES OF VEHICLE SEGMENTS

PASSENGER CARS	LIGHT DUTY TRUCKS	MEDIUM DUTY TRUCKS	HEAVY DUTY TRUCKS	OTHER
Sedans, hatchbacks	Small pickup trucks, SUVs	Cargo vans, pickup trucks, utility vehicles	Transit buses, big-rigs, school buses, motor homes	Motorcycles, construction equipment

The GHG emissions chart shows transportation sector emissions from internal combustion vehicles spanning all vehicle segments for 2018. SVCE ended 2018 with ~26,000 EVs registered in its territory, which were predominantly non-commercial. The BAU scenario in the GHG emissions forecast used recent EV adoption trends to project that this number will increase to ~190,000 total EVs in 2025, a roughly sevenfold increase. The BAU scenario also assumed that ~5% of commercial VMT would be electrified by 2025.

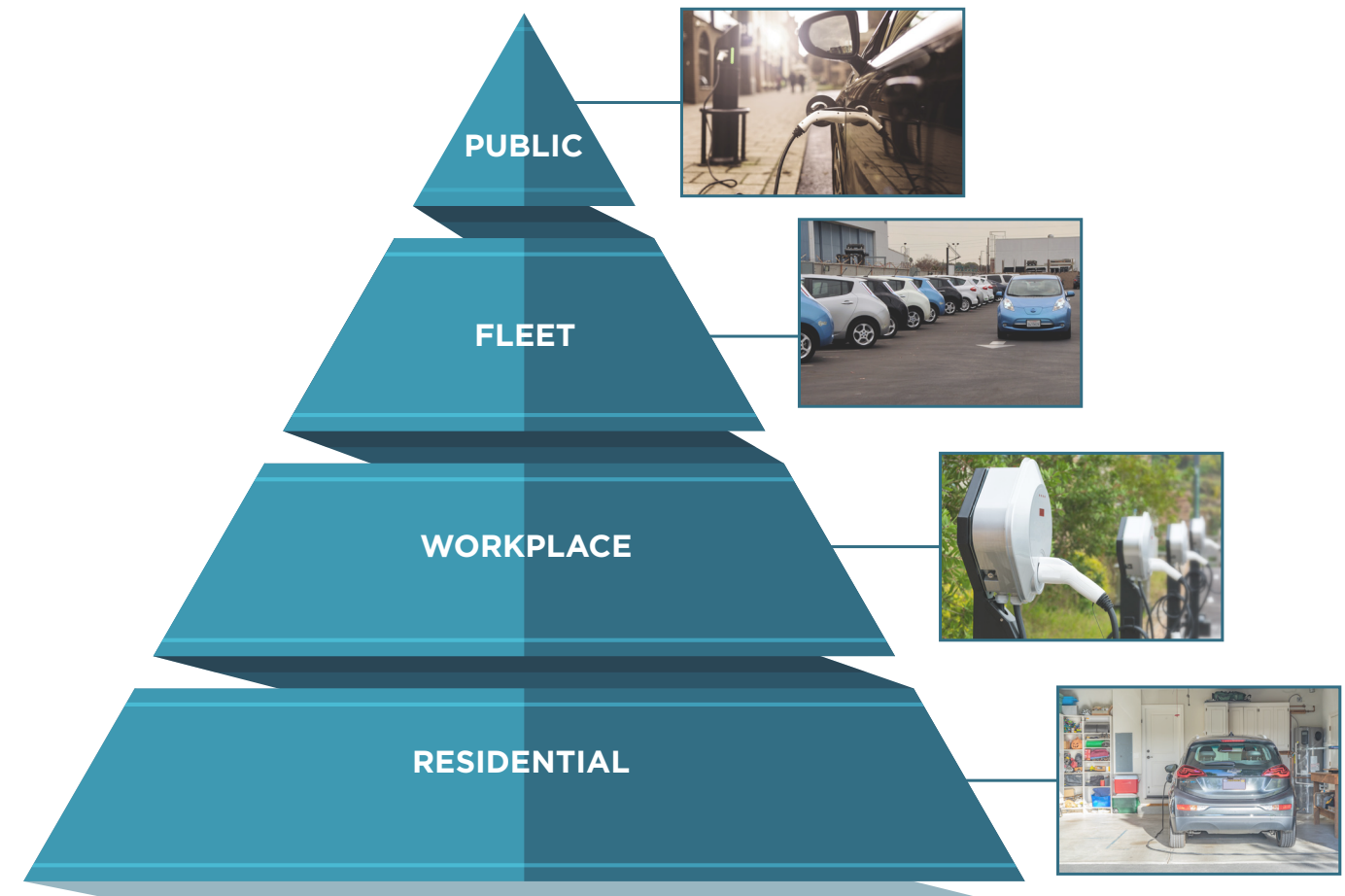
Achieving the additional GHG emissions reductions needed to meet SVCE’s 2025 goal will require substantial adoption of EVs beyond this BAU scenario. This growth will require a correspondingly significant increase in the deployment of EV infrastructure. SVCE programs identified in this report represent important incremental efforts needed help to sustain and accelerate local EV adoption rates through initial SVCE investment in EV infrastructure and broadened collaborative planning and deployment efforts.

While electrification will occur at different rates depending on vehicle segment, it must be actively encouraged and supported across all segments to achieve SVCE’s decarbonization goals. On a periodic basis, SVCE will take stock of progress against goals, bring stakeholders together to share collective experiences, assess priorities for action, and refine program designs or create entirely new programs.

3 EV CHARGING USE CASE

EV adoption needed by 2025 must be supported by an increase in EV infrastructure deployed across a broad range of charging use cases. These EV charging use cases represent different scenarios in which EV drivers may choose to charge their vehicles – as such, a given driver may make use of different charging use cases at different times.

The EV charging “pyramid”, shown below, is an image often used to generally describe how EV drivers have typically needed and utilized charging at different locations.⁵ Research has shown that among current EV adopters, most charging events occur at home, followed by workplace, destination and corridor locations. Of course, this is an idealized model, as actual usage depends greatly on individual driver circumstances (e.g. driving patterns, single family home versus apartment or condo, availability of charging at the workplace). Additionally, the charging paradigm presented in the pyramid may not be able to adequately serve some potential EV drivers, such as residents in multi-unit developments (MUDs).



⁴Off-road emissions are presented in the GHG emissions chart, but this Plan focuses on on-road emissions only. Future SVCE efforts may target the off-road sector.

⁵U.S. Department of Energy, November 2015, *Costs Associated with Non-Residential Electric Vehicle Supply Equipment*, https://afdc.energy.gov/files/u/publication/evse_cost_report_2015.pdf

Residential EV Charging Use Cases

Most EV charging currently occurs at the home, at either the Level 1 or Level 2 speed. Most EV adoption to date has been among residents of single-family homes, where a charger can be deployed in the occupant’s garage or parking area. Residents in MUDs, such as apartment or condominium complexes, have substantially lower EV adoption rates in SVCE’s service territory as well as other regions throughout the state. MUD EV adoption in California has been seriously hindered by the lack of residential charging infrastructure, which stems from challenges including physical constraints, cost, complexity and competing priorities for owner investment.⁶ Because of the disparity in EV ownership, most residential EV charging currently occurs in single family homes. The table below compares EV adoption by single family and MUD residents.

RESIDENTIAL EV ADOPTION BY RESIDENT TYPE IN SVCE SERVICE TERRITORY

RESIDENT TYPE	HOUSEHOLD BY RESIDENT TYPE		REGISTERED EV BY RESIDENT TYPE	
	Units	%	EVs	%
Single Family	150,000 units	61%	20,000 EVs	91%
MUD	95,000 units	39%	2,000 EVs	9%
Total	245,000 units	100%	22,000 EVs	100%

Workplace EV Charging Use Cases

The second most common location for EV charging is currently at work. As a workplace amenity, a number of large employers in SVCE’s service area provide free or low-cost EV charging to their employees. EV infrastructure at large workplaces is typically private, meaning charging is reserved for company employees only. In most small or medium businesses, it is often more difficult to install charging, due to resource constraints, physical constraints and ownership-related constraints. Yet in small office complexes or mixed-use developments where EV charging is available, it is often available both to employees and the general public.

Access to charging at the workplace can be a major driver of EV adoption, especially for employees that do not have charging at home. Also, daytime charging of EVs at the workplace is well-aligned with the cleanest and lowest-cost electricity available on the grid.

Workplace Charging Deployment in SVCE Territory

As of 2017, more than 8,000 workplace chargers are estimated to be in operation throughout the SVCE service area, with large employers leading the way. Unfortunately, more exact data is difficult to obtain as workplaces are typically considered “private” – being predominantly restricted for employees – and thus are not included in the Department of Energy or Plugshare databases of public chargers.

To help fill in this data gap, SVCE’s programs include plans to partner directly with local employers to survey current charger deployment, future growth and the extent of unmet need. In addition, surveys will endeavor to determine to what extent workplace chargers are serving commuters who may really need the range extension versus employees who are simply “topping off” for convenience or due to the availability of free charging. Surveys will also track pricing and parking management policies to better understand (and share) how local employers are managing EVI demand that is often in excess of available EVI supply.

⁶ David Peterson, D., UCLA Luskin Center, June 2011, *Addressing Challenges to Electric Vehicle Charging in Multifamily Residential Buildings*, https://luskin.ucla.edu/sites/default/files/EV_Multifamily_Report_10_2011.pdf

Fleet EV Charging Use Cases

Vehicle fleets are groups of vehicles used by an organization to support day-to-day operational activities. In most cases, these vehicles are owned by the organization, though in some cases such as with Uber and Lyft, vehicles are usually owned by individual drivers. There are a number of specialized fleet charging applications – including light-duty public and private fleets, transportation network companies (TNCs) and heavy-duty passenger bus and commercial freight vehicles. To date, construction of fleet charging centers has been nascent – due to complexity, cost and dependencies on high-capacity charging and electric distribution infrastructure.

Fleets consisting of light-duty vehicles are used by both public agencies (like city governments) and private organizations (including private workforces or drivers TNCs). These fleets can take advantage of other use cases, such as public EV infrastructure built to serve non-commercial EVs or at residences if employees are able to bring the EVs to their homes overnight. However, EV charging for public agencies and most private fleets will typically take place in private fleet charging centers – the fleet charging use case in this Joint Action Plan refers to this private charging setup.

Fleet charging for public/private transit and for other large private fleets (such as delivery trucks) require substantially more expensive and faster charging equipment than other use cases. These heavy-duty vehicles like buses and commercial vehicles typically use private fleet charging centers, and cannot effectively utilize any EV charging infrastructure deployed to support the other use cases.

Public EV Charging Use Cases

Charging stations at retail locations or other “destination” locations (e.g. civic centers, parks, recreation facilities) are typically available to the general public. When located in visible, frequently-visited locations, these charging stations help alleviate range anxiety and promote EV awareness. Similarly, fast charging facilities at or near major freeway corridors are essential for enabling EV drivers to make longer-range trips. Public fast chargers can support a variety of driver needs.

Public DC Fast Chargers Support Drivers with Diverse Needs

- Charging for MUD or other residents with no charging at home
- Charging for visitors and commuters on long trips
- TNCs or taxis
- Delivery fleets
- Medium- and heavy-duty vehicles

To support broad-based transportation electrification, EV infrastructure must be deployed across all major use cases. If charging expands only in selected uses cases (for instance, at single family homes and large workplaces), mass adoption of EVs will be severely impacted. Harder-to-serve segments – such as MUD residents and fleet operators – will be greatly limited in their ability to make the transition to clean mobility. To meet SVCE’s ambitious GHG goals, progress must be made in all charging use cases.



Key Barriers by Use Case

Based on SVCE’s survey of existing community efforts, it is clear that new EV infrastructure programs – including increased region-wide resourcing and coordination – are needed to sustain and accelerate EV adoption necessary to meet 2025 GHG reduction targets. In designing the new programs, SVCE has sought to identify and address specific barriers associated with deployment in each major EV charging use case. While some barriers are unique to each use case, others are common to many use cases – as illustrated in the chart below and the discussion of key barriers that follows.

SUMMARY OF KEY BARRIERS TO EVSE ADOPTION, BY USE CASE

USE CASE	CHARGER LEVEL	EASE OF DEPLOYMENT	BARRIERS		
Corridor Charging	Level 2 Level 3	Low	Upfront Costs	Siting Permitting, Service upgrades & Interconnection	Interconnection & Demand Charge Management
Destination/Retail	Level 2 Level 3	Med	Siting and Owner Permission, Permitting	Utilization Certainty	Sustainable Business Models
Fleets	Level 2 Level 3	Low	Upfront Costs	Site Specific Electrical Needs	Performance Assurance
Large Workplace	Level 2 Level 3	Med/Low	Upfront Costs	Site Specific Electrical Needs	Charger Oversubscription
Small/Med Workplace	Level 2 Level 3	Low	Upfront Costs	Lack of Planning Capacity	Technology Selection/ Knowledge Gaps
MUDs	Level 1 Level 2	Very Low	Site Specific Electrical Needs	Knowledge Gaps	Lack of Financial Incentives & Tenant Demand
Single Fam	Level 1 Level 2	Very High	Technology Selection/ Knowledge Gaps	Contracting & Install Management	Accessing Incentives & EV Rates



High upfront costs and site-specific electrical needs: EV charging infrastructure costs vary substantially from site to site based on differences in electric service, panel capacity, distance from the charging station to the electrical panel and many other factors. In most cases, property owners and site hosts require external subsidies to move forward on the installation of public EV charging stations. Creative “charging as a service” or “mobility as a service” financing options can also help overcome capital cost constraints.



Knowledge gaps: Building owner knowledge gaps about EV charging options, utility programs and installation requirements can slow or prevent EV charger adoption.



Lack of financial incentives and low tenant demand: Difficulty recouping charger capital costs through user fees – as well as a lack of tenant demand – can slow or prevent EV charger adoption in multi-unit residential settings and some workplaces.



Performance assurance: Fleet operators and other site hosts with critical needs require that their charging stations be highly reliable and meet robust standards for uptime and repair. The lack of such guarantees can inhibit EVSE deployment.



Siting, permitting, and service upgrade challenges: Identifying optimum sites for EV charger installation requires extensive planning to address user demand, geographic charging gaps, availability of electrical capacity, business models and other issues. These challenges – as well as delays in permitting or utility service upgrades – can slow or prevent EVSE deployment.



Utilization certainty: A lack of certainty regarding charger usage can discourage site hosts and EV service providers from deploying new public chargers.

The programs outlined in this Joint Action Plan target key challenges to EV infrastructure deployment identified by diverse customers, and seek to increase deployment levels in many use cases outlined above. SVCE will be focusing more of its limited resources on unlocking EV ownership in market segments that have seen lower adoption to date – including MUD residents and private and public fleets. Investment in charging infrastructure to support these segments will also support SVCE’s goals for social equity – and provide significant co-benefits including accelerated reduction of diesel pollutants in the fleet sector.



4 ENABLING PRACTICES AND PRINCIPLES TO ACCELERATE EV INFRASTRUCTURE DEPLOYMENT

SVCE is committed to closing EV infrastructure gaps identified above with strategic use of SVCE program funding and by catalyzing increased investment from other public and private entities. These efforts will be guided by the following Core Priorities that SVCE has established for its overall decarbonization efforts. Each considered EVI program was assessed using criteria linked to these priorities.

- **Customer and Community Value:** Deliver value to SVCE customers and community through program offerings and ongoing initiatives.
- **Core Role of SVCE:** Focus on activities where SVCE can and must play a key role given its unique position as a community-owned electricity provider.
- **Equity in Service:** Focus on activities that meet the needs of the diverse SVCE customer base and geography.
- **Emissions Impact:** Prioritize activities with the greatest emissions reduction potential.
- **Scalability and Transferability:** Deploy solutions that can be expanded and adapted by others, both within and beyond its borders.



SVCE Enabling Practices

Within the EVI program portfolio, SVCE has also identified key Enabling Practices that are critical approaches to overcoming specific barriers to EV infrastructure deployment and associated EV adoption. Programs were constructed to help further establish and leverage these important enabling practices. The enabling practices are described below.

Enabling Practices for EV Impact⁷



Regional Coordination: Local governments, employers, educational institutions, commercial property owners, innovators and other stakeholders all have a key role to play within Silicon Valley’s EV infrastructure ecosystem. Bringing stakeholders together to share information and purpose can help to accelerate EV infrastructure deployment.



Funding Support and Incentives: Many local agencies, employers and fleet operators lack the funds required to overcome the one-time, up-front cost of EV infrastructure upgrades. Particularly for installations with costs that exceed “average” due to unique challenges, the availability of incentives, rebates, and grant funds are often essential to EV infrastructure adoption.



Education and Outreach: Decisionmakers determining whether to install EVSE often do not have the awareness or expertise to plan, select and install EV charging infrastructure. Education and outreach can help provide fluency and comfort in the technology.



Building Codes: EV charging standards embedded within local building codes can ensure that EV charging stations are ubiquitous, safe, and accessible. Building codes can have far-reaching impacts because they affect ongoing development and because new charging infrastructure installed at the time of construction or major remodel is far less costly than a retrofit approach.



Permit Streamlining: Making the permitting process simple, affordable and timely for member agencies and permitting applicants can help speed the roll out of charging infrastructure and meet the requirements of AB 1236, which mandates streamlined local EVSE permitting.⁸



Planning, Land Use and Zoning: Local governments can include charging requirements or incentives in their zoning ordinances, development guidelines and parking codes. These requirements can help ensure that cities are well-positioned to meet projected EV demand and that EV-equipped spaces are efficiently utilized.



Electric Rates: Customer-friendly electric rates for EV charging will provide predictable fueling costs for EVs that provide benefits to the electrical grid and the community as a whole.



Vehicle-Grid Integration (VGI): Integrating EVs and chargers with the electrical grid can enable revenue-producing grid services such as frequency regulation and load balancing. This integration has the potential to unlock new value streams for customers, vehicle owners, EV service providers and SVCE.

⁷ Enabling practices are based on ICF’s 2018 Driving to Net Zero Report for the County of Santa Clara Office for Sustainability. ICF, County of Santa Clara Office of Sustainability, March 2018, *Plug-in Electric Vehicles and Infrastructure: A White Paper for the Cities Association of Santa Clara County*, <https://www.sccgov.org/sites/dnz/Documents/Task-1B-EVs-and-Charging-Infrastructure-A-White-Paper-for-the-Cities-Association-of-SCC.pdf>

⁸ California Legislative Info. *AB 1236: Local Ordinances: electric vehicle charging stations*, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1236

5 CURRENT STATE OF LOCAL ENABLING PRACTICES, POLICIES AND INITIATIVES

Many SVCE member communities have adopted CalGreen-aligned building code requirements for EV readiness, and are working to make these even more robust. However, other EVI-related initiatives have been slower to develop. As part of the SVCE program research and development process, the current status of each of the key enabling practices identified above was assessed for each community in the SVCE territory relative to each EV charging use case.

Building code, parking and permitting initiatives were the most commonly deployed across SVCE communities. However, programmatic approaches to funding support, education and outreach, and vehicle-grid integration (VGI) initiatives have not yet been locally developed. The EVI program portfolio formed by SVCE helps address the most critical gaps to support EVI development and market acceleration.

SVCE TERRITORY USE CASE AND ENABLING PRACTICE MATRIX - CURRENT VIEW

ENABLING PRACTICE

USE CASE	ENABLING PRACTICE								
	Regional Coordination	Funding Support & Incentives	Education & Outreach	Building Codes	Parking Enforcement or Signage Requirements	Permitting	Planning, Land Use, & Zoning	Electric Rates	VGI
Fleet - Public/Private Transit Buses, Shuttles	Ad Hoc Coordination	Intermittent State & Regional Funding Opportunities Available	No Permanent Program	N/A	N/A	N/A	N/A	No Specialized Rates	No Programs
Fleet - TNC					No Relevant Language				
Fleet - Public/Private Vehicles (City Fleets, etc.)					N/A				
Corridor	Drive the ARC			Low Adoption of EV Supportive Building Code	Low Adoption	More Than 50% of Communities Have Permitting in Place	No Relevant Language		
Destination/Retail	Ad Hoc Coordination								
Workplace - Large									
Workplace - Small/Medium				N/A					
MUD	EV Rates in Place								
Single Family Residential									

Given SVCE's ambitious emissions reduction goals and the importance of transportation electrification as a strategy, progress will need to occur across the matrix. Cells marked in yellow, indicating some level of accomplishment today, will likely need additional focus and/or investment. Cells marked in red, indicating no active and local accomplishment, will need to be addressed via newly formed program activities.

6 SVCE EVI PROGRAMS

SVCE is proposing six programs to support EV infrastructure deployment in its territory as an initial tranche of programs that will address the particularly in-need use cases. Additional programs will also be needed to meet SVCE's future GHG goals and will build on lessons learned from this first set. Additionally, SVCE has initiatives in adjacent sectors that will also support EV infrastructure deployment.

Context - Existing External EVI Support Programs

Substantial funding for EV infrastructure has been made available by the California Energy Commission and the Air Resources Board, the Bay Area Air Quality Management District, PG&E and private industry. These resources are generally increasing over time. However, most of this funding is available only on a first come, first served or competitive basis, and available funding levels vary month by month.

A key conclusion of this report is that a professionally managed funding clearinghouse could significantly increase the level of competitive funds awarded to SVCE customers and communities. Accordingly, a relatively modest but important strategic investment in resource development will likely yield a substantial return for the community.



Ongoing SVCE EVI Initiatives

Prior to the beginning of the current EV infrastructure planning process, SVCE established six EVI-related initiatives that will help to address some of the identified barriers in the EVI domain. These include:

- Reach Codes Initiative:** SVCE partnered with Peninsula Clean Energy (PCE) to co-develop, with a collective thirty-four member agencies and industry stakeholders, proposed “reach codes” – local amendments to the building code that go above and beyond the state baseline requirements. The reach code initiative incorporates code development to advance EVSE buildout, in addition to a second track that focuses on supporting building electrification. The more rigorous EVSE reach codes will increase the number of parking lots that include EVSE-ready electrical infrastructure (called “make-readies”) and the number of EV charging stations deployed in newly constructed facilities. Because charging infrastructure is far less costly to install when facilities are pre-wired for charging stations at the time of new construction, enhanced EV infrastructure mandates can reduce future installation costs by as much as 80% compared to the retrofit costs for buildings without EV-ready infrastructure. Multiple SVCE and PCE member agencies are scheduled to adopt model reach codes by the end of 2019, with an effective date of January 1, 2020.

SVCE and PCE also are in the process of developing a companion program to provide financial support and technical assistance specifically to affordable housing projects in jurisdictions that adopt EVSE reach codes. This is to help ensure affordable housing providers bear little or no added construction cost to meet local requirements, address incremental operating costs associated with EV charging, and provide lower-income residents with significant, tangible benefits from SVCE’s program investments.

- Permit Streamlining:** As identified in its 2018 Decarbonization Roadmap, SVCE plans to partner with its local member agencies to develop permit streamlining practices. These will include practices designed to expedite the approval process on new EVI installations by creating model code language and processes to be adopted at a local level. The effort aligns with policy guidance from the Governor’s Office of Business and Economic Development (GO-Biz) – provided in the new Electric Vehicle Charging Station Permitting Guidebook and ZEV Readiness website.
- EV Rates:** SVCE currently supports EV-specific electric rates for residential customers. In 2020, SVCE will support new commercial EV rates, including a ‘subscription’ charge that helps limit the impact of EV charging on demand charges paid by most commercial customers.
- Customer Resource Center:** SVCE is currently pursuing a customer-focused online information platform for SVCE customers to access information on all SVCE programs, including EV-related incentives and technical assistance. Customer Resource Center programs in the EV and EVI domains are still being evaluated, but will likely include information on EV performance, pricing, and available models, EV charging hardware and installation options, links to qualified installation contractors and help accessing available incentives. The Customer Resource Center may also make available negotiated discounts on chargers and EVs and be presented in multiple languages.
- Virtual Power Plant (VPP) Initiative:** SVCE is currently developing its VPP program to monetize and harness the value that distributed energy resources can provide customers and the grid to advance decarbonization and manage the anticipated load growth resulting from electrification. A variety of strategies are under consideration, including real time pricing, peak shedding demand response programs and broader load shifting approaches that incorporate direct energy market participation. Electric vehicle charging equipment can participate in a VPP program through smart charging platforms.



California Electric Vehicle Infrastructure Project

The California Electric Vehicle Infrastructure Project (CALeVIP) was created by the California Energy Commission (CEC) to support electric vehicle infrastructure throughout the state. The CEC has reached out to local partners to help fund and launch targeted programs in major regions throughout the state. To date, the CEC has launched four such regional programs, which have typically funded both Level 2 and DC Fast Charging initiatives.

To attempt to steer CALeVIP funding to local communities, SVCE formed a regional CALeVIP funding coalition with the City of Palo Alto Utilities, Silicon Valley Power, San Jose Clean Energy and Peninsula Clean Energy. This coalition created a compelling application to the CEC to fund a strategically aligned program for EV infrastructure that addresses one of the highest-need, fastest-growing areas of EV adoption in the state.⁹ SVCE’s letter of intent to participate in CALeVIP included a pledge of up to \$6 million in match funding.

The CEC announced in August 2019 that it selected SVCE’s coalition as a partner and will launch a local program in early 2020. The pledged funding for this program across the entire coalition’s service area, including CEC and coalition member investments, is \$60 million. The CEC plans to dedicate \$6 million of their funds to SVCE’s territory, to take advantage of SVCE’s offered match. CALeVIP will result in \$12 million in combined funding for EVI dedicated to serving SVCE customers within its member jurisdictions.

The final eligibility requirements and program design for CALeVIP will be publicly workshopped through the first quarter of 2020. SVCE believes that its programs will run smoothly in parallel with the final CALeVIP design, by referring applicants to the CALeVIP program for incentive payments. The other components of SVCE’s programs would function as described in the Joint Action Plan. This arrangement would allow SVCE to make an even larger impact with its programs by utilizing the joint pool of \$12 million in incentive funding. However, since the CALeVIP requirements are still being workshopped, final determinations on how CALeVIP will impact budgets, designs and timelines for SVCE’s programs have not been made in this report.

⁹National Renewable Energy Laboratory. CEC EV Infrastructure Projection Tool (EVI-PRO), <https://maps.nrel.gov/cec/>

Overview of SVCE's New EVI Programs

Through the process and analysis outlined in this Joint Action Plan, SVCE created six program designs – two EV infrastructure ecosystem support programs and four EV infrastructure programs. These designs are briefly summarized below.

SVCE EVI Ecosystem Support Program Summaries

A. Silicon Valley Transportation Electrification Clearinghouse - SVTEC

- SVCE-funded regional work group focused on transport electrification
- Goals: 1) Share information; 2) Attract external funding using professional grant writing firm
- Includes key stakeholders in EV/EVSE industry, public agencies, employers, and local organizations
- SVTEC will interface with PG&E to streamline interconnection process

B. Regional EV Leadership Recognition

- Ongoing recognition for employer-led EV infrastructure initiatives
- Promotes Electrification Pledge by leading organizations
- Participants access SVCE funding and support
- Case studies of excellence in EV infrastructure and EV adoption

SVCE EVI Program Summaries

C. Priority Zone DC Fast Charging

- Competitive RFP for incentives for DCFC deployment in SVCE-defined priority areas
- Focus on areas to support MUD residents and corridor use cases

D. Multi-Unit Residential Charging Technical Assistance

- Target medium-density apartments to enable shared charging
- Includes site visits and technical assistance
- SVCE incentives enable near 100% cost recovery

E. Workplace Charging Rebates

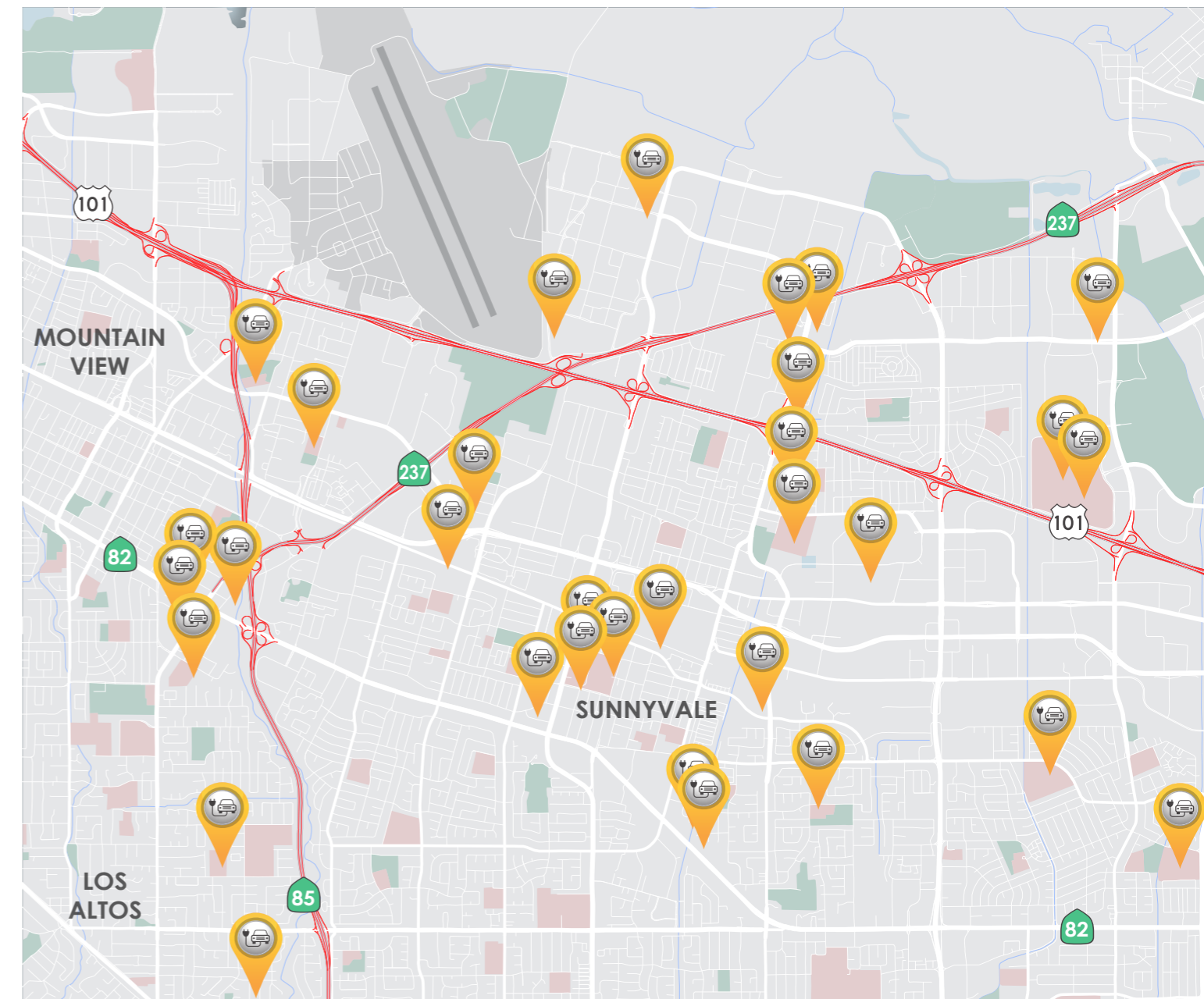
- Rebates for workplace charger deployment
- Focus on small/medium businesses
- Technical assistance enabled with link to Leadership Recognition Program

F. Fleet Electrification Grants

- Competitive grants for fleet electrification planning and site upgrades
- Focus on high-visibility fleet and public agencies (such as school buses)

One-page summaries of key elements from each design's Program Implementation Plan are provided in this report, which include information on the program rationale and examples of representative impacts and costs. These designs provide a starting point for future development, launch and ongoing refinement of each program.

Once each program proceeds to final launch planning, additional details – such as the total funding amount, specific project selection criteria or targeted locations – will be determined with supplementary stakeholder input. SVCE's internal Program Implementation Plan documents contain additional information including cost details and assumptions, implementation workplans and launch requirements, which will be used to inform this final scoping process.



A. Silicon Valley Transportation Electrification Clearinghouse

Program Rationale: A working group is an effective way to develop the needed resources to accelerate EV and EVI deployment across the region, and to share information among stakeholders. The Silicon Valley Electric Vehicle Transportation Electrification Clearinghouse (SVTEC) will bring together SVCE member communities and key leaders from relevant private and public sector organizations. The scale of the investment needed to accomplish SVCE's GHG goals necessitates coordinated action and the acquisition of external funding. The SVTEC will also allow SVCE to hear from its group of local stakeholders on needs that SVCE can address, such as acting as an interface with Pacific Gas and Electric (PG&E) on streamlining interconnection processes and helping engage with other statewide agencies.

Program Design: The SVTEC will enable regional information sharing and a coordinated and rapid response to funding opportunities – leading to substantial new public and private investment in EV infrastructure. The SVTEC will contract with a professional grant firm to monitor and respond effectively to grant funding opportunities, increasing the participation and “win rate” for SVCE and its partner communities and stakeholders.

Equity in Service: SVCE will work proactively with SVTEC members to target funding support for lower income households and communities that face barriers to EV adoption. Innovative shared e-mobility programs and technologies, including micro-mobility technologies (e.g. electric scooters and bikes), as well as electric buses and electric TNC vehicles will be among the eligible projects resourced through SVTEC in order to enhance e-mobility access for all residents in the service territory.

Program Strategies

- S1.** Establish a Regional SVTEC Steering Committee that includes key customers and community stakeholders
- S2.** Develop a bold regional vision for transportation electrification and robust program concepts that can be pro-actively seeded with key funders
- S3.** Develop a strong portfolio of projects that enable equitable access to e-mobility by all customers, including underserved communities
- S4.** Engage a grant firm with a proven track record to monitor and respond to funding opportunities
- S5.** Explore the feasibility of a regional decarbonization bond to increase regional EV infrastructure investment
- S6.** Provide a venue for SVCE to hear from key stakeholders about EVI-related issues that SVCE is best suited to address with statewide agencies

Representative Costs and Impacts: The exact impact based on SVCE's costs will depend heavily on the types of opportunities that are presented to the SVTEC and how successfully the group pursues outside funding. To win between \$20 and \$30 million in outside funding over four years, SVCE would need to spend approximately \$250,000 to launch the group and pay for the first year of consultant assistance, until outside funding could be secured to run the group. Other activities and deployment would ideally be funded through outside grants.

B. Regional EV Leadership Recognition

Program Rationale: Employers and organizations of all types need more information and support to understand the value of installing EV charging, and to learn about the benefits, incentives and deployment strategies available to charging providers. The EV Leadership Recognition program is designed to create a platform for information sharing, recognition of accomplishments and accelerated action with key employer partners.

Program Design: The EV Leadership Recognition program will spotlight the efforts of local businesses, educational institutions and public agencies to install EV charging, and will identify emerging EV infrastructure best practices. To participate, entities will need to: 1) create an EV action team of the relevant internal stakeholders, 2) submit a pledge to participate in the program, 3) deliver a basic EV and EVI implementation plan within four months of completing the pledge and 4) report on progress in implementing the plan within one year of its submittal. At the outset of their engagement, participants can join regular information exchanges among participants and access to SVCE planning support. Following their initial plan submission, organizations can qualify for access to grant funds for EV infrastructure through SVTEC.

Equity in Service: SVCE will provide clear guidance on desired equitable outcomes across the service territory, and link recognition programs to those efforts. SVCE will also track the flow of benefits from EVI programs across SVCE communities and customer demographics to ensure that the economic and environmental benefits of EVI and EV adoption are broadly shared throughout the service area.

Key Program Strategies

- S1.** Develop EV Leadership Recognition campaign to include: 1) campaign branding, website, materials; 2) Steering Committee; 3) recognition criteria; 4) survey instrument to regularly assess current charger deployment in the service area
- S2.** Recruit and manage first participant cohort to include at least 20+ leading organizations
- S3.** Provide technical assistance, peer learning, and SVTEC access to support participating employer EV teams and pledges
- S4.** Screen applications for awards and develop case studies of leading projects
- S5.** Conduct annual recognition event for EV leadership organizations and EV pledge fulfillments
- S6.** Leverage technical assistance learnings for program improvement and data collection

Representative Costs and Impacts: To run the program for four years and engage at least 400 organizations and property owners, SVCE would need to spend approximately \$200,000 to launch the program and pay for the first year of consultant assistance. This would result in thousands of additional EV chargers at these workplaces, though the exact number would depend on the level of engagement at each workplace and its size. After the first year, outside funding through SVTEC could be secured to run the program.

C. Priority Zone DC Fast Charging

Program Rationale: Public DC Fast Chargers (DCFCs) are critically needed to provide EV drivers with a rapid recharging experience. The current generation of DCFCs can provide from 30 to 100+ miles of additional range per 15 minutes of charging, depending on the vehicle and charger type. While DCFCs are much more costly than Level 2 chargers per port deployed, DCFCs enable the much quicker fill-ups needed by longer-distance travelers, and are cost-competitive when measured in kilowatt hours of charging provided and electric vehicles serviced. In addition, residents – particularly those in MUDs – who may not have charging available at home or work gain the ability to charge rapidly at public DCFCs stations, increasing the likelihood of EV adoption.

Program Design: SVCE will focus DCFC incentives near concentrations of those MUD developments where onsite charging is not practical (i.e. limited onsite parking spaces available or accessible), and in high traffic areas near major travel corridors and destinations. Exact incentive levels per site will be based on vendor input received within competitive responses. SVCE will issue a Request for Proposals (RFP) to solicit competitive bids and ensure that program incentives gain the greatest possible matching funds from EV service providers and site hosts. The designation of priority zones will be driven through a stakeholder process with the local member agencies to ensure that the locations align with local transportation and other planning efforts.

Equity in Service: By establishing priority deployment zones for DCFC near target MUDs, SVCE aims to provide charging access to renters who otherwise face significant barriers to charger access. Some of the priority deployment zones will be also be established in areas of underserved residents.

Key Program Strategies

S1. Identify DCFC zones near MUDs, high traffic areas and underserved areas (note that SVCE will identify general priority zones for DCFC deployment, while leaving it up to project developers responding to the solicitation to identify specific site addresses)

S2. Facilitate a competitive RFP to identify highest-value DCFC projects in those zones

Representative Costs and Impacts: Actual impacts will depend heavily on the level of incentive paid per site, matching funds secured and site conditions. To install ~30 new DCFC ports, SVCE would need to spend approximately \$300,000 to launch the program and pay a consultant to administer it. The associated incentives would be about \$2.5 million.



D. Multi-Unit Residential Charging Technical Assistance

Program Rationale: Only 15 apartment properties in SVCE territory currently are known to have onsite EV charging, yet ~40% of SVCE customers live in MUDs (i.e. apartments or condos). To unlock the market for EVs in this key customer segment, it is essential to provide more charging options for MUD residents at their place of residence. A combination of site surveys, technical assistance and direct incentives are needed to address barriers to EV Infrastructure deployment and subsequent EV adoption in MUDs. Targeting medium-density properties (such as garden-style apartments) will allow the program to best leverage SVCE funds because they have a much higher ratio of parking stalls to dwelling units than most apartment complexes, so EV chargers can more easily be deployed as shared charging. A shared charger can serve many vehicles, with the caveat that drivers must rotate their vehicles through the shared charging space. The shared approach allows far more units to be enabled for charging per dollar expended, as well as avoiding the serious problem of dedicated chargers quickly becoming stranded when a tenant with an EV moves out of the unit with the assigned charger.

Program Design: The SVCE approach focuses marketing and outreach initially on medium-density apartment complexes as these represent the best opportunity for shared charging – other MUD types would still be able to participate if they meet the eligibility criteria. Targeting this concentrated group of properties will enhance program efficiency and maximize SVCE’s impact. The other key element of the MUD program is provision of technical assistance to MUD owners to help solve the many site-specific challenges relative to electrical capacity upgrades, load management, equipment selection, business models and energy metering and payment.

Equity in Service: The MUD program aims to support SVCE community members who have traditionally faced significant barriers to EVSE deployment. To drive higher EVSE deployment and EV adoption in the MUD segment, SVCE plans to provide a larger proportion of cost coverage for MUDs than in any other customer segment. Co-location of EVSE with shared EV services, such as on-site car sharing, will be encouraged. Additional outreach efforts will be focused on MUDs designated as affordable housing or located in areas with a concentration of underserved residents.

Key Program Strategies

S1. Provide basic site planning for property owners to determine best fit EVSE for each site, including analysis of electrical requirements, selection of business models and possible deployment of load management, solar and energy storage to reduce long-term costs

S2. Focus first tranche of technical assistance on medium-density apartments with many units on-site to take advantage of opportunity for shared charging

S3. Provide substantial incentives to enable 100% or near 100% cost coverage to targeted properties (stacking additional available incentives where available)

Representative Costs and Impacts: To install ~450 shared EVSE, SVCE would need to spend approximately \$300,000 launch the program and pay a consultant to administer it. The associated incentives would be about \$2 million.

E. Workplace Charging Rebates

Program Rationale: Workplaces are currently key locations for charging, second in importance only to residential charging. At most workplaces, day-long dwell times are well-matched to Level 2 charging or in some cases Level 1 charging. According to workshop feedback, EV drivers and employers currently report that workplace charging throughout SVCE communities is oversubscribed and the need for additional ports is urgent, especially for workers with long commutes or who lack home charging options. SVCE workplace programs and incentives will focus on small and medium businesses which have not yet deployed EVSE in large numbers.

Program Design: SVCE workplace charging rebates will focus on networked EVSE equipped for managed charging to help balance loads and ensure utilization of lowest-carbon electricity. SVCE incentives would be \$3,000 per plug on average. Some limited technical assistance will be provided through this program, with additional support from peer-to-peer learning available through the Regional EV Leadership Recognition program.

Equity in Service: Workplace rebates are designed to support small and medium businesses which currently lack EVSE.

Key Program Strategies

- S1.** Provide cost reimbursement for EVSE and installation
- S2.** Optimize EVSE procurement with negotiated smart charger discounts
- S3.** Link EVSE incentives to participation in smart charging via Demand Response or Virtual Power Plant programs
- S4.** Create a robust workplace EVSE marketing program as part of a regional EV awareness campaign
- S5.** Consider flexible funding for special site needs (e.g., Level 1 EVSE at ~\$2,000 per plug; or power upgrades ~\$20,000 per site)

Representative Costs and Impacts: To install ~325 Level 2 EV charging ports at small and medium businesses, which may include some Level 1 charging, SVCE would need to spend approximately \$150,000 to launch the program and pay a consultant to administer it. The associated incentives would be about \$1 million.

F. Fleet Electrification Grants

Program Rationale: To ensure that fleet operators in the SVCE territory make a rapid transition to electric vehicles, a comprehensive support program is needed that combines outreach and education for fleet managers, technical assistance in fleet transition planning for select fleets, and fleet charging incentives. Funding and technical support will be provided on a competitive basis to fleets that offer the highest benefit-cost ratio for accelerating GHG reduction, provide other community benefits or meet other specified criteria. To ensure that the fleet plans will also be usable as models for other fleet managers in the SVCE territory, SVCE will attempt to select a wide variety of fleets for this program – spanning from light-duty to heavy-duty vehicles.

Program Design: SVCE will provide support for fleet-specific transition planning and flexible grant funds for fleet EV infrastructure. Fleet transition assistance provided with SVCE support may include (on an as-needed basis): 1) assistance in vehicle replacement planning (taking into account duty cycles and routes); 2) infrastructure upgrade cost assessment and planning (including load studies), 3) help accessing SVCE and external incentives; and 4) assistance in structuring bid processes for EV infrastructure. While a few larger fleets have in-house capabilities to undertake the electrification transition, most fleets confront a host of uncertainties and challenges that call for specialized assistance to effectively launch and accelerate their electrification journey. Eligible fleets will include, among others, those used by TNCs, municipalities, private workplaces, rental agencies, delivery companies, and public/private transit. SVCE will also tailor its program design to take advantage of any complementary fleet electrification funding and support programs.

Equity in Service: Equity-related outcomes achieved via fleet electrification will be incorporated into scoring criteria on competitive applications to the SVCE fleet assistance program. Criteria will include emissions impact, benefits to underserved communities, and scalability and transferability to other communities and fleets.

Key Program Strategies

- S1.** Engage large fleets in EV transition planning – focusing on high-visibility fleets with an emphasis on accelerated replacement of the dirtiest diesel trucks and buses (such as school buses and public fleets)
- S2.** Provide EVI incentives to support EV charging procurement, installation, and capacity expansion
- S3.** Support fleet electrification efforts that support local resilience goals and initiatives, especially by means of solar and energy storage integration, and/or microgrid deployments

Representative Costs and Impacts: To complete ~12 electrification plans, SVCE would need to spend approximately \$125,000 to launch the program and pay a consultant to administer it. The associated incentives would be about \$1 million. The exact costs will depend heavily on the specific makeup of the fleets selected for support through the competitive process.



7 SUMMARY OF REPRESENTATIVE IMPACTS AND PROGRAM COSTS

The program design summaries in the previous section are, in some sense, irrespective of budget. The designs can be scaled up or down based on available SVCE resources, with corresponding adjustments to the expected impacts. However, to provide a sense of the scope of these programs, the summaries included some examples of the costs that would be expected to make a given impact.

This table aggregates those numbers and provides some additional information on how the as-designed programs align with expected CALeVIP requirements. SVCE will make determinations on how to fund each program once it is being prepared for launch, based on desired impacts and other considerations - the funding allocation will depend heavily on the outcome of the CALeVIP design process.

	A. SVTEC	B. REGIONAL EV LEADERSHIP RECOGNITION	C. PRIORITY ZONE DCFC	D. MULTI-UNIT RESIDENTIAL CHARGING TECHNICAL ASSISTANCE	E. WORKPLACE CHARGING REBATES	F. FLEET ELECTRIFICATION GRANTS	TOTAL
FOR A COMBINED COST TO LAUNCH AND OPERATE OF APPROXIMATELY...	\$250,000	\$200,000	\$300,000	\$300,000	\$150,000	\$250,000	\$1.5M
ASSUMING THE PROGRAM LASTS...	4 years	4 years	N/A	N/A	N/A	N/A	N/A
WITH ASSOCIATED INCENTIVES OF...	\$0	\$0	\$2.5M	\$2M	\$1M	\$1M	\$6.5M
THE PROGRAM COULD ACHIEVE...	\$20-30 MILLION IN UNLOCKED FUNDING	400 PARTICIPATING ORGANIZATIONS	30 DCFC PORTS	450 SHARED L2 PORTS	325 L2 PORTS AT SMALL AND MEDIUM BUSINESSES	12 ELECTRIFICATION PLANS	N/A
WILL THIS PROGRAM BE IMPROVED BY CALeVIP?	YES	YES	YES	YES	YES	YES	N/A



8 FUTURE STATE OF LOCAL ENABLING PRACTICES, POLICIES AND INITIATIVES

Following implementation of SVCE's EVI programs, the enabling practices and use case matrix is expected to include new activities across SVCE's member communities and customer segments. As programs evolve, the matrix will have additional green cells representing growing support of EVI across the service territory.

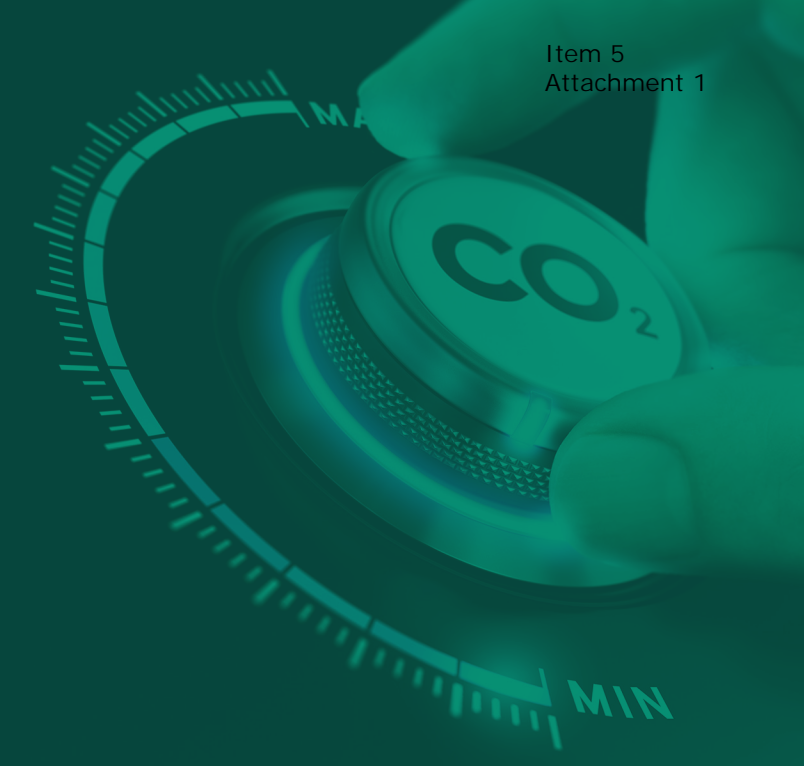
FUTURE STATE OF LOCAL ENABLING PRACTICES, POLICIES AND INITIATIVES

USE CASE	ENABLING PRACTICE								
	Regional Coordination	Funding Support & Incentives	Education & Outreach	Building Codes	Parking Enforcement or Signage Requirements	Permitting	Planning, Land Use, & Zoning	Electric Rates	VGI
Fleet - Public/Private Transit Buses, Shuttles	SVTEC	Competitive Grant	Competitive Grant, Regional Recognition Program	N/A	N/A	N/A	N/A	Assuming CPUC/PG&E Approval	VPP Program
Fleet - TNC					No Relevant Language				
Fleet - Public/Private Vehicles (City Fleets, etc.)					N/A				
Corridor		DCFC Solicitation	No Permanent Program	SVCE Working Group	Minimal Coordinated Effort	SVCE Coordinated Permit Streamlining	No Relevant Language		
Destination/Retail									
Workplace - Large		EVSE Rebate	Regional Recognition Program	MUD TA, Incentives, Customer Resource Center, Regional Recognition	MUD TA and Incentive	N/A	EV Rates in Place		
Workplace - Small/Medium									
MUD		Ad Hoc Coordination	Intermittent State & Regional Funding Opportunities Available	Customer Resource Center	N/A	N/A	EV Rates in Place		
Single Family Residential									



9 SUMMARY AND NEXT STEPS

Achieving SVCE’s transportation emission reduction goals will require the collaborative engagement of SVCE, member communities, local employers, property owners and customers. To drive this broader engagement, SVCE plans to implement the portfolio of EVI initiatives articulated in the Joint Action Plan, while engaging in a continuous improvement process with regular input from stakeholders and customers. SVCE will support the community’s charging needs through deployment of DC Fast Charge infrastructure, and through programs specifically targeted at workplaces, fleets, and multi-unit developments. The regional recognition program and funding clearinghouse will provide essential support to these efforts, along with SVCE’s existing efforts including the Reach Code initiative, Permit Streamlining, Customer Resource Center and Virtual Power Plant programs.



As SVCE moves forward to launch EVI initiatives beginning in 2019-2020, the internal Program Implementation Plans will provide key guidance to rapidly deploy new programs. Prior to program launch, each program concept will be adjusted as necessary to incorporate supplementary stakeholder input and respond to any changed conditions. SVCE will secure external program support where needed, and organize its own internal staff support. Anticipated program achievements and expected costs will be determined based on the more detailed information uncovered through the final program development and launch process. In this way, the high-level program designs described in the Joint Action Plan will evolve into full-fledged programs and launch in a relatively short period, since most of the key stakeholder input and strategic thinking has already been integrated into the program design summaries and implementation plans.

SVCE will also closely consider the impacts of CALeVIP on the program designs and timeline. By securing the additional state funding, SVCE has greatly magnified the amount of EVI deployment that will occur in its service territory.

The best way to structure the targeted SVCE programs outlined in the Joint Action Plan will depend on the final CALeVIP requirements, which will not be finalized until the end of the stakeholder engagement process sometime in 2020.

Finally, SVCE intends to closely evaluate the impact that these programs have on EVI deployment and corresponding EV adoption in its territory and throughout the region. Future EVI programs to be designed and deployed in support of the 2025 and later GHG goals will learn from the successes and failures of these initial programs in reaching target audiences and driving change.

Given the urgent need for additional EV deployment by 2025 to achieve SVCE’s decarbonization goals, SVCE encourages all Silicon Valley community leaders and the public at large to join together in accelerating the EV infrastructure build-out inspired by these programs.

SVCE SERVICE AREA

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



SILICON VALLEY
CLEAN ENERGY

SVCleanEnergy.org



Staff Report – Item 6

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 6: Executive Committee Report

Date: 9/11/2019

The Executive Committee met on August 23, 2019 and this item will be addressed as an oral report to the Board.



Staff Report – Item 7

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 7: Finance and Administration Committee Report

Date: 9/11/2019

The Finance and Administration Committee met on September 3, 2019 and this item will be addressed as an oral report to the Board.



Staff Report – Item 8

To: Silicon Valley Clean Energy Board of Directors

From: Girish Balachandran, CEO

Item 8: Legislative Ad Hoc Committee Report

Date: 9/11/2019

The Legislative Ad Hoc Committee met on August 27, 2019 and this item will be addressed as an oral report to the Board.



Silicon Valley Clean Energy Board of Directors Meeting

September 11, 2019

Appendix A

Power Resource Contracts Executed by CEO

Shell Energy North America (US), L.P.
1000 MAIN ST LEVEL 12
HOUSTON, TX 77002
877-504-2491



August 08, 2019

Deal No.

3557428

SILICON VALLEY CLEAN ENERGY AUTHORITY
333 W. EL CAMINO REAL, Ste. 290
SUNNYVALE, CA 94087

CONFIRMATION AGREEMENT

This confirmation agreement (this "Confirmation" or "Agreement") shall confirm the agreement reached on August 07, 2019, between Shell Energy North America (US), L.P. ("Shell Energy") and SILICON VALLEY CLEAN ENERGY AUTHORITY ("CounterParty") (herein sometimes referred to as a "Party" and collectively as the "Parties") regarding the sale of electric capacity and/or electric energy under the terms and conditions set forth below.

BUYER: SILICON VALLEY CLEAN ENERGY AUTHORITY
SELLER: Shell Energy North America (US), L.P.
PRODUCT/FIRMNESS: CAISO Energy/Firm

PERIOD OF DELIVERY	07/01/2022 through 07/31/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays
PERIOD OF DELIVERY	07/01/2022 through 07/31/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400
PERIOD OF DELIVERY	08/01/2022 through 08/31/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays
PERIOD OF DELIVERY	08/01/2022 through 08/31/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400
PERIOD OF DELIVERY	09/01/2022 through 09/30/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays
PERIOD OF DELIVERY	09/01/2022 through 09/30/2022
QUANTITY:	[REDACTED]
PRICE:	[REDACTED]
DELIVERY POINT(S):	[REDACTED]
SCHEDULING:	NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400

PERIOD OF DELIVERY 10/01/2022 through 10/31/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays

PERIOD OF DELIVERY 10/01/2022 through 10/31/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400

PERIOD OF DELIVERY 11/01/2022 through 11/30/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays

PERIOD OF DELIVERY 11/01/2022 through 11/30/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400

PERIOD OF DELIVERY 12/01/2022 through 12/31/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: Monday thru Saturday, Hours ending 0700 thru 2200 Excluding NERC Holidays

PERIOD OF DELIVERY 12/01/2022 through 12/31/2022
QUANTITY: [REDACTED]
PRICE: [REDACTED]
DELIVERY POINT(S): [REDACTED]
SCHEDULING: NERC Holidays , Hours ending 0100 thru 2400; Monday thru Saturday, Hours ending 0100 thru 0600; Monday thru Saturday, Hours ending 2300 thru 2400; Sunday thru Sunday, Hours ending 0100 thru 2400

TIME ZONE: PPT
TOTAL MWH: [REDACTED]

SUBJECT TO MASTER AGREEMENT EEI DATED: 11/28/2016

This Confirmation sets forth the terms of the transaction into which the Parties have entered into and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of electric energy and/or electric capacity please have this confirmation executed by an authorized representative or officer of your company and return via facsimile to (713) 767 5414.

SILICON VALLEY CLEAN ENERGY AUTHORITY

Shell Energy North America (US), L.P.

DocuSigned by:
Girish Balachandran
By: _____
Name: Girish Balachandran
Title: CEO
Date: 8/8/2019

John W. Pillion
By: _____
Name: John W. Pillion
Title: Confirmations Team Lead
Date: 08/08/2019

DS
MP

Morgan Stanley

AMENDED. THIS CONFIRMATION RESTATES AND SUPERSEDES ANY CONFIRMATION PREVIOUSLY ISSUED BY US IN CONNECTION WITH THIS TRANSACTION.

Commodities

Morgan Stanley Capital Group Inc.

Attn: Commodities
1585 Broadway
New York, NY 10036-8293

Date: August 26, 2019
To: SILICON VALLEY CLEAN ENERGY AUTHORITY
650 WEST OLIVE AVENUE
SUNNYVALE CA 94086

Attention: Affirmation Team

Contact: Commodity Confirms
Phone: 443-627-5650
Fax: 914-750-0445
Email: CommodConfsNY@morganstanley.com

Reference No.: E6771673 v. 2
Trade Date: August 23, 2019

This electronic communication and any attachments hereto, are intended only for use by the addresses(s) named herein and may contain legally privileged and/or confidential information, which is exempt from disclosure under applicable law. If you are not the intended recipient of this electronic communication, you are hereby notified that any examination, dissemination, disclosure, distribution, or copying of, or reliance on or use of this electronic communication, and any attachments hereto, is strictly prohibited. If you have received this electronic communication in error, please notify me immediately on the above telephone number and permanently destroy all copies of this electronic communication.

This confirmation confirms the terms of Morgan Stanley Capital Group Inc. ("MSCGI") agreement regarding the sale of firm energy (the "Transaction") to SILICON VALLEY CLEAN ENERGY AUTHORITY . The terms are as follows:

Purchaser: SILICON VALLEY CLEAN ENERGY AUTHORITY

Seller: MSCGI

Term: [REDACTED]

Delivery Hours: Peak: Monday through Saturday, Exclude NERC holidays, HE 0700 through 2200 (16 hours)



Off Peak: Monday through Saturday, HE 0100 through 0600, 2300 through 2400 (8 hours) Sunday, HE 0100 through 2400 (24 hours), including NERC holidays.

Pacific Prevailing Time (PPT)

Contract Quantity: [REDACTED]

Delivery Point: [REDACTED]

Energy Price: As per Appendix I

Special Conditions: This purchase and sale of energy is Firm (LD). The parties agree to notify each other as soon as possible of any interruption or curtailment affecting this transaction.

Scheduling: Scheduling to be completed in accordance with WECC Guidelines.

"CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a Scheduling Coordinator ("SC") to SC transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff).

A CAISO "Schedule Adjustment" (defined as a schedule change implemented by the CAISO that is neither caused by or within the control of either Party) shall not constitute an Uncontrollable Force; rather if there is a CAISO Schedule Adjustment, the Party negatively impacted shall notify the other Party and the Parties shall be obligated to exercise their reasonable efforts to reach an equitable resolution that reflects as nearly as practicable, the intention of the Transaction as originally negotiated. All terms used within the definition of CAISO Energy but not defined in the Agreement shall have the meaning ascribed to them in the Tariff.

Morgan Stanley Real-Time Communications and Scheduling

Option Exercise Line:	914-225-1501
Prescheduling:	914-225-1501
Real Time (24 hour):	914-225-1500

The parties agree that this transaction is a Forward Contract within the meaning of the U.S. Commodity Exchange Act, and in reliance upon such agreement, each party represents to the other that, as of the date the transaction is entered into:


(a) It is a commercial market participant with respect to the specified commodity and is entering into the transaction in connection with its business; and



(b) It intends to make or take physical delivery of the specified commodity.

This letter is being provided pursuant to and in accordance with the EEI Master Agreement for purchase and sale of Physically settled Electricity in the US and Canada dated November 23, 2016, the ("Agreement") between SILICON VALLEY CLEAN ENERGY AUTHORITY and MSCGI, and constitutes part of and is subject to all the terms and provisions of such agreement. Terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

If the recipient of the confirmation disagrees with any of the terms summarized herein, it shall promptly notify MSCGI by telephone and facsimile transmission. Please confirm that terms stated herein accurately reflect the agreement reached between SILICON VALLEY CLEAN ENERGY AUTHORITY and MSCGI by returning an executed copy of this Confirmation Letter. (Fax: 914-750-0445)

<p>Yours Sincerely,</p>  <p>Parker Corbin Authorised Signatory Morgan Stanley Capital Group Inc.</p>	<p>Confirmed as of the date first written above:</p> <p>SILICON VALLEY CLEAN ENERGY AUTHORITY</p> <p>DocuSigned by: <i>Girish Balachandran</i></p> <p>By: 5CA64B9AC4C24C3...</p> <p>Name: Girish Balachandran</p> <p>Title: CEO</p>
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Appendix I

Calendar Month		Energy Price (USD per MWh)
[Redacted Data]		



**CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
MARIN CLEAN ENERGY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority**, a California joint powers authority ("Buyer") and **Marin Clean Energy**, a California joint powers authority ("Seller"), each individually a "Party" and together the "Parties", dated as of August 13, 2019 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement, effective as of June 21, 2018, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "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 Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.

- 1.11** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.12** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the “Contract Quantity (MWs) Table” in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14** “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.
- 1.15** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “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.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.23** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27** “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).
- 1.28** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.30** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.31** “Non-Excusable Event” means any event, other than a Planned Outage that is acceptably noticed pursuant to the Notification Deadline and those events described under the definition of “Service Schedule B Commitment Service” in the WSPP Agreement that excuse Seller’s performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller’s failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32** “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 1.33** “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.
- 1.34** “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.

- 1.35** “Product” has the meaning specified in Article 3 hereof.
- 1.36** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR 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 RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.41** “Replacement Unit” has the meaning specified in Section 4.5.
- 1.42** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43** “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.44** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.45** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48** “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.49** “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. A Unit shall not be a coal-fired generating facility.

- 1.50** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.51** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that 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, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52** “WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

Name	King City Cogeneration Plant
Location	King City, CA
CAISO Resource ID	BASICE_2_UNITS
Unit SCID	CALJ
Unit NQC	120
Unit EFC	N/A
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A
Run Hour Restrictions	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

3.1 Resource Adequacy Capacity Product

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the “Product”) and the Contract Quantity set forth in Section 4.3. The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction, and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess

of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of any Planned Outage of the Unit(s) and/or reduction in the Unit EFC or Unit NQC of such Unit, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity 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. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity (i) for any reason other than a Non-Excusable Event or (ii) in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: [REDACTED], 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 for each Monthly Delivery Period shall be:

CONTRACT QUANTITY (MWs)

Contract Month	Total RAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the

Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month, provided however that the Replacement Unit shall not be a coal-fired generating facility.
- (c) If Seller fails to provide Buyer any portion of the Designated RA Capacity for a given Showing Month during the Delivery Period, then Buyer may, but shall not be required to, purchase such Product from a third party. 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 to the extent the failure to deliver the Contract Quantity is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (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); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

- (c) 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 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 (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) 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 the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes, and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (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 CAISO revenues or 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, 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 due to a Non-Excusable Event;
- (b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

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

4.9 Monthly RA Capacity Payment

Notwithstanding Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, 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 for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RAR Capacity Price (\$/kW-month)

Contract Month	RAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

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

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, 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.

ARTICLE 6. GOVERNING LAW

Section 24 is deleted in its entirety and this Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the WSPP Agreement applicable to this Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and
- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

Provided, however, that "commercially reasonable actions" under this Section 7,1 shall not require the Seller, or the owner or operator of any Unit to undertake any capital improvements, facility enhancements, or the construction of new facilities.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator

is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

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

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller's obligations or liabilities hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ARTICLE 11. 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 12. JOINT POWERS AUTHORITY

Each Party hereby acknowledges and agrees that the other Party is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (California Government Code Sections 6500 et seq.) and is a public entity separate and distinct from its members. Each Party shall solely be responsible for all of such Party's debts, obligations and liabilities accruing and arising out of this Agreement, and each Party agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of the other Party's members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer's retail customers in connection with the Transaction to which this Confirmation applies.

ARTICLE 13. 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


ARTICLE 14. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty 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.

[Signatures appear on the following page]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

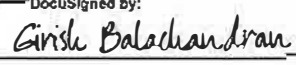
**MARIN CLEAN ENERGY, A CALIFORNIA
JOINT POWERS AUTHORITY**

By: 

Name: Dawn Weisz

Title: Chief Executive Officer

**SILICON VALLEY CLEAN ENERGY AUTHORITY, A
CALIFORNIA JOINT POWERS AUTHORITY**

By: 
DocuSigned by:

Name: Girisli Balachandran

Title: CEO

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and Silicon Valley Clean Energy Authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of July 3, 2019 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of November 28, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) 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 ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "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 Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14** “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.
- 1.15** “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16** “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “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.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27** “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).
- 1.28** “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.29** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.34 "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.
- 1.35 "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.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR 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 RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.42 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.47 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

- 1.49** “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50** “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.
- 1.51** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that 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, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	Colgate Hydro Unit 1
Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT 1
Unit SCID	YCWA
Unit NQC	Varies By Month
Unit EFC	N/A
Resource Type	Hydro
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	PG&E Other
Product Attributes (RA Attributes, LAR Attributes, Flexible RA Attributes)	LAR Attributes
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity 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. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

3.3 Flexible RA Product

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

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: [REDACTED]

4.2 Delivery Point.

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

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

Contract Quantity (MWs)

Contract Month	COLGAT_7_UNIT 1 2020	COLGAT_7_UNIT 1 2021	COLGAT_7_UNIT 1 2022

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** 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 and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer

in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) 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 such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. 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 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); 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 Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

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

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may 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 Article Six of the Master 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 for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	COLGAT_7_UNIT 1 (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the

responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, 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.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, including all performance obligations and penalties related thereto, so as to maintain

the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been granted, pledged, assigned, sold or otherwise committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been, granted, pledged, assigned, sold or otherwise committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market, or confer any RAR, LAR or Flexible RAR benefits upon, any party other than Buyer;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if

applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

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

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

SILICON VALLEY CLEAN ENERGY AUTHORITY

By: *John W. Pillion*
Name: John W. Pillion
Title: Confirmations – Team Lead
Date: 09/27/2017

By: DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3
Name: girish@svcleanenergy.org
Title: CEO
Date: 7/11/2019

Nucleus: 917761

**AMENDED AND RESTATED
MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
SILICON VALLEY CLEAN ENERGY AUTHORITY
AND
SHELL ENERGY NORTH AMERICA (US), L.P.**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Silicon Valley Clean Energy Authority** ("Buyer") and **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller"), each individually a "Party" and together the "Parties", dated as of August 16, 2019 (the "Confirmation Effective Date"), and, noce executed by both Parties, shall amend, restate, replace and supersede in its entirety the confirmation entered into on July 3, 2019 in which Seller agrees to provide to Buyer the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction shall be subject to the terms and conditions of the EEI Master Power Purchase and Sale Agreement dated November 28, 2016 between the Parties (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement."

Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

**ARTICLE 1
DEFINITIONS**

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.4 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.5 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.6 "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 Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price," as used in the Master Agreement.
- 1.7 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.8 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.
- 1.10 "Contract Price" means, for any Monthly Delivery Period, the price for such Monthly Delivery Period as

specified in the RA Capacity Price Table set forth in Section 4.9.

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

1.12 "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 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.13 "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.

1.14 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.15 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.16 "Designated RA Capacity" shall be equal to, for each day during 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 any reductions to Contract Quantity specified in Section 4.4 with respect to which Seller has not elected to provide Alternate Capacity.

1.17 "Effective Flexible Capacity" means, for so long as such term is not defined in the Tariff, the flexible capacity of a resource that can be counted towards an LSE's FCR obligation and, if after the Effective Date, such term is defined in the Tariff, from and after the date on which such term is defined in the Tariff, "Effective Flexible Capacity" has the meaning specified for such term in the Tariff.

1.18 "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.

1.19 "Flexible RA Product" means Designated RA Capacity consisting of FCR Attributes, and, if applicable, LAR Attributes and/or RAR Attributes.

1.20 "FCR Attributes" means, with respect to a Unit, 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 CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

1.21 "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.

1.22 "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, but not FCR Attributes.

1.23 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority 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.

1.24 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA 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 ("LCR") in other regulatory proceedings or legislative actions.

1.25 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational

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attributes related to system reliability), as they are 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, 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 Transaction.

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

1.27 "LRA" has the meaning set forth in the Tariff for the term "Local Regulatory Authority".

1.28 "LSE" has the meaning specified in the Tariff for the term "Load Serving Entity".

1.29 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.30 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

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

1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.

1.33 "Non-Availability Charges" are as defined in the Tariff.

1.34 "Notification Deadline" means, for each Showing Month, the date that is fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, FCR Showings and/or LAR Showings for such Showing Month, and (b) the Supply Plan filings applicable to that Showing Month.

1.35 "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 Outage (defined below).

1.36 "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.

1.37 "Product" has the meaning specified in Article 3 hereof.

1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR, and if applicable, 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 applicable RAR Attributes, and if applicable, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

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

1.40 "RAR" means the resource adequacy requirements, exclusive of LAR established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

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- 1.41 “RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as identified and existing as of the Confirmation Effective Date by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.
- 1.42 “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 CPUC Decisions, or to an LRA having jurisdiction.
- 1.43 “Replacement Capacity” has the meaning specified in Section 4.7(a) hereof.
- 1.44 “Replacement Unit” means any generating unit have comparable RAR Attributes, LAR Attributes and, if applicable, FCR Attributes to the Unit(s), meeting the requirements for a Unit specified herein and meeting the requirements specified in Section 4.5.
- 1.45 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.46 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.47 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.48 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.49 “Supply Plan” has the meaning specified in the Tariff.
- 1.50 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.51 “Transaction” has the meaning specified in the introductory paragraph hereof.
- 1.52 “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.
- 1.53 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.54 “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, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.55 “Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Unit EFC 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, or (ii) the CAISO-adjusted Effective Flexible Capacity.

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**ARTICLE 2
UNIT INFORMATION**

Location	RA UNIT*
CAISO Resource ID	TBD
Unit SCID	TBD
Unit NQC	TBD
Unit EFC	TBD
Resource Type	TBD
Resource Category (1, 2, 3 or 4)	TBD
Flexible RAR Category (1, 2 or 3)	TBD
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	N/A
Product Attributes (RA Attributes, LAR Attributes, Flexible RA Attributes)	RA Attributes
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A
Run Hour Restrictions	N/A

***BUYER WILL BE NOTIFIED OF RA UNIT 15 DAYS PRIOR TO THE APPLICABLE FILING DEADLINE.**

**ARTICLE 3
RESOURCE ADEQUACY CAPACITY PRODUCT**

3.1 During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity in accordance with the product types selected in Section 3.2 (the "Product") and the Contract Quantity set forth in Section 4.3. 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/or 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.

3.2 Product Type

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder shall include the following Product attributes:

FCR Attributes with LAR Attributes

FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder shall include the following Product attributes:

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RAR Attributes

LAR Attributes

3.3 Delivery Obligation

Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not able to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity 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. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non-availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, and Seller provides notice of such by the Notification Deadline, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

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 Force Majeure, 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.

ARTICLE 4 DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period is: [REDACTED]

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.

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4.5 Alternate Capacity and Replacement Units

- (a) If Seller elects or 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, at no additional cost to Buyer, may 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 in writing of such no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month. that Showing Month and Seller shall not be liable to Buyer or any other party for damages, including any cover costs, and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if and only if Seller has provided Buyer with timely notice pursuant to this Section 4.5(a) of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month.
- (b) 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 and Seller does not provide Alternate Capacity in an amount equal to that which allows Seller to provide the full Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase Replacement Capacity.

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, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.
- (b) Seller shall or shall cause the Unit's Scheduling Coordinator to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

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 by 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, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RAR Attributes and no LAR Attributes or FCR Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable FCR Attributes and/or LAR Attributes ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller so long as such transactions are done at prevailing market prices. 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.

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- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the Replacement Capacity times the Capacity Replacement Price, and (B) the Designated RA Capacity not provided by Seller (less any Replacement Capacity) times the Capacity Replacement Price; and (ii) the Designated RA Capacity not provided by Seller times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may, in addition to any other remedies that may be available to Buyer, offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement. Seller will not be in breach of this Confirmation for any failure to provide any Designated RA Capacity so long as Seller complies with the provisions of this Section 4.7.

4.8 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, without duplication of amounts included in Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity if such failure is not excused under the terms of the Product or by Buyer's failure to perform;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 4.5;
- (c) A Unit Scheduling Coordinator's failure to submit timely 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 costs, penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may, in addition to any other remedies that may be available to Buyer, offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 RA Capacity Payment

Buyer shall make a RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's RA Capacity Payment shall be equal to the sum for each day during the Showing Month of the product of (a) the applicable Contract Price for that Monthly Delivery Period, prorated to reflect the number of days during such Showing Month, multiplied by (b) the Designated RA Capacity for the applicable day during the Monthly Delivery Period, multiplied by (c) 1,000. The final product of this RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

RA CAPACITY PRICE TABLE

Contract Year/Month	NP System RA Unit TBD (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) 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. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

**ARTICLE 5
CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller is responsible for either scheduling or causing 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 performing, or causing the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform, all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6 CHANGE IN LAW

If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure for Product set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or if a new product that is a derivative of the Product(s) contracted for herein is created, the Parties hereto agree to negotiate in good faith to amend this Confirmation, to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Confirmation or to provide Buyer with Product pursuant to another program if possible; provided, however, that neither Party shall be obligated to enter into any such amendment except in its sole discretion.

ARTICLE 7 OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, LAR, and/or FCR, as applicable, including, 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, 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, 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) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, or FCR so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date.

7.2 Seller Representations and Warranties

Seller represents and warrants 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 analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

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- (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, RAR, LAR, and FCR;
- (g) If Seller is the owner of any Unit, the cumulative amounts 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, RAR, LAR, and FCR;
- (i) Seller has notified 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 has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer notice, no later than the Notification Deadline, of the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's 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.

ARTICLE 8 CONFIDENTIALITY

Notwithstanding any agreement or obligation of confidentiality or non-disclosure between Buyer and Seller, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA 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 Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans. In addition, If Buyer becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes 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, or a request to Buyer under the California Public Records Act (California Government Code Section 6250 et seq.)) to disclose any confidential information of Seller, Buyer may do so after providing Seller with prompt notice so that Seller, at its sole expense, may seek an appropriate protective order or other appropriate remedy against disclosure. Notwithstanding anything to the contrary in Section 10.11 of the Master Agreement, Buyer may make portions of this Confirmation available to the public as part of Buyer's process of seeking approval from its Board of Directors for this Transaction.

ARTICLE 9 BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder, provided that Buyer shall bear all cost and risk associated with such resale and indemnify Seller for any claims by third parties arising therefrom. In the event of any such re-sale, Seller shall cause its Scheduling Coordinator to, cooperate reasonably with Buyer and Buyer's transferee (and their respective Scheduling Coordinators) to allow such transferee to utilize the re-sold Product.

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**ARTICLE 10
MARKET-BASED RATE AUTHORITY**

Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, 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 shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**ARTICLE 11
COLLATERAL REQUIREMENTS**

The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

Silicon Valley Clean Energy Authority

Shell Energy North America (US), L.P.

DocuSigned by:
Girish Balachandran
5CA64B9AC4C24C3...

John W. Pillion

By: _____

By: _____

Name: Girish Balachandran

Name: John W. Pillion

Title: CEO

Title: Confirmations Team Lead

Execution Version**CONFIRMATION LETTER**

This confirmation letter ("Confirmation") confirms the Transaction between Wellhead Power eXchange, LLC, a Delaware limited liability company ("Seller") and Silicon Valley Clean Energy Authority, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of August 22, 2019 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of August 15, 2019, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the "Master Agreement"), and as amended and supplemented by this Confirmation. In the event of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. The Master 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. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5 (and subject to the restrictions specified therein).
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "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.
- 1.8 "CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.
- 1.9 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.11 "Contingent Firm RA Product" means the Product with the terms and conditions specified in Section 3.2 hereof.
- 1.12 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.13 "Contract Quantity" means, with respect to each day of each Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity (MWs) table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.14 "CPUC" means the California Public Utilities Commission.

- 1.15 **"CPUC Decisions"** means, to the extent applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, and 16-06-045 and subsequent decisions related to resource adequacy as issued from time to time by the CPUC.
- 1.16 **"CPUC Filing Guide"** means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program.
- 1.17 **"Delivery Period"** has the meaning specified in Section 4.1 hereof.
- 1.18 **"Delivery Point"** has the meaning specified in Section 4.2 hereof.
- 1.19 **"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 for which Seller has elected to provide Alternate Capacity in accordance with the terms of this Confirmation, minus any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity.
- 1.20 **"Excusable Event"** means any of the following events that causes Seller to be unable to deliver all or a portion of the Contract Quantity: (a) a Planned Outage that is acceptably noticed pursuant to the Notification Deadline in accordance with Section 4.4(a), (b) a reduction in Unit NQC and/or Unit EFC as provided in Section 4.4(c), or (c) those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance.
- 1.21 **"Flexible RA Attributes"** means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.22 **"Flexible RAR"** means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.23 **"Flexible RAR Showing"** means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.24 **"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.
- 1.25 **"LAR"** means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 **"LAR Attributes"** means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.27 **"LAR Showings"** means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.28 **"Local RAR"** means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also

be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

- 1.29 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.30 "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).
- 1.31 "Master Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.32 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.33 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.34 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.35 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.36 "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.
- 1.37 "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.
- 1.38 "Product" has the meaning specified in Article 3 hereof.
- 1.39 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.40 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and/or Flexible RAR 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 RA Attributes, and if applicable, LAR and/or Flexible RA Attributes of the capacity provided by a Unit.
- 1.41 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.42 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.43 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.44 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.45 "Resold Product" has the meaning specified in Section 9 hereof.
- 1.46 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.47 "RMR Agreement" has the meaning set forth in the Tariff.
- 1.48 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.49 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.50 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC



Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.51 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.52 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.53 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.54 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof, as well as any Replacement Units, from which RA Capacity is provided by Seller to Buyer. A Unit shall not be a coal-fired or nuclear generating facility.
- 1.55 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.56 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that 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, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	WELLHEAD POWER PANOCHÉ
Location	FRESNO
CAISO Resource ID	PNOCHÉ_1_PL1X2
Unit SCID	WPX1
Unit NQC	49.97
Unit EFC	49.97
Resource Type	NATURAL GAS
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Point of Interconnection With The CAISO Controlled Grid ("Substation")	PANOCHÉ
Path 26 (North or South)	NORTH
Local Capacity Area (if any, as of Confirmation Effective Date)	FRESNO
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	NONE
Run Hour Restrictions	NONE

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

For each day of each Showing Month that is part of the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes and, if applicable, LAR and/or Flexible RA Attributes for a Contingent Firm RA Product, as specified in Sections 3.1 and 3.2 below (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary

services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes and, if applicable, LAR and/or Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity specified in Section 4.3. If the Units are not available to provide the full amount of the Contract Quantity as a result of an Excusable Event, then, subject to Section 4.4(a) or 4.4(c), as applicable, Seller shall have the option to notify Buyer that either (a) Seller will not provide the portion of Contract Quantity attributable to such event during the period of such non-availability (which period shall be specified in such notice) or (b) Seller will supply Alternate Capacity pursuant to Section 4.5(b) to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, Seller shall have the option to supply Alternate Capacity pursuant to Section 4.5(b) to fulfill the remainder of the Contract Quantity during such period.

If Seller has elected to provide Alternate Capacity under Section 4.4(a), 4.4(c) or 4.5(b), and fails to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. If Seller has not elected to provide Alternate Capacity under Section 4.4(a) or 4.4(c) and does not provide a portion of the Contract Quantity attributable to such event, then 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.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be [REDACTED]

4.2 Delivery Point

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

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month/Year	Total Local and Flexible RAR Contract Quantity (MWs)
	



Contract Month/Year	Total Local and Flexible RAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity pursuant to Section 4.5(b), which when combined with any Product from the Unit, shall not exceed the Contract Quantity for the affected portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above, or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below, and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then (A) Seller shall notify Buyer as soon as reasonably possible, and (B) Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity pursuant to Section 4.5(b) up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The “**Notification Deadline**” in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “**Replacement Unit**”), then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event may such generating unit be a nuclear facility or coal facility and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. Any Alternate Capacity must have the same or comparable LAR Attributes and Flexible RA Attributes as the Product. If Seller notifies Buyer in writing as to the particular Replacement Units and such Replacement Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month. If Seller notifies Buyer in writing of its intent to provide Alternate Capacity pursuant to this Section 4.5 and Buyer is unable to utilize the Alternate Capacity under Tariff rules governing the substitution or replacement of capacity products, Seller may be liable for costs or charges incurred by Buyer under Sections 4.7 and 4.8.

- (c) If Seller fails to provide Buyer any portion of the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, or if Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (b) above, then (i) Buyer may, but shall not be required to, purchase such Product from a third party; and (ii) 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 (A) if such failure is the result of a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, unless Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (b) above, or (B) if Seller has notified Buyer pursuant to Section 3.2 that the Unit is not capable of providing the full amount of the Contract Quantity for any Monthly Delivery Period and has not notified Buyer that it will provide Alternate Capacity for some or all of the Contract Quantity not provided.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (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); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.
- (c) 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 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 (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) 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 the Agreement, 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 from the Unit or as Alternative Capacity with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided or replaced by Seller; provided, however, that if any portion of such Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase

transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity (including costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity), and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided or replaced by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided or replaced by Seller for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may, in addition to any other rights or remedies available to Buyer, offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this, Confirmation pursuant to the Master Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Sections 4.4 and 4.5, then Seller also shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to the failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any applicable adjustments pursuant to Section 4.4 and due to requests from Buyer pursuant to Section 4.6(b), 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 for any portion of the Delivery Period for which notice is not timely provided in accordance with Sections 3.2, 4.4, and 4.5;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity for any portion of the Delivery Period as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder for each day of the Delivery Period.

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

4.9 Monthly RA Capacity Payment

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

CAISO filing for such Showing Month.

RA CAPACITY PRICE TABLE

Contract Month/Year	Local and Flexible RAR Capacity Price (\$/kW-month)
	



Contract Month/Year	Local and Flexible RAR Capacity Price (\$/kW-month)
[Redacted Table Content]	

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. 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 or payments made under a successor program to the Residual Unit Commitment program, but excluding payments described in clauses (a) through (e) above). All such revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, Seller shall indemnify Buyer for any such revenues received by Seller that are not subsequently 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. If Seller fails to pay such revenues to Buyer, Buyer may, in addition to any other rights or remedies available to Buyer, offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense during normal working hours after reasonable prior notice, to retain an independent third party reasonably acceptable to Seller to audit any documents, records, or data of Seller associated with the Contract Quantity. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event 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. Seller shall likewise have no liability for the failure of Buyer to comply with any Tariff provisions, including any penalties or fines imposed on Buyer for such noncompliance.

ARTICLE 6. [RESERVED]**ARTICLE 7. OTHER BUYER AND SELLER COVENANTS****7.1 Further Assurances**

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

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain to the extent reasonably possible the benefits of the bargain struck by the Parties on the Confirmation Effective Date. The Parties acknowledge that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings which may necessitate such amendments.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit;

- provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
 - (l) No portion of the Designated RA Capacity or any Alternate Capacity provided under this Confirmation is or will be from Units that utilize coal or coal materials as a source of fuel. Seller understands and acknowledges that it is Buyer's policy to not purchase or accept products from generators that utilize coal or coal materials as a source of fuel. Any future replacement of the Units or the Designated RA Capacity, if necessary, shall not be from generators that utilize coal or coal materials as a source of fuel.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Notwithstanding anything to the contrary contained herein or the Master Agreement, neither party is prohibited from disclosing the terms of this Transaction to any rating agency or its representatives, so long as such receiving party is subject to a confidentiality agreement or non-disclosure agreement with the Party disclosing such information that requires the receiving party to maintain the confidentiality of such information, or is otherwise subject to a professional duty to maintain the confidentiality of such information.

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.) and that Buyer is required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Buyer 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 Buyer may submit to Seller information

that Buyer 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 Agreement ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Agreement or any information designated by a Disclosing Party as Confidential Information, 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 thirty (30) 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.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder and any associated rights, in each case, acquired under this Agreement, but no such sale shall be considered an assignment of Buyer's rights hereunder or create any contractual privity between Seller and any such purchaser. In the event 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 each Unit's SC, to follow Buyer's instructions that are consistent with this Confirmation and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause each Unit's SC, 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. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or a Unit's SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Sections 4.7 and 4.8, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ARTICLE 11. CREDIT AND COLLATERAL REQUIREMENTS

Within thirty (30) days of the Confirmation Effective Date, Seller shall deliver Performance Assurance to Buyer in the amount equal to five percent (5%) of the product of the Contract Price multiplied by the undelivered portion of the Contract Quantity during the Delivery Period ("Performance Security"). The Collateral Requirement shall be recalculated each year on the anniversary of the Confirmation Effective Date and any excess Performance Assurance held by Buyer shall be returned to Seller (if cash) or reduced (if in the form of a Letter of Credit) within thirty (30) days of such anniversary. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

With respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Confirmation to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (a) cash, or (b) a substitute Letter of Credit from a Qualified Institution, 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, shall constitute an Event of Default:

- i. the issuer of such Letter of Credit becomes Bankrupt;
- ii. the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- iii. 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;
- iv. such Letter of Credit fails or ceases to be in full force and effect at any time; or
- v. 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, and in no event less than ninety (90) days prior to the expiration of the outstanding Letter of Credit.

ARTICLE 12. COUNTERPARTS

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

ARTICLE 13. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

WELLHEAD POWER EXCHANGE, LLC, a
Delaware limited liability company

By: Harold E. Dittler
 Name: HAROLD E. DITTLER
 Title: PRESIDENT

SILICON VALLEY CLEAN ENERGY
AUTHORITY, a California joint powers
authority

By: Girish Balachandran
 Name: GIRISH BALACHANDRAN
 Title: CEO