

Pricing and other market-sensitive data within this Contract may be exempt from disclosure under the California Public Records Act and other rules, including but not limited to Government Code Sections 6254(k) and 6255; Evidence Code Sections 1040 and 1060; Civil Code Section 3426.1, and Public Utilities Code Sections 454.5(g) and 583; and Decision 06-06-066 of the California Public Utilities Commission (as amended by D. 21-11-029 and other decisions).

This Contract has been redacted accordingly.

Originals of all Contracts signed by the City as administrator of San José Clean Energy are with the Office of the Community Energy Department.

A redacted audit trail for any non-dated electronically signed contracts is attached.

Contact the Community Energy Department at:

-Email: info@sanjosecleanenergy.org

-Phone: (833) 432-2454 for additional information.

RESOURCE ADEQUACY CONFIRMATION LETTER

This confirmation letter (“Confirmation”) confirms the Transaction agreed to as of the last dated signature on the signature page hereto (the “Confirmation Date”), between City of San José, a municipal corporation, and Enterprise Solar Storage II, LLC, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product. This Confirmation is governed by Master Power Purchase and Sale Agreement (version 2.1., modified 4/25/00), as published by the Edison Electric Institute (the “EEI Form”) as modified by the Cover Sheet in Annex A attached hereto and incorporated by reference (collectively, the “Master Agreement”), all of which form a part of this Agreement. All provisions contained in or incorporated by reference in the EEI Form will govern this Agreement except as expressly modified herein or in Annex A, as if the Parties had executed such an agreement based on the EEI Form (as if modifications or elections specified in the Annex A were made on the Cover Sheet); provided, however, that the Parties acknowledge and agree that the Collateral Annex is not a part of and is not applicable to this Agreement. This Transaction shall constitute a “Transaction” under the Master Agreement. The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. In the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless otherwise stated.

ARTICLE 1 TRANSACTION TERMS

Buyer: City of San José, a municipal corporation

Seller: Enterprise Solar Storage II, LLC

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A and B are incorporated into this Confirmation.

ARTICLE 2 DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Expected Quantity of the Product from the Shown Unit(s), where “Expected Quantity” is the Quantity less any excused deductions to the Quantity for Force Majeure and/or for excused reductions in Unit NQC for which Seller has provided notice pursuant to Section 2.1(h).
- (b) Seller will deliver the Product by submitting to CAISO in its Supply Plan the Shown Unit(s) and the applicable characteristics of the Shown Unit(s) and Product

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for Buyer, as further specified in Appendix B, all in compliance with this Confirmation.

- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Quantity.
- (d) Seller may sell and deliver from a Shown Unit that meets the Product requirements set forth in Appendix B. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. Seller will identify the Shown Unit(s) and Expected Quantity for a Showing Month by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.
- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if Seller fails to submit a Supply Plan for the volume of Expected Quantity for any Showing Month in such amount as instructed by Buyer (but not to exceed the Expected Quantity) for the applicable Showing Month. Buyer will have received the Product if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Product if Buyer fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.¹ The Parties agree that the Unit(s) described in Appendix B do not trigger the need for Buyer or Seller to file an advice letter or other request for

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

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authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380. Upon Seller's request, Buyer will promptly evaluate any Shown Unit identified by Seller and provide written confirmation of whether such Shown Unit would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.

- (h) Excused Reductions in Unit NQC: Seller's obligation to deliver any of the Quantity during the Delivery Period will be excused if a Unit described in Appendix B experiences a reduction in Unit NQC after the Initial Unit NQC Date for such Unit as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller's obligation to deliver is excused will equal (i) the Quantity multiplied by (ii) the total amount (in MW) by which the Unit NQC was reduced since the Initial Unit NQC Date, divided by (iii) the Unit NQC as of the Initial Unit NQC Date. If a Unit described in Appendix B experiences such a reduction in Unit NQC, then Seller may, but is not obligated to, provide the applicable part of the Quantity from any Shown Unit.

2.2 Buyer's Remedies for Seller's Failure to Deliver Expected Quantity

- (a) If Seller fails to deliver any part of the Expected Quantity as required herein for any Showing Month and such failure is not excused under the terms of the Agreement ("Shortfall Quantity"), then Seller is liable for damages pursuant to Section 4.1 of the Master Agreement. Buyer will use commercially reasonable efforts to purchase replacement Capacity Attributes comparable to the Product to replace the Shortfall Quantity.
- (b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's unexcused failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. Seller will have no obligation to Buyer under this Section 2.2(b) in respect of the portion of the Expected Quantity for any portion of the Delivery Period for which Seller has paid damages pursuant to Section 2.2(a) of this Confirmation and Section 4.1 of the Master Agreement; i.e., Buyer shall not be entitled to damages under this Section 2.2(b) that were recovered under Section 2.2(a) above. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.3 Buyer's Re-Sale of Product

- (a) Buyer may re-sell all or part of the Product; provided that any such re-sale will not relieve Buyer of any of its obligations under this Agreement and any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.
- (b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Buyer will have exclusive rights to direct the Seller or the Unit's SC to offer, bid, or otherwise submit the Expected Quantity of Product for re-sale in such market, Seller and the Unit's SC shall comply with the Buyer's direction to the extent it is consistent with applicable law and the Tariff, and Buyer shall retain and receive all revenues from such re-sale; provided, however, that if participation in the centralized capacity market causes Seller to incur material additional costs or to forgo revenues that Seller would have otherwise received but for its participation in the centralized capacity market, then Buyer shall indemnify and hold Seller harmless from and against those material additional Seller costs or foregone Seller revenues associated with participation in the centralized capacity market.

2.4 Seller's Remedies for Buyer's Failure to Receive Expected Quantity

If Buyer fails to receive any part of the Expected Quantity as required herein for any Showing Month, and such failure is not excused under the terms of the Agreement, then Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement. If Buyer resells any portion of the Product to a Subsequent Buyer and that Subsequent Buyer fails to receive any portion of the resold Product, such failure will be deemed a failure of Buyer to receive the Product hereunder, and Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement.

ARTICLE 3
PAYMENTS

3.1 Payment

Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (a) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon the first day of the Showing Month) and (b) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day ("Monthly RA Capacity Payment"). The Monthly RA Capacity Payment shall equal the product of (i) the applicable Contract Price for that Showing Month, (ii) the Expected Quantity for the Showing Month and (iii) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Expected Quantity in clause (ii) of the Monthly RA Capacity Payment formula shall be reduced by the portion, if any, of Expected Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month.

3.2 Allocation of Other Payments and Costs

- (a) Seller will receive and is entitled to retain any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or its SC or a Subsequent Buyer or its SC. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Buyer under the Master Agreement.
- (b) Buyer is to receive and retain all revenues associated with the Expected Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.
- (c) If CAISO designates any part of the Expected Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and, to the extent permitted under the Tariff, not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

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

ARTICLE 4 **OTHER BUYER AND SELLER COVENANTS**

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Expected Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Expected Quantity of the Product for the sole benefit of Buyer or any Subsequent Buyer. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the balance of benefits and burdens of the Transaction as of the Confirmation Date.

4.3 Seller's Representations and Warranties

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

- (a) no part of the Expected Quantity of the Product during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) the Unit qualifies under the Tariff for the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit in respect of each Showing Month of the Delivery Period does not exceed the NQC for that Unit during the applicable Showing Month of the Delivery Period;
- (d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Expected Quantity of Product for the Delivery Period to Buyer; and
- (e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b) and that such SC is obligated to promptly deliver those

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revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 5

ADDITIONAL MASTER AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Buyer PPA Default; Seller PPA Default; Termination Payment

- (a) If the PPA is terminated by Seller due to a Buyer PPA Default, then such occurrence will be deemed an Event of Default of Buyer under this Agreement that is not subject to cure.
- (b) If the PPA is terminated by Buyer due to a Seller PPA Default, then such occurrence will be deemed an Event of Default of Seller under this Agreement that is not subject to cure; provided, however, that if the Seller PPA Default occurs prior to the PPA COD, then, notwithstanding anything to the contrary herein, Seller will not owe a Termination Payment to Buyer under this Agreement.
- (c) Notwithstanding anything to the contrary in this Agreement, in no event shall Seller's aggregate liability for any breaches of this Agreement or Events of Default of Seller under this Agreement arising prior to the PPA COD exceed the amount of the Seller Performance Security.

5.2 Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose information to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

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5.4 Governing Law

This Confirmation, including the provisions and requirements of the Tariff and the definition of the Product and its components, and any portion of the Master Agreement applicable to this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

5.5 City of San José Standard Provisions

- (a) Nondiscrimination/Non-Preference. Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.
- (b) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Seller certifies that, as of the Confirmation Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. Seller has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the Buyer in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (b) is a material breach.
- (c) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this subsection (c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Buyer to terminate this Agreement.

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- (d) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (d) is a material breach.
- (e) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

ARTICLE 6 **COLLATERAL REQUIREMENTS**

6.1 Seller Collateral

To secure its obligations under this Agreement, Seller shall deliver Seller Performance Security to Buyer within thirty (30) days after the Confirmation Date. "Seller Performance Security" means (i) cash or (ii) Letter of Credit in the amount of [REDACTED]. Promptly following the end of the Delivery Period, Buyer shall promptly return to Seller the unused portion of the Seller Performance Security, subject to any draws made by Buyer in accordance with this Confirmation, upon Seller's written request.

6.2 Buyer Collateral

Buyer is not required to post any credit support for this Transaction.

ARTICLE 7 **ASSIGNMENT FOR FINANCING**


No Party shall assign this Agreement or its rights hereunder unless it also assigns the PPA and its rights thereunder to the same assignee. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, (a) except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller, and (b) Seller shall have the right at any time and from time to time to create or provide for a security interest in, or convey in trust its respective rights, titles and interests in this Agreement to a lender, mortgagee, or trustee under deeds of trust, mortgages or indentures, or to secured parties under a security agreement as security for its present or future bonds or other obligations or securities, or to any lender(s), lessor(s) or tax equity investor(s) and other parties providing any financing or refinancing and any successor(s) or assigns thereto ("Secured Party") with respect to any Unit described in Appendix B to the Confirmation, without the consent of Buyer, and without such Secured Party assuming or becoming in any respect

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obligated to perform any of the obligations of the Parties hereto. Any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior consent of the other Party, succeed to and acquire all the rights, titles and interests of Seller in this Agreement, and may foreclose upon said rights, titles and interests of Seller, provided any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof is a Permitted Transferee and has agreed in writing to be bound by this Agreement. Upon the written request of Seller, Buyer shall execute, or arrange for the delivery of, such consents, estoppels and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of any Unit described in Appendix B to the Confirmation or any part thereof, including a form of financing party consent and agreement, each of which documents and instruments shall be in form and substance reasonably acceptable to Buyer and Seller shall agree to pay for the reasonable third party legal review expenses of Buyer in compliance with such requests.

AGREED AS OF THE CONFIRMATION DATE:

**ENTERPRISE SOLAR STORAGE II,
LLC**

By: 
Name: Don Vawter
Title: Vice President, Origination
Date: Dec 16, 2022

**CITY OF SAN JOSE, a California
municipal corporation**

By: 
Email: sarah.zarate@sanjoseca.gov
Date: 12/19/2022 GMT
Name: Sarah Zarate
Title: Director of City Manager's Office
Date: 12/19/2022

Approved as to form:

By: 
Name: Rosa Tsongtaatarii
Title: Chief Deputy City Attorney
Date: Dec 16, 2022

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APPENDIX A DEFINED TERMS

“Buyer PPA Default” means an Event of Default (as defined in the PPA) of Buyer under the PPA.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing substantially the same functions.

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

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

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“Compliance Obligations” means, as applicable based on the Product specifications, RAR, Local RAR and FCR.

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

“CPUC” means the California Public Utilities Commission.

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

“Delivery Period” has the meaning set forth in Appendix B.

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

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

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

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“Initial Unit NQC” means, for each Unit described in Appendix B, the initial Net Qualifying Capacity set by the CAISO for such Unit.

“Initial Unit NQC Date” means, for each Unit described in Appendix B, the date on which the CAISO first published the final Initial Unit NQC for such Unit.

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

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

“MW” means megawatt.

“Net Qualifying Capacity” or “NQC” has the meaning set forth in the Tariff.

“Notification Deadline” is fifteen (15) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Permitted Transferee” has the meaning set forth in the PPA.

“PPA” means that certain Renewable Power Purchase Agreement, dated as of the Confirmation Date, between Buyer and Seller, as it may be amended from time to time.

“PPA COD” means the date established as the Commercial Operation Date (as defined in the PPA) pursuant to the PPA.

“Product” means Capacity Attributes applicable to compliance with RAR from Units that meet the specifications contained in the “Product” section of Appendix B.

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

“SC” means Scheduling Coordinator as defined in the Tariff.

“Seller PPA Default” means an Event of Default (as defined in the PPA) of Seller under the PPA.

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

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Date.

“Subsequent Buyer” means the buyer of Product from Buyer in a re-sale of Product by Buyer.

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

“Unit” means any generation unit described in Appendix B and any Shown Unit.

“Unit EFC” means Unit Effective Flexible Capacity (as defined in the Tariff) and is the lesser of that of the Unit as set by CAISO as of the Confirmation Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means Unit Net Qualifying Capacity and is, for a given date of determination, the lesser of the Initial Unit NQC as of the Initial Unit NQC Date and the Net Qualifying Capacity of the Unit on such date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: System

MCC Bucket: _____

CPUC Local Area (if applicable): N/A

Flexible Capacity Category (if applicable): N/A

Delivery Period: “Delivery Period” means the period of time, (a) beginning with the first day of the first Showing Month that begins at least sixty (60) calendar days after the PPA COD and (b) ending on December 31st, 2040, or the last day of the Delivery Term (as defined in the PPA), whichever is earlier, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

Quantity and Contract Price:

RAR

Showing Month and Year	Quantity (MW)	Contract Price (\$/kW-mo.)
EACH SHOWING MONTH IN 2025 THAT IS INCLUDED IN DELIVERY PERIOD		
EACH SHOWING MONTH IN 2026		
EACH SHOWING MONTH IN 2027		
EACH SHOWING MONTH IN 2028		
EACH SHOWING MONTH IN 2029		
EACH SHOWING MONTH IN 2030		
EACH SHOWING MONTH IN 2031		

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Showing Month and Year	Quantity (MW)	Contract Price (\$/kW-mo.)
EACH SHOWING MONTH IN 2032		
EACH SHOWING MONTH IN 2033		
EACH SHOWING MONTH IN 2034		
EACH SHOWING MONTH IN 2035		
EACH SHOWING MONTH IN 2036		
EACH SHOWING MONTH IN 2037		
EACH SHOWING MONTH IN 2038		
EACH SHOWING MONTH IN 2039		
EACH SHOWING MONTH IN 2040		

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Unit

Enterprise Solar II, an approximately 48 MW solar photovoltaic electricity generating facility located in Kern County, California. Seller has the right, but not the obligation, in its sole discretion, to incorporate an integrated energy storage facility (“Storage Facility”) into the Enterprise Solar II project. Prior to commencing construction on the Enterprise Solar II project, Seller will provide Buyer with a revised Appendix B reflecting the Unit Specific Information, which will automatically supersede the prior version of Appendix B.

Unit Specific Information	
Resource Name	
Physical Location	
CAISO Resource ID	_____
SCID of Resource	
Unit NQC by month (e.g., Jan=50, Feb=65):	_____
Unit EFC by month (e.g., Jan=30, Feb=50)	N/A
Resource Type (e.g., gas, hydro, solar, etc.)	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	N/A
TAC Area (e.g., PG&E, SCE)	_____
Prorated Percentage of Unit Factor	_____
Prorated Percentage of Unit Flexible Factor	
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	_____
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	_____

ANNEX A

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 Confirmation Date (“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: Enterprise Solar Storage II, LLC
 (“Party A”)

Name: City of San José, a municipal corporation
 (“SJCE” or “Party B”)

All Notices:

Street: 437 Madison Avenue, Suite A
City: New York, NY Zip: 10022
Attn: Business Management
Phone: [REDACTED]
Facsimile: [REDACTED]
Duns: to be provided by Party A
Federal Tax ID Number: [REDACTED]

All Notices:

Standard Mail
200 East Santa Clara Street
San Jose, CA 95113

Shipping/courier
88 South 4th Street, Suite 130
San Jose, CA 95112
Attn: Deputy Director, Power Resources
Phone: [REDACTED]
Email: procurement@sanjosecleanenergy.org
Duns: [REDACTED]
Federal Tax ID Number: [REDACTED]

With a copy to:

Office of the City Attorney
Attn. Deputy City Attorney, Community Energy
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113-1905
Direct: [REDACTED]
Email: cao.main@sanjoseca.gov

and an additional email copy to:

Hall Energy Law PC
Attn: Stephen Hall
Phone: [REDACTED]
Email: [REDACTED]

Invoices:

Attn: Accounts Payable
Phone: [REDACTED]
Facsimile: [REDACTED]

Confirmations:

Attn: Deputy Director of Power Resources
Address: Same as above
Phone: [REDACTED]
Email: procurement@sanjosecleanenergy.org

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Scheduling:

Attn: Operations 24/7 Desk
Phone: [REDACTED]
Facsimile: [REDACTED]

Scheduling:

[REDACTED] 0

Alternative:

[REDACTED]

Payments:

Attn: Treasury Department
[REDACTED]

Payments:

Attn: Accounts Receivable
Phone: [REDACTED]
Email: Invoices@sanjosecleanenergy.org

Wire Transfer:

To be updated

Wire Transfer:

[REDACTED]
[REDACTED]
[REDACTED]

Credit and Collections:

Attn: Treasury Department
[REDACTED]
[REDACTED]

Credit and Collections:

Attn: Division Manager, Budget & Financial Planning
Phone: [REDACTED]
Email: Invoices@sanjosecleanenergy.org

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

[REDACTED]
[REDACTED]
[REDACTED]

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

Hall Energy Law PC
Attn: Stephen Hall
[REDACTED]
[REDACTED]

and

Attn: Director of Finance
200 East Santa Clara Street
San Jose, CA 95113
Phone: [REDACTED]
Email: [REDACTED]

and

Office of the City Attorney
Attn. Deputy City Attorney, Community Energy
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113-1905
Direct: [REDACTED]
Email: cao.main@sanjoseca.gov

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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 _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

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: N/A

Party A: _____ Cross Default Amount

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B: N/A

Party B: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount

5.6 Closeout Setoff:

Option A (Applicable if no other selection is made.)

Option B

Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

Financial Information:

[REDACTED]

Credit Assurances:

[REDACTED]

Collateral Threshold:

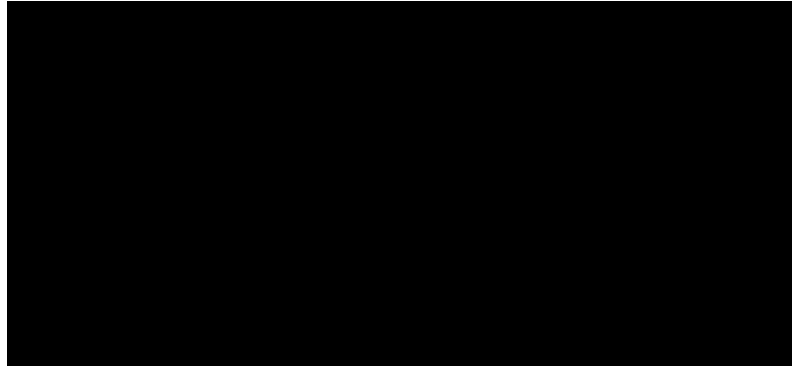
[REDACTED]

Downgrade Event:

[REDACTED]

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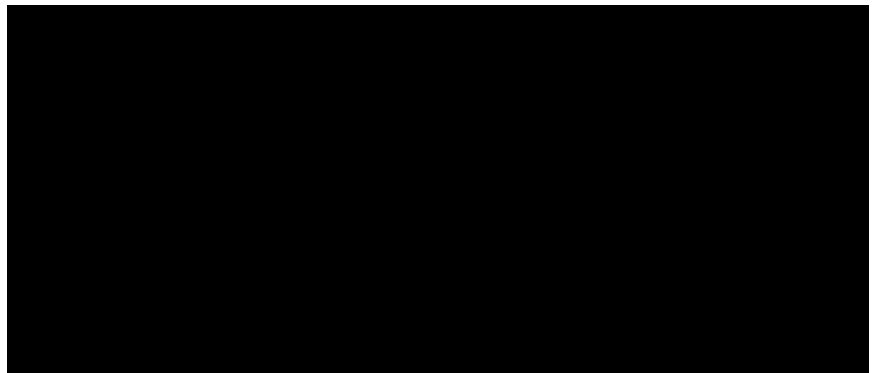
If applicable, complete the following:



8.2 Party B Credit Protection:



If applicable, complete the following:



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Article Ten

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:

- 1) In Section 1.3, insert the phrase “and, in the case of any such petition instituted or presented against it, that petition remains undismissed and unstayed for a period of ninety (90) days” at the end of clause “(i)”.
- 2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.
- 3) In Section 1.12, (a) delete the word “issues” in the fourth line and replace it with “issuers” and (b) insert “and if such ratings are different, the lowest of such ratings shall apply” after the word “Sheet” in the last line.
- 4) Section 1.23 is amended by inserting in the thirteenth line thereof before the phrase “foregoing factors” the word “two.”
- 5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.
- 6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”
- 7) Section 1.46 is deleted in its entirety.
- 8) In Section 1.50, delete the reference to “Section 2.4” and replace it with “Section 2.5”.
- 9) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.
- 10) Section 1.52 is amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”
- 11) Section 1.53 is amended by:
 - (i) deleting the phrase “at the Delivery Point” from the second line;
 - (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and
 - (iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

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12) The following defined term is added as Section 1.53A:

“1.53A “San José Clean Energy” is the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.”

13) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

14) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

15) In Section 2.1, delete the first sentence in its entirety and replace it with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

16) In Section 2.3, delete the section in its entirety and replace it with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

17) In Section 2.4, delete “either orally or” after “agreed to” in the 7th line.

18) In Section 2.5, delete the section in its entirety and specify it as “Reserved”.

19) In Section 5.1(a), change “three (3) Business Days” to “five (5) Business Days”.

20) In Section 5.1(b), insert the phrase “and such Party does not fully mitigate the adverse consequences of such false or misleading representation or warranty to the other Party within thirty (30) days after written notice thereof” after the word “repeated” in the last line.

21) In Section 5.1(c), change “three (3) Business Days” to “thirty (30) days”.

22) In Section 5.1(e), insert the phrase “if such failure is not remedied within five (5) Business Days after written notice thereof” after the word “hereof” in the last line.

23) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

24) Section 5.1(h)(v), insert the phrase “made in connection with this Agreement” after the phrase “any guaranty”.

25) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated

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Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information 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 dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of the net Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then for purposes of the calculation of the Termination Payment, such Settlement Amount shall be deemed to be zero dollars (\$0.00)."

26) In Section 5.7, (a) delete the phrase "(a)" in the first sentence and (b) delete the following phrase in the first sentence "or (b) a Potential Event of Default".

27) In Section 6.3, (a) delete "two (2)" in the fifth sentence and replace it with "five (5)" and (b) in lines 3, 16 & 18, change "twelve (12) months" to "twenty-four (24) months".

28) Section 7.1 shall be amended by:

(i) adding "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE," in the fifth sentence;

(ii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3." immediately after the words "ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE"; and

(iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES."

29) A new Section 8.4. "UCC Waiver," is added as follows:

"Section 8.4: Section 8 sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

30) In Section 10.2(ii), insert the clause " , except all permits necessary to install, operate and maintain the generating facilities and sell the output therefrom in the case of Party A, which Party A reasonably expects to be obtained in the ordinary course of business prior to delivery of Product under this Agreement;" at the end thereof.

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31) In Section 10.2(viii), add the following after “doing,” in the 7th line:

“nor is it relying on any unique or special expertise of the other Party and it is not in any special relationship of trust or confidence with respect to the other Party,”

32) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“Each party acknowledges and agrees that (i) certain transaction(s) hereunder are intended to constitute a “forward contract” providing a “contractual right” within the meaning of such terms under Title 11 of the United States Code, as amended (the “Bankruptcy Code”); (ii) it is a “forward contract merchant” within the meaning of the Bankruptcy Code with respect to any transaction that constitutes a “forward contract,” (iii) all payments made or to be made by one party to the other party pursuant to this contract constitute a “settlement payment” within the meaning of the Bankruptcy Code; (iv) all transfers of adequate assurance, prepayment or similar performance assurance by one party to the other party under this contract constitute a “margin payment” within the meaning of the Bankruptcy Codes; (v) each party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code; and (vi) the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

33) In Section 10.6, delete “NEW YORK” and replace with “CALIFORNIA”.

34) Section 10.7 is amended to add before each occurrence of the word “facsimile” the phrase “electronic mail”.

35) In Section 10.8, (a) delete the following “Except to the extent herein provided for” and (b) add the following to the end thereof:

“This Master Agreement and any Confirmation hereunder may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by electronic mail transmission shall be effective as delivery of a manually executed signature page.”

36) In Section 10.9, (a) insert the words “copies of” after the word “examine” and (b) in line 9, change “twelve (12) months” to “twenty-four (24) months”.

37) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “Affiliates, actual or potential provider of debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, contractors” immediately prior to the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties)

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to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential”. The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

38) The following Mobile-Sierra clause shall be added as Section 10.12:

“10.12 Standard of Review/Modifications.

(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 proposed by a Party (to the extent that any waiver in the next paragraph below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the ‘public interest’ standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008).

(b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable law, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.”

39) The following shall be added as Section 10.13:

“Section 10.13 Imaged Agreement. Any fully executed Agreement, Confirmation or other related document, or recording may be scanned and stored electronically, or stored on computer tapes and disks, as may be practicable (the “Imaged Agreement”). The Imaged Agreement, if introduced as

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evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, any recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of any Imaged Agreement (or photocopies of the transcription of such Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.”

SCHEDULE M GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM

Schedule M is hereby deleted in its entirety and replaced with the following:

- A. The Parties agree to add the following definitions in Article One:

“Act” means City of San José Municipal Code Title 26.

“Designated Fund” means that certain Department of Community Energy designated fund as further described in Section 4.80.4050 of the City of San José Municipal Code that shall be used solely for Party B (San José Clean Energy) costs and expenses, including the obligations under this Master Agreement.

“Governmental Entity or Public Power System” means Party B (San José Clean Energy).

“Special Fund” means the Designated Fund.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One:

“If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.”

- C. The Parties agree to add the following representations and warranties to Section 10.2:

“Further, Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, or other required procedures has or will be taken and performed as required under the Act and Party B’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B’s obligations to make payments hereunder are unsubordinated obligations and such payments are to be made solely from the Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by Party B will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Party B otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B which, in either case, is proscribed by any provision of the Act or any

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other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.”

- D. The Parties agree to add the following sections to Article Three:

“Section 3.4 Reserved.”

“Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (provided such court is located within a venue permitted under this Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.”

- E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

“Section 3.6 Governmental Entity or Public Power System: Security. Party B is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement; provided, however, that (a) Party B has created and set aside a Special Fund for payment of its obligations under this Agreement, (b) as set forth in Section 4.80.4060 of the City of San José Municipal Code, all monies derived from operation of San José Clean Energy, including revenues from sale of electricity, payments from other entities, and any financing proceeds associated with San José Clean Energy will be deposited in the Special Fund, and (c) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, Party B agrees to establish, and represents and warrants it has established and will continue to maintain during the term of this Agreement, San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under this Agreement and all of Party B’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Party B shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund as of the Effective Date and periodically during the Term. Further upon written request of Party A, which request shall be made no more often than monthly, Account balance information shall be provided by Party B and shall include a representation of the total obligations to which the account applies as of such date. Party B’s payment obligations under this Agreement are special limited obligations of Party B payable solely from the Special Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the City of San José. Party B shall provide Party A with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of this Agreement.”